

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 2345H.01I
Bill No.: HB 1183
Subject: Labor and Management; Employees - Employers; Civil Rights; Sexual Offenses;
Business and Commerce; Ethics
Type: Original
Date: April 8, 2021

Bill Summary: This proposal prohibits sexual harassment of unpaid interns.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Various State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Colleges and Universities	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Legal Expense Fund*	\$0	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

*Transfers in and Payments out net to zero.

Numbers within parentheses: () indicate costs or losses.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Total Estimated Net Effect on FTE	0	0	0

☒ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

☐ Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2022	FY 2023	FY 2024
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume that a small number of additional complaints are anticipated under this section, which can be handled with existing resources. However, if more complaints are filed than anticipated, MCHR (State of Missouri Commission on Human Rights) will request additional resources.

Oversight notes the DOLIR assumes some complaints arising from the proposal and if more complaints are filed than anticipated, DOLIR - MCHR will request more funding. Therefore, Oversight assumes the DOLIR will be able to perform any additional duties required by this proposal with current staff and resources and will reflect no fiscal impact to the DOLIR for fiscal note purposes.

Officials from the **Office of Administration** assume the proposed prohibits sexual harassment of unpaid interns, adding definitions and a provision waiving sovereign and official immunity. This legislation has the possibility of increasing the number of cases that could successfully be asserted against the state and increase costs to the Legal Expense Fund. The amount of the potential costs resulting from this proposal cannot be reasonably estimated as this language creates new legal standards, subject to judicial interpretation, and there is no readily available information that could assist in forming a rational basis for estimating costs. In addition, the number of potential claims, the severity of those claims, and the ultimate costs associated with any settlement or judgment resulting from those claims cannot be forecasted with any degree of assurance to their accuracy.

Oversight notes the legislation could create claims and damages that could potentially be asserted against the state or other entities covered by the Legal Expense Fund (LEF).

Officials from the **State Technical College of Missouri** assume the sexual harassment of interns is already protected under Title IX and this proposed bill creates a different definition of sexual harassment than is mandated in the Final Rule that went into effect on August 14, 2020. Having two different definitions will cause confusion and can definitely have a negative impact if there are allegations and a college is forced to decide between following the federal definition and a state definition.

Oversight notes most LEF costs are reimbursed from the General Revenue Fund (GR). GR has paid for the majority of payments from the LEF since payments on LEF cases for agencies with designated reimbursable funds have been relatively small. According to Office of Administration - Risk Management (OARM), broader budget authority to transfer from Federal and Other Funds beginning in FY 18 allowed for an increase of percentage of payments from Federal and Other Funds. Table 1 below shows LEF costs broken down for GR versus Federal Funds/Other Funds.

Table 1: Legal Expense Fund payments from GR and Fed/Other

	GR	Fed/Other	Total	GR %	Fed/Other %
FY 15	\$9,197,461	\$661,555	\$9,859,016	93%	7%
FY 16	\$11,386,339	\$600,489	\$11,986,828	95%	5%
FY 17	\$19,983,784	\$4,217,582	\$24,201,366	83%	17%
FY 18	\$18,625,000	\$9,649,513	\$28,274,513	66%	34%
Total	\$59,192,584	\$15,129,139	\$74,321,723	80%	20%

OARM provided Oversight with claim payment data from FY 2015 to FY 2018. Based on the data provided, Oversight estimated the number of claims and amount paid by claim type shown in table 2 below. Motor vehicle claims accounted for 69% of the total number of claims but only 11% of the value of claims. Claims related to discrimination accounted for 8% of the total number of claims but 25% of the value of claims paid.

Table 2: Payment data **by type** of claim

Type of Claim	Number of Claims	Cost of Claims
Discrimination	67	\$19.6 million
Wrongful Death	5	\$11.9 million
Motor Vehicle	583	\$8.6 million
Medical Malpractice	10	\$8.3 million
STL & KC Police	5	\$5.4 million
Tort	10	\$4.6 million
Harassment	3	\$4.3 million
Personal Injury	10	\$3.6 million
Class Action Law Suit	1	\$2.6 million
Dangerous Condition of Property	96	\$1.6 million

Source - OARM: Includes motor vehicle and dangerous condition of property claims (based on FY 2015-2018 data).

Oversight notes, based on the data provided by OARM, the average payment for harassment claims was approximately \$1.43 million (3 harassment cases /\$4.3 million in discrimination claims paid by the LEF). If this proposal resulted in one additional claim per year at a similar payout, this could potentially cost the state \$1.43 million in additional liability claims. If this

proposal resulted in 10 additional claims per year, this could potentially cost an estimated \$14.3 million per year. However, Oversight notes the cost of any potential liability would be entirely dependent on the number of claims (if any) and circumstances of the claims filed; therefore, the cost is ultimately unknown.

Oversight does not have any information to the contrary in regards to OA=s or State Technical College of Missouri assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an AUnknown@ cost (increased claims related to practices based sexual harassment) to above organizations on the fiscal note for general revenue, other state fund, and federal funds.

Officials from the **Attorney General's Office, Missouri Department of Transportation, Office of the Governor, Office of the Lieutenant Governor, Office of the State Auditor, Missouri Department of Conservation, Missouri University, Northwest Missouri State University, and University of Central Missouri** each assume the proposal will not have a direct fiscal impact on their organizations.

Officials from the **City of Kansas City** assume the proposal will have a negative fiscal impact on Kansas City by increasing its liability.

Oversight does not have any information to the contrary in regards to Kansas City=s, assumption; therefore, Oversight will range the fiscal impact to local governments from \$0 (does not increase litigation to local governments) to an AUnknown@(increased claims related to practices based on gender) on the fiscal note.

Officials from the **City of Claycomo, City of Corder, City of O'Fallon, City of Springfield, and City of Saint Louis – Budget Division** each assume the proposal will not have a direct fiscal impact on their organization.

Oversight only reflects the responses that we have received from state agencies and political subdivisions; however, other school districts, counties, cities, and colleges were requested to respond to this proposed legislation but did not. A general listing of political subdivisions included in our database is available upon request.

L.R. No. 2345H.01I

Bill No. HB 1183

Page **6** of **9**

April 8, 2021

<u>FISCAL IMPACT – State Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
GENERAL REVENUE FUND			
<u>Cost - Potential increase in payments to Legal Expense Fund due to increase in claims</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
COLLEGES AND UNIVERSITIES			
<u>Cost - Colleges and Universities Potential increase in claims</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT ON COLLEGES AND UNIVERSITIES	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
VARIOUS STATE FUNDS			
<u>Cost – OA Potential increase in claims</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
NET EFFECT ON VARIOUS STATE FUNDS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

<u>FISCAL IMPACT – State Government (continued)</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>	<u>\$0 to Unknown</u>
<u>Transfer Out</u> - payment of discrimination claims	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT – Local Government</u>	FY 2022 (10 Mo.)	FY 2023	FY 2024
LOCAL POLITICAL SUBDIVISIONS			
<u>Cost</u> - Potential increase in claims	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>	<u>\$0 to (Unknown)</u>

FISCAL IMPACT – Small Business

Small businesses will be required to comply with revised sections. If a small business fails to comply, they could be held liable for those actions as a result of this proposal.

FISCAL DESCRIPTION

This bill includes acts of sexual harassment against unpaid interns in the Missouri Human Rights Act's definition of an unlawful employment practice. In addition to employer liability for specified direct acts of sexual harassment, liability for an unlawful employment practice may occur when an employer knows or reasonably knows of conduct constituting sexual harassment and fails to take corrective action.

Individual elected public officials may be considered to be employers under the bill and may be personally liable for violations. Defenses including sovereign immunity, official immunity, and legislative immunity are explicitly waived in civil actions related to unlawful employment practices.

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

Department of Labor and Industrial Relations

Missouri Department of Conservation

Attorney General's Office

Missouri Department of Transportation

Office of the Governor

Office of the Lieutenant Governor

Office of the State Auditor

Missouri Department of Conservation

Missouri University

Northwest Missouri State University

University of Central Missouri

City of Claycomo

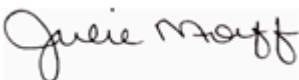
City of Corder

City of O'Fallon

City of Springfield

City of Saint Louis – Budget Division

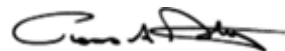
City of Kansas City



Julie Morff

Director

April 8, 2021



Ross Strobe

Assistant Director

April 8, 2021