

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3076H.011
 Bill No.: HB 1674
 Subject: Employees - Employers; Civil Rights; Labor and Management; Department of Labor and Industrial Relations
 Type: Original
 Date: January 12, 2024

Bill Summary: This proposal establishes the Employee Restroom and Locker Room Access Act.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
General Revenue	Could Exceed (\$68,8876 to \$141,175)	Could Exceed (\$81,937 to \$163,874)	Could Exceed (\$83,275 to \$166,550)
Total Estimated Net Effect on General Revenue	Could Exceed (\$68,8876 to \$141,175)	Could Exceed (\$81,937 to \$163,874)	Could Exceed (\$83,275 to \$166,550)

*Oversight reflects the potential of 1 to 2 FTE Human Resource Officers within the Department of Labor and Industrial Relations, as well as construction improvements and potential legal expenses from the LEF.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Legal Expense Fund*	\$0	\$0	\$0
Other State Funds**	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on <u>Other</u> State Funds	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

Numbers within parentheses: () indicate costs or losses.

*Transfers-in and increased Payments net to zero.

**Depending upon future litigation resulting from the proposed changes, Oversight assumes the fiscal impact to the state could potentially exceed \$250,000.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2025	FY 2026	FY 2027
Various 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 2025	FY 2026	FY 2027
General Revenue Fund	1- 2 FTE	1- 2 FTE	1- 2 FTE
Total Estimated Net Effect on FTE	1- 2 FTE	1- 2 FTE	1- 2 FTE

- 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 2025	FY 2026	FY 2027
Local Government	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Labor and Industrial Relations (DOLIR)** note:

This proposal would broaden the complaints the Missouri Commission on Human Rights (MCHR) covers and instill MCHR as the enforcement mechanism. The bill prohibits employers from requiring employees to share multiple-occupancy restrooms, changing areas, or locker rooms with members of the opposite sex. No employer shall require employees to share a restroom/locker room with a member of the opposite sex. Employer may provide single-occupancy restrooms/locker rooms that are designated as unisex & may also provide gender-neutral restrooms/locker rooms open to all employees regardless of gender identity in addition to facilities for single-sex use. Shall be an unlawful employment practice for any person or entity to discriminate against any individual on the basis of sex in the use of employee restrooms. Medical exceptions for employees who have fully medically transitioned and for employees who require and request assistance to use restroom/locker room (and for employees who provide such help). MCHR shall enforce; if MCHR finds that employer violated this section, it may order employer to take corrective action. Any person or entity who willfully violates this section shall be guilty of a misdemeanor & liable for a civil penalty of not more than \$250/violation

The MCHR received 33 complaints of discrimination involving sex and restroom usage in CY 2023. The increase of complaints and responsibilities, which would now be enforced by the MCHR, as a result of the bill, require an additional one (1) to two (2) Human Rights Officers (HRO).

Officials from the DOLIR, through additional conversation via e-mail, note:

Sexual Orientation and Gender Identity are not currently classes protected by the MHRA. This means that the 33 cases they received last year regarding these bathroom-involved situations are referred to the federal EEOC, or indicate additional bases for discrimination which are covered by the current MHRA.

Therefore, if this bill is passed, it is creating new situations where cases which they previously referred must now be worked by the Missouri Commission on Human Rights. MCHR human rights officers are each already at maximum caseload, so an additional 33 cases is going to necessitate additional staff, but there is an expectation that the passage of the law will encourage individuals who file federally to do so locally, as well. There is a distinct possibility this leads to more than the 33 cases they've seen previously, which is why the fiscal note states a range of 1 to 2 HROs being necessary.

Oversight notes the officials from the DOLIR assume the proposal will have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a DOLIRs required FTE impact in the fiscal note and range the impact from 1 to 2 HRO's at \$47,280 annually (and fringe benefits with expense and equipment).

Officials from the **Office of Administration (OA)** note:

213.200.1 This provision has the potential to increase costs to the state Legal Expense Fund (LEF) for actions alleging discrimination against a state employee in connection with their official duties on behalf of the state, due to the addition of an unlawful discriminatory practice. This change will be subject to judicial construction; therefore, the cost impact to the state is unknown.

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.

Oversight does not have any information to the contrary in regards to the OA's assumption; therefore, Oversight will range the fiscal impact from \$0 (does not increase litigation) to an AUnknown@ cost (increased claims related to restroom practices) on the fiscal note.

Officials from the **Department of Corrections (DOC)** note:

The proposal establishes the employee restroom and locker room access act.

The proposed legislation establishes employers cannot require an employee to use a restroom or locker room with members of the opposite sex. An employer may provide a single-occupancy restroom/locker room designated as unisex, and may provide gender-neutral restrooms/locker rooms for single-sex use. Any person or employer who violates this section is guilty of a misdemeanor and subjected to a fine of up to \$250.

The department assumes this legislation will not apply to the offender population.

Operationally speaking, the department may need to assess existing practices to ensure compliance with this legislation. The department operates on 19 correctional facilities, 6 CSC's, 2 Transition Centers, 70 plus Probation and Parole District offices, a Central Office campus, and 3 training centers. An evaluation of current restroom and locker room designations will need to occur and may result in changing the restroom designations at some locations.

In the event a current infrastructure at a site cannot comply with this legislation, the department may need new construction to bring the site into compliance. The department estimates that each construction could cost a minimum of \$10,000 per restroom/locker room.

In addition, the department assumes the creation of this section may result in increased litigation from employees. The department has no way to estimate the number of potential lawsuits; therefore, the department projects a \$0-unknown cost for this legislation.

Oversight notes the Department of Commerce and Insurance, Department of Mental Health, and the Department of Natural Resources deferred to the Office of Administration for an estimated impact.

Oversight contacted Office of Administration – Facilities Management Design and Construction (FMDC) for additional information and notes:

FMDC is using past similar examples for their response which is based on accommodation requests that they have received from departments for handicap accessible restrooms and lactation rooms. Any cost would depend on the type of accommodation the department was requesting based on the need in their facility. In the past when requests were received from departments, FMDC would plan out a project to fulfill the request and the cost was paid through the use of an Inter-Agency Spending Delegation Agreement (IASDA). FMDC would complete the project and then bill the department using the IASDA.

There would be no way to determine the scale of project that would be required by a department at this time. If the department requested the project through a capital improvement request, then FMDC would include it in the capital improvement budget request.

If FMDC is being asked to project the impact for every department, FMDC's response would be \$0 to unknown since there would be no way for FMDC to know how each department would respond to this act.

Oversight notes the OA-FMDC assume any potential cost for improvements of the facilities, due to the proposal, could be paid through the use of an Inter Agency Spending Delegation Agreement or possibly the capital improvement budget request. Oversight is uncertain if any agency facilities would require improvements; therefore, Oversight will show a range of impact of \$0 (no improvements required) to an unknown cost (improvements required).

Officials from the **Office of Attorney General (AGO)** assume any potential litigation costs arising from this proposal can be absorbed with existing resources. The AGO may seek additional appropriations if the proposal results in a significant increase in litigation or investigation.

Oversight assumes AGO is provided with core funding to handle a certain amount of activity each year. Oversight assumes AGO could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, AGO could request funding through the appropriation process.

Officials from the **Office of Administration – Budget & Planning (B&P)** note:

Section 213.200 creates the "Employee Restroom and Locker Act". The provision in subsection 213.200.12 provides a penalty of \$250 for any person or entity who violates section 213.200. To the extent any such penalties are deposited in the state treasury, TSR may be impacted.

Oversight notes that violations of section 213.200 could result in fines or penalties. Oversight also notes per Article IX Section 7 of the Missouri Constitution fines and penalties collected by counties are distributed to school districts. Fine varies widely from year to year and are distributed to the school district where the violation occurred. Oversight will reflect a positive fiscal impact of \$0 to Unknown to local school districts. For simplicity, Oversight will not reflect the possibility that fine revenue paid to school districts may act as a subtraction in the foundation formula.

Officials from the **Department of Economic Development, the Department of Elementary and Secondary Education, the Department of Higher Education and Workforce Development, the Department of Health and Senior Services, the Department of Revenue, the Department of Public Safety (Office of the Director, Capitol Police, Alcohol & Tobacco Control, Fire Safety, Gaming Commission, Missouri Highway Patrol, State Emergency Management Agency and Veterans Commission), the Missouri National Guard, the Office of the Governor, the Missouri Lottery Commission, the Missouri Consolidated Health Care Plan, the Department of Agriculture, the Missouri Department of Conservation, the Missouri Ethics Commission, the Department of Transportation, the Office of Prosecution Services, the Office of Administration (Administrative Hearing Commission and Budget and Planning), the Office of the State Courts Administrator, the Office of the Secretary of State, Office of Treasurer, and the State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations for this proposal.

Officials from the **University of Central Missouri** assume the proposal will have an indeterminate fiscal impact on their organization.

Officials from the **City of Kansas City, the City of Springfield the Phelps County Sheriff, the Kansas City Police Dept., the St. Louis County Police Dept., the Northwest Missouri State University,** the each assume the proposal will have no fiscal impact on their respective organization.

Oversight notes the proposal, Section 213.200 3. (2) defines employer as “any person or entity employing one or more employees within the state of Missouri, including a public employer as defined under Section 285.525”. Therefore, **Oversight** will range the impact to colleges, universities, and local governments from \$0 (does not increase litigation) to an Unknown@ cost (increased claims related to practices based on discrimination claims) in the fiscal note.

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
GENERAL REVENUE			
<u>Cost</u> – OA – FMDC for state facilities improvements p.5	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost</u> - Potential increase in payments to Legal Expense Fund for increase in claims p. 5	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
<u>Cost</u> – Section 213.200 Employee Restroom and Locker Room Access Act reviews by HRO’s			
Personnel Service	(\$39,400) Up to (\$78,800)	(\$48,226) Up to (\$96,451)	(\$49,190) Up to (\$98,380)
Fringe Benefits	(\$27,787) Up to (\$55,575)	(\$33,711) Up to (\$67,422)	(\$34,085) Up to (\$68,170)
Expense & Equipment	(\$1,700) Up to (\$6,800)	\$0	\$0
<u>Total Costs</u> – DOLIR 1 -2 FTE	(\$68,887) Up to (\$141,175)	(\$81,937) Up to (\$163,874)	(\$83,275) Up to (\$166,550)
FTE Change	1 - 2 FTE	1 - 2 FTE	1 - 2 FTE
ESTIMATED NET EFFECT ON GENERAL REVENUE	<u>Could Exceed</u> <u>(\$68,887 to</u> <u>\$141,175)</u>	<u>Could Exceed</u> <u>(\$81,937 to</u> <u>\$163,874)</u>	<u>Could Exceed</u> <u>(\$83,275 to</u> <u>\$166,550)</u>
Estimated Net FTE Change on General Revenue	1 - 2 FTE	1 - 2 FTE	1 - 2 FTE

<u>FISCAL IMPACT – State Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
FEDERAL FUNDS			
<u>Revenue Cost</u> - Potential increase in claims p. 5	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
OTHER STATE FUNDS			
<u>Revenue Cost</u> - OA Potential increase in payments to Legal Expense Fund for increase in claims p. 5	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO OTHER STATE FUNDS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
LEGAL EXPENSE FUND (0692)			
<u>Transfer In</u> - from GR, Federal, and Other State Funds Potential increase in claims (p.5)	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
<u>Transfer Out</u> - payment of discrimination claims (p.5)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO THE LEGAL EXPENSE FUND	\$0	\$0	\$0

<u>FISCAL IMPACT – Local Government</u>	FY 2025 (10 Mo.)	FY 2026	FY 2027
LOCAL POLITICAL SUBDIVISIONS			
Revenue Gain – Section 213.200 12. (\$250 penalty)	\$0 to Unknown	\$0 to Unknown	\$0 to Unknown
Revenue Cost - Potential increase in claims (p.5)	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO LOCAL POLITICAL SUBDIVISIONS	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

FISCAL IMPACT – Small Business

A direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill creates the "Employee Restroom and Locker Room Access Act," effective January 1, 2025. The Act does not apply to any other provision of Chapter 213, RSMo, concerning human rights and does not limit action under that chapter. The bill defines terms including, among others, "employee," "employer," "gender identity," "hostile work environment," and "sex." The bill contains findings and declares it the public policy of the state to prohibit employers from requiring employees to share multiple-occupancy restrooms, changing areas, or locker rooms with members of the opposite sex. Employers cannot require sharing restrooms or locker rooms with members of the opposite sex, but they may provide single-occupancy restrooms or locker rooms designated as unisex and gender-neutral facilities open to all employees regardless of gender identity in addition to facilities designated for single-sex use.

Under the Act, it is an unlawful employment practice to discriminate against an individual on the basis of sex in employee restroom use. An exception is established for employees who have completed a full medical procedure to change the employee's sex, regardless of whether the change is reflected on the employee's birth certificate. A general exception covers employees who require assistance to use the restroom or locker room and employees who provide such assistance.

The Commission on Human Rights will enforce the Act. Corrective actions available to the Commission upon finding an employer violation include paying damages to the employee for harm suffered, reinstatement to the employee's prior position, or other equitable relief. A willful

violation is a misdemeanor, which upon conviction creates liability for a civil penalty of not more than \$250 for each violation.

This legislation is not federally mandated, would not duplicate any other program. Oversight assumes this could potentially require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office

Department of Commerce and Insurance

Department of Economic Development

Department of Elementary and Secondary Education

Department of Higher Education and Workforce Development

Department of Health and Senior Services

Department of Mental Health

Department of Natural Resources

Department of Corrections

Department of Labor and Industrial Relations

Department of Revenue

Department of Public Safety

Office of the Director

Division of Alcohol and Tobacco Control

Capitol Police

Fire Safety

Missouri Gaming Commission

Missouri Highway Patrol

State Emergency Management Agency

Missouri Veterans Commission

Missouri National Guard

Office of the Governor

Missouri Lottery Commission

Missouri Consolidated Health Care Plan

Missouri Department of Agriculture

Missouri Department of Conservation

Missouri Ethics Commission

Missouri Department of Transportation

Missouri State Employee's Retirement System

MoDOT & Patrol Employees' Retirement System

Missouri Office of Prosecution Services

Office of Administration

Administrative Hearing Commission

Budget and Planning

Facilities Management, Design and Construction

Office of the State Courts Administrator

Office of the Secretary of State

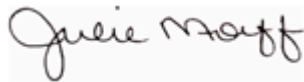
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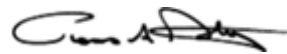
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State Tax Commission
University of Central Missouri
City of Kansas City
City of Springfield
Phelps County Sheriff
Kansas City Police Dept
St. Louis County Police Dept
Northwest Missouri State University



Julie Morff
Director
January 12, 2024



Ross Strobe
Assistant Director
January 12, 2024