

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0701-04
Bill No.: Perfected HCS for HB 205
Subject: Civil Rights; Employees - Employers; Employment Security
Type: Original
Date: February 23, 2011

Bill Summary: This proposal changes the laws regarding unlawful discriminatory practices in employment as they relate to the Missouri Human Rights Law.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	(\$50,045)	(\$57,436)	(\$58,012)
Total Estimated Net Effect on General Revenue Fund	(\$50,045)	(\$57,436)	(\$58,012)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Federal Funds	(\$1,136,479)	(\$1,136,479)	(\$1,136,479)
Total Estimated Net Effect on <u>All</u> Federal Funds	(\$1,136,479)	(\$1,136,479)	(\$1,136,479)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Labor and Industrial Relations (DOL)** assume the federal fiscal impact was calculated by using the current EEOC and HUD contract amounts and the costs of additional staff. The total for MCHR's current contract with HUD equals \$374,829. The current contract amount with EEOC is currently \$761,650. The fiscal impact at this time is \$1,136,479.

The fiscal impact for General Revenue was calculated by estimating a 16 percent increase in MCHR's case load if whistler blower language became a new protected category. The state of Maine is the only state that has the whistler blower protection enforced by the Human Rights Agency and whistler blower basis make up approximately 16 percent of their cases load. MCHR received 2,109 complaints in FY10. If this increased by 16 percent due to adding whistler blower as a protected category, this would add 337 new complaints. The Department estimates at minimum MCHR would need 5.00 FTE to absorb the additional workload. Each Human Relations Investigator is required to investigate a minimum of 96 cases a year and most average 96 cases per year. Therefore, 337 divided by 96 additional cases equals 3.5. MCHR would need at least an additional three Human Relations Officers to investigate those cases, one Human Relations Tech for the additional intake calls, and one Senior Office Support Assistant (SOSA) to process the additional paperwork. The salary plus fringe benefits would be \$232,181 in fiscal year 2012, and expense and equipment for five new FTE in 2012 would be \$19,280. In fiscal year 2013 the salary plus fringe benefits would be \$281,404, and expense and equipment for in 2013 would be \$7,380.

Oversight has, for fiscal note purposes only, changed the starting salary for the FTE to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees over the last six months of FY 2010 and policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Oversight assumes that it is unclear how many additional complaints would be generated as a result of this proposal. Oversight has shown in the fiscal note the need of DOL to have one FTE Human Relations Officer. Should DOL experience a measurable increase in its workload as a direct result of this proposal then it can request additional FTE in future budget requests.

Oversight assumes DOL's estimate of expense and equipment cost for the new FTE could be overstated. If DOL is able to use existing desks, file cabinets, chairs, etc., the estimate for equipment for fiscal year 2012 could be reduced by roughly \$2,656.

ASSUMPTION (continued)

In response to the previous version of this legislation, officials at the **Office of Administration Division of Personnel** assume if passed, the Division may need to advise agencies and political subdivisions of the newly established statutes. It does not appear to require updates to the Missouri Merit Laws, Chapter 36, RSMo or 1 CSR 20.

While the proposed legislation will impact the manner in which employment cases are adjudicated, it is difficult to estimate the actual fiscal impact. Therefore, all costs are listed as unknown.

Officials at the **Office of the Attorney General** assume that costs are unknown. AGO assumes an increase in the number of cases as the proposal limits all specified unlawful employment practices to the Commission, and expects initially increased appeals from determinations of the MCHR. The number of such cases, however, is unknown.

Officials at the **Missouri Department of Transportation** assume the current standard for a claim under the Missouri Human Rights Act (MHRA) is that discrimination was "a contributing factor" for the adverse employment action. This bill would change the standard to "the motivating factor". This bill would also remove individual liability for employees acting in the employer's interest. This would result in an unknown positive impact for the department.

Officials at the **Missouri Department of Conservation** assume an unknown negative fiscal impact. The amount would be based on legal costs if a claim was brought against the Department for employment actions. The Department must and does comply with the Missouri Human Rights Law.

Officials at the **City of Kansas City** assume this would have a negative impact on the City. It would severely negatively impact Kansas City's ability to enforce its civil rights ordinance. The effect of the bill would be to make it more difficult for persons who believe that they have been discriminated against to bring claims and to receive adequate relief when claims are brought.

Kansas City's Civil Rights Division, as well as the Missouri Commission on Human Rights (MCHR) and the St. Louis Civil Rights Enforcement Agency (CREA), participate in work-sharing agreements with both HUD and the EEOC. A key part of the agreement is that Kansas City's laws remain substantially equivalent to Title VII of the 1964 Civil Rights Act (employment discrimination) and Title VIII of the 1968 Civil Rights Act (Fair Housing Act). If Kansas City's laws are amended such that they are no longer substantially equivalent, which would be the effect of this proposal, then Kansas City would not be able to participate in the

ASSUMPTION (continued)

respective federal programs. Kansas City receives approximately \$150,000 to \$200,000 from these programs each year. To lose those funds would have a crippling effect on the budget of Kansas City's Civil Rights Division.

In response to a previous version of this legislation, officials at the **Special School District** assume this would have a positive impact on the district. The district has paid employment discrimination cases due to the current statute leading to court interpretations unduly in favor of employees. The average legal expense is \$15,000 -\$20,000.

Officials at the **Linn State Technical College** assume an unknown impact.

Officials at the **Administrative Hearing Commission, City of Raytown, Lincoln University, Metropolitan Community College, Missouri Southern State University, Missouri State University, Northwest Missouri State University, Office of the State Courts Administrator, Parkway School District, St. Louis County, St. Louis Public Schools, University of Central Missouri** and the **University of Missouri** assume that there is no fiscal impact from this proposal.

In response to a previous version of this legislation, officials at the **City of St. Robert, East Central College, Franklin County, Missouri Western State University** and the **Platte County** assume that there is no fiscal impact from this proposal.

Officials at the following cities: Ashland, Belton, Bernie, Bonne Terre, Boonville, California, Cape Girardeau, Clayton, Columbia, Dardenne Prairie, Excelsior Springs, Florissant, Frontenac, Fulton, Gladstone, Grandview, Harrisonville, Independence, Jefferson City, Joplin, Kearney, Kirksville, Knob Noster, Ladue, Lake Ozark, Lebanon, Lee Summit, Liberty, Linn, Louisiana, Maryland Heights, Maryville, Mexico, Neosho, O'Fallon, Pacific, Peculiar, Popular Bluff, Republic, Richmond, Rolla, Sedalia, Springfield, St. Charles, St. Joseph, St. Louis, Sugar Creek, Sullivan, Warrensburg, Warrenton, Webb City, Weldon Spring and West Plains did not respond to **Oversight's** request for fiscal impact.

Officials at the following counties: Andrew, Barry, Bates, Boone, Buchanan, Butler, Callaway, Camden, Cape Girardeau, Carroll, Cass, Clay, Cole, Cooper, DeKalb, Greene, Hickory, Holt, Jackson, Jasper, Jefferson, Johnson, Knox, Laclede, Lafayette, Lawrence, Lincoln, Marion, Miller, Moniteau, Monroe, Montgomery, New Madrid, Nodaway, Ozark, Pemiscot, Perry, Phelps, Pulaski, Scott, St. Charles, St. Louis, St. Francois, Taney, Texas, Warren, and Webster did not respond to **Oversight's** request for fiscal impact.

ASSUMPTION (continued)

Officials at the following schools: Blue Springs Public Schools, Branson Public Schools, Columbia Public Schools, Fair Grove Schools, Francis Howell Public Schools, Independence Public Schools, Jefferson City Public Schools, Kansas City Public School Board, Kirksville Public Schools, Lee Summit Public Schools, Mehlville Public Schools, Mexico Public Schools, Nixa Public Schools, Sedalia School District, Sikeston Public Schools, Silex Public Schools, St Joseph School District, St. Charles Public Schools, and Sullivan Public Schools did not respond to **Oversight's** request for fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
GENERAL REVENUE			
<u>Cost - Dept. of Labor</u>			
Personal Service	(\$31,080)	(\$37,669)	(\$38,046)
Fringe Benefits	(\$16,267)	(\$19,716)	(\$19,913)
Equipment and Expenses	(\$2,698)	(\$51)	(\$53)
<u>Total Costs - DOL</u>	<u>(\$50,045)</u>	<u>(\$57,436)</u>	<u>(\$58,012)</u>
FTE Change - DOL	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>(\$50,045)</u>	<u>(\$57,436)</u>	<u>(\$58,012)</u>
Estimated Net FTE Change on General Revenue	1 FTE	1 FTE	1 FTE
FEDERAL FUNDS			
<u>Loss - Dept. of Labor</u>			
EEOC & HUD contracts	(\$1,136,479)	(\$1,136,479)	(\$1,136,479)
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>(\$1,136,479)</u>	<u>(\$1,136,479)</u>	<u>(\$1,136,479)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill changes the laws regarding unlawful discriminatory practices as they relate to the Missouri Human Rights Law. In its main provisions, the bill:

- (1) Adds the definition of "because" or "because of" as it relates to a decision or action to be the protected criterion was a motivating factor;
- (2) Revises the definition of "employer" by specifying that it is a person engaged in an industry affecting commerce who has six or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and does not include the federal government; a corporation owned by the federal government; an individual employed by an employer; an Indian tribe; private membership clubs, excluding labor organizations; and corporations and associations owned and operated by religious or sectarian groups;
- (3) Defines "other protected person" as a person who has reported to the proper authorities an unlawful act of the employer or its agent; a person who reports to an employer serious misconduct of the employer that violates state law or regulation; or a person who has refused to carry out a directive issued by the employer that if completed would be a violation of the law; or a person who engages in conduct otherwise protected by statute or regulation;
- (4) Adds the definition of "proper authorities" which includes governmental or law enforcement agencies or an officer or the employee's human resources representative employed by the employer;
- (5) Specifies that it will be an unlawful discriminatory practice to discharge a person because of his or her status as an other protected person;
- (6) Specifies that Chapter 213, RSMo, will provide the exclusive remedy for any and all unlawful employment practices and nullifies any common law causes of action to the contrary;
- (7) Requires courts to rely heavily upon judicial interpretations of Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act of 1967, and the Americans With Disabilities Act in interpreting and applying the provisions of Chapter 213 in employment cases;
- (8) Specifies that the legislature intends expressly to abrogate *McBryde v. Ritenour School*

FISCAL DESCRIPTION (continued)

District, 207 S.W.3d 162 (Mo. App. E.D.) as it relates to the necessity and appropriateness of the issuance of a business judgment instruction;

(9) Recommends that certain specified frameworks for analysis should be considered highly persuasive if an employer in a Chapter 213 case files a Rule 74.04 of the Missouri Rules of Civil Procedure motion as a tool in removing factually insubstantial cases from crowded dockets;

(10) Prohibits the prevailing party in a case brought alleging discharge of an other protected person from being entitled to attorney fees ;

(11) Allows any party in any unlawful discriminatory employment practice complaint to demand a trial by jury;

(12) Specifies that the amount of all damages awarded cannot exceed the amount of the actual back pay plus interest and punitive damages of up to \$50,000 in the case of an employer with six to 100 employees in each of 20 or more weeks in the current or preceding calendar year; up to \$100,000 for an employer with 101 to 200 employees; up to \$200,000 for an employer with 201 to 500 employees; and up to \$300,000 for an employer with more than 500 employees. The maximum award amounts do not apply to unlawful discrimination actions regarding housing, commercial real estate loans, and selling or renting by real estate agencies;

(13) Requires the plaintiff to prove that the protected criterion was the motivating factor in the alleged unlawful decision or action in any employment-related civil action; and

(14) Prohibits punitive damages from being awarded against the state or any of its political subdivisions.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

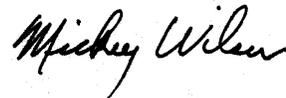
SOURCES OF INFORMATION

Administrative Hearing Commission
City of Kansas City
City of Raytown
City of St. Robert
Department of Labor and Industrial Relations
East Central College

JH:LR:OD

SOURCES OF INFORMATION (continued)

Franklin County
Lincoln University
Linn State Technical College
Metropolitan Community College
Missouri Department of Conservation
Missouri Department of Transportation
Missouri Southern State University
Missouri State University
Missouri Western State University
Northwest Missouri State University
Office of Administration Division of Personnel
Office of the Attorney General
Office of the State Courts Administrator
Parkway School District
Platte County
Special School District
St. Louis County
St. Louis Public Schools
University of Central Missouri
University of Missouri



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Director
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