

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 5579-02  
Bill No.: HB 1930  
Subject: Employees - Employers; Labor and Management  
Type: Original  
Date: March 12, 2014

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Bill Summary: This proposal would change the laws regarding unlawful discriminatory employment practices as they relate to the Missouri Human Rights Act, and would create the Whistleblower Protection Act.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
General Revenue	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
Conservation Commission	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Road	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
Colleges and Universities	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>	<b>\$0 or (Unknown)</b>

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

☐ 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 2015	FY 2016	FY 2017
Local Government	\$0 or (Unknown)	\$0 or (Unknown)	\$0 or (Unknown)

### FISCAL ANALYSIS

#### ASSUMPTION

##### Sections 213.010. - 213.101, RSMo. - Discriminatory Employment Practices

Officials from the **Office of Administration - Division of General Services** assume this proposal would expand the definition of discrimination in Missouri Human Rights cases, and indicated potential unknown costs for the General Revenue Fund.

Officials from the **Department of Conservation (MDC)** assume this proposal would change the laws regarding unlawful discriminatory employment practices as they relate to the Missouri Human Rights Act, and would create the Whistleblower Protection Act. MDC officials indicated an unknown fiscal impact for this proposal but assume it would likely be less than \$100,000. MDC officials noted the amount would be based on legal costs if a claim was brought against the Department for employment actions.

**Oversight** assumes the expanded definition of discrimination in this proposal could result in additional costs to defend against discrimination allegations, or for the payment of compensation and legal fees to employees. Oversight will include \$0 or Unknown cost to the General Revenue Fund, the Conservation Commission Fund, Road Funds, Colleges and Universities, and Local Governments.

**Oversight** notes this proposal could potentially have an impact on state agencies which are wholly or partially supported with federal funds. If this proposal results in increased costs for those funds, Oversight assumes that cost would be offset by additional federal funds earned; and will not include the potential additional cost or funding in this fiscal note.

ASSUMPTION (continued)

Section 288.030.1.(23), RSMo. - Employee Misconduct:

Officials from the **Department of Labor and Industrial Relations (DOLIR)** stated that individuals who are determined to have been separated from employment due to misconduct are not eligible to receive Unemployment Insurance (UI) benefits, assume this proposal would amend the definition of misconduct, and provided the following additional comments.

Under existing provisions, an employee discharged for misconduct is not qualified to receive unemployment compensation, and this proposal would expand the definition of 'misconduct'. The proposal would also eliminate absenteeism or tardiness as a rebuttable presumption of misconduct, and would include absenteeism and tardiness in the new definition of misconduct.

DOLIR officials noted that federal law prohibits a state from imposing a total reduction of benefit rights, or the cancellation of wage credits, unless the individual is discharged for misconduct connected with work.

DOLIR officials stated the United States Department of Labor (USDOL) has reviewed this bill for conformity issues and has informed the Division of Employment Security (DES) that any interpretation of the language that would allow Missouri to impose a total reduction of benefit rights, or the cancellation of wage credits for misconduct not connected to the work would cause a conformity issue with federal law. The USDOL expressed concerns about the language in this bill and if enacted, the USDOL would require the DES to assure it that the agency would not interpret the bill in a way that would cause a conformity problem.

In summary, DOLIR officials stated the proposed changes would have no fiscal impact as long as Missouri interprets this bill in a manner that does not raise conformity issues with federal law, and non-conformity with federal law could jeopardize the certification of Missouri's UI program. If the program is not certified, Missouri would lose approximately \$40 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$13 million in federal funds each year that the Department of Economic Development - Division of Workforce Development uses for Wagner-Peyser reemployment services.

ASSUMPTION (continued)

DOLIR officials also noted the Federal Unemployment Tax Act (FUTA) imposes a 6.0 percent payroll tax on employers. Most employers do not pay the total 6.0 percent due to credits they receive for the payment of state unemployment taxes and for reduced rates under an approved experience rating plan. FUTA allows employer tax credits up to a maximum of 5.4 percent against the federal tax if the Secretary of Labor approves the state UI law. However, if the Missouri's program is determined to be out of compliance or out of conformity, Missouri employers would pay the full 6.0 percent, or approximately an additional \$880 million per year.

The DOLIR response included an estimated loss of \$40 million per year to the Unemployment Compensation Administration Fund and an estimated loss of \$13 million to the Wagner-Peyser Administration Fund for the potential withdrawal of federal certification for the Missouri Unemployment Compensation Program.

**Oversight** notes that the DOLIR response for similar language in Truly Agreed To and Finally Passed SS for SB 28 LR 0288-02 (2013), DOLIR officials indicated that proposal did not have a conformity issue, but commented the department would have to make an assurance to the federal Department of Labor it would not interpret the language in a way that would cause a conformity issue. Therefore, based on those assurances from DOLIR, Oversight did not reflect a potential loss of federal funds for that proposal and will not indicate a loss of federal funds for the current proposal.

Section 288.050,(1), RSMo. - Voluntary Termination and Good Cause:

DOLIR officials noted individuals can be disqualified for UI benefits if they voluntarily leave work without "good cause" attributable to such work or to the employer. This proposal would add a definition of "good cause". DOLIR officials noted that "good cause" is not currently defined in state law, but assumed the change would have no fiscal impact.

ASSUMPTION (continued)

Bill as a whole responses

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Joint Committee on Administrative Rules** assume that this proposal would not have a fiscal impact to their organization in excess of existing resources.

Officials from the **Department of Transportation** did not respond to our request for information.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
<b>GENERAL REVENUE FUND</b>			
<u>Cost - OA</u> Defense or payment of costs in discrimination cases Section 213.010 - 213.101	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO GENERAL REVENUE FUND</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>
<b>CONSERVATION COMMISSION FUND</b>			
<u>Cost - MDC</u> Defense or payment of costs in discrimination cases Section 213.010 - 213.101	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO CONSERVATION COMMISSION FUND</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>
<b>ROAD FUNDS</b>			
<u>Cost - MODOT</u> Defense or payment of costs in discrimination cases Section 213.010 - 213.101	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>	\$0 or <u>(Unknown)</u>
<b>ESTIMATED NET EFFECT TO ROAD FUNDS</b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>	<b>\$0 or <u>(Unknown)</u></b>

FISCAL IMPACT - State Government  
 (Continued)

FY 2015  
 (10 Mo.)

FY 2016

FY 2017

**COLLEGES AND UNIVERSITIES**

Cost - Colleges and Universities  
 Defense or payment of costs in  
 discrimination cases  
 Section 213.010 - 213.101

\$0 or  
(Unknown)

\$0 or  
(Unknown)

\$0 or  
(Unknown)

**ESTIMATED NET EFFECT TO  
 COLLEGES AND UNIVERSITIES**

**\$0 or**  
**(Unknown)**

**\$0 or**  
**(Unknown)**

**\$0 or**  
**(Unknown)**

FISCAL IMPACT - Local Government

FY 2015  
 (10 Mo.)

FY 2016

FY 2017

**LOCAL GOVERNMENTS**

Cost - Local governments  
 Defense or payment of costs in  
 discrimination cases  
 Section 213.010 - 213.101

\$0 or  
(Unknown)

\$0 or  
(Unknown)

\$0 or  
(Unknown)

**ESTIMATED NET EFFECT ON  
 LOCAL GOVERNMENTS**

**\$0 or**  
**(Unknown)**

**\$0 or**  
**(Unknown)**

**\$0 or**  
**(Unknown)**

FISCAL IMPACT - Small Business

This proposal could have a direct fiscal impact to small businesses to defend against alleged discrimination.



### FISCAL DESCRIPTION

This proposal would change the definition of unlawful discriminatory employment practices, create the Whistleblower Protection Act, and change the definitions of employee misconduct and good cause for resignation as they relate to the unemployment insurance program

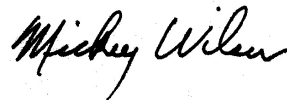
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

### SOURCES OF INFORMATION

Office of the Secretary of State  
Joint Committee on Administrative Rules  
Office of Administration  
    Division of General Services  
Department of Conservation  
Department of Labor and Industrial Relations

**Not responding:**

Department of Transportation



Mickey Wilson, CPA  
Director  
March 12, 2014

Ross Strobe  
Assistant Director

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