

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated February 13, 2013)

**Drafting Number:** LLS 13-0713 **Date:** April 22, 2013  
**Prime Sponsor(s):** Rep. Levy; Salazar **Bill Status:** Senate Judiciary  
 Sen. Carroll; Guzman **Fiscal Analyst:** Clare Pramuk (303-866-2677)

**TITLE:** CONCERNING THE CREATION OF REMEDIES IN EMPLOYMENT DISCRIMINATION CASES BROUGHT UNDER STATE LAW.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015	FY 2015-2016
<b>State Revenue</b> General Fund	Potential Increase. See State Revenue section.		
<b>State Expenditures</b> General Fund* Cash Funds Risk Management Fund		\$12,914	25,903 See State Expenditures section.
<b>FTE Position Change</b>		0.2 FTE	0.4 FTE
<b>Effective Date:</b> August 7, 2013, if the General Assembly adjourns on May 8, 2013, as scheduled, and no referendum petition is filed. The bill applies to causes of action accruing on or after January 1, 2015.			
<b>Appropriation Summary for FY 2013-2014:</b> None required.			
<b>Local Government Impact:</b> See Local Government Impact section.			

\*This amount may be partially or fully offset by the receipt of gifts, grants, or donations.

**Summary of Legislation**

The *reengrossed* bill establishes the Job Protection and Civil Rights Enforcement Act of 2013. It establishes a process for a complaining party to pursue a claim for damages in state court after pursuing administrative options through the Civil Rights Commission (commission) or the State Personnel Board (board).

The bill allows for the remedies of compensatory and punitive damages and attorney fees to be awarded in employment discrimination cases brought under state law. Compensatory and punitive damages may be awarded in addition to the remedies allowed under current law, including front pay, back pay, interest on back pay, reinstatement or hiring, and other equitable relief. Remedies that are currently allowed at the federal level for employers with 15 or more employees are extended by the bill to include employers with less than 15 employees and to employment discrimination on the basis of sexual orientation. The bill also allows for claims of age discrimination by persons 70 years of age and older.

Total damage awards are capped at \$10,000 for employers with 1 to 4 employees and at \$25,000 for employers with 5 to 14 employees. State and local government and school district employees may not recover punitive damages under the bill but are allowed compensatory damages. Punitive damages cannot be charged against an employer who demonstrates good-faith efforts to prevent discriminatory and unfair employment practices or to provide reasonable workplace accommodations for an employee with a disability. Any party in a civil action where the plaintiff is seeking compensatory or punitive damages may demand a trial by jury.

Because total damage awards are based on the size of the employer, the court is directed to consider the size and assets of the employer and the egregiousness of the intentional discriminatory or unfair employment practice when assigning damages. Damage limits are shown in Table 1. The bill allows for compensatory damages against the state to be paid from the Risk Management Fund.

<b>Employer Size</b>	<b>Maximum Compensatory and Punitive Damages</b>
1 to 4	\$10,000
5 to 14	25,000
15 to 100	50,000
101 to 200	100,000
201 to 500	200,000
501 and up	300,000

By September 1, 2013, the commission is required to appoint a working group of employers and employees, including human resources professionals, to assist in education and outreach efforts and to foster compliance with laws prohibiting discriminatory or unfair employment practices. The commission is allowed to accept and expend gifts, grants and donations to fund this effort. Agencies that interact with private business are directed to post information on their websites within existing resources to encourage compliance with the provisions of the bill.

## **Background**

**Colorado Civil Rights Division.** Under state law, a person who believes he or she has been discriminated against must exhaust administrative relief before filing with a court. To accomplish this, the person must file a charge of discrimination (claim) with the Colorado Civil Rights Division (CCRD) in the Department of Regulatory Agencies. The CCRD investigates the claim and the director makes a determination. If a claim is not settled at the division, the person may sue in an appropriate court within 90 days of the determination.

**Federal civil rights law.** Under federal law, plaintiffs who prevail in employment discrimination cases may be awarded compensatory and punitive damages and attorneys fees. This only applies to cases against employers with 15 or more employees. An exception is the Age Discrimination in Employment Act (ADEA) which applies to employers with 20 or more employees and allows for the award of attorneys fees but not compensatory or punitive damages. ADEA does not apply to claims of age discrimination by persons 70 years of age or older. Claims of employment discrimination on the basis of sexual orientation cannot be brought under federal law.

**State Revenue**

The commission may accept and expend gifts, grants and donations for expenditures related to educational efforts, including the volunteer working group for deposit into the General Fund. No such funding has been identified at this time and is expected to be minimal.

**State Expenditures**

**This bill is not expected to increase costs in FY 2013-14 but is expected to increase General Fund expenditures by \$12,914 and 0.2 FTE in FY 2014-15 and at least \$25,903 and 0.4 FTE in FY 2015-16 within the CCRD.**

The CCRD is expected to have an increase of 24 cases per calendar year. One investigator can investigate 84 cases per year, so staffing includes 0.2 FTE for intake and investigation for half of FY 2014-15 and 0.4 FTE for intake and investigation in FY 2015-16. The CCRD requires 40 hours of legal services in FY 2014-15 and 81 hours in FY 2015-16 from the Department of Law. The fiscal note assumes that if caseloads are higher than estimated, funding will be requested through the supplemental or annual budget process. Expenditures for the CCRD are detailed in Table 2.

<b>Table 2. CCRD Expenditures Under HB13-1136</b>			
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Personal Services	\$0	\$9,824	\$19,646
FTE	0	0.2	0.4
Legal Services	0	3,090	6,257
<b>TOTAL</b>	<b>\$0</b>	<b>\$12,914</b>	<b>\$25,903</b>

Expenditures related to educational efforts, including the volunteer working group, may be funded by gifts, grants and donations if available. The fiscal note assumes that the working group will identify its workload and funding requirements.

**State Personnel Board, Department of Personnel and Administration.** The board hears appeals by applicants and employees in the state personnel system. However, discrimination cases against the state are typically filed in federal court because the Colorado Governmental Immunity Act cap of \$150,000 does not apply there. Because this bill adds some areas of discrimination that are not addressed under federal law, the board may see a small increase in cases. Claimants will still

need to go to state court to seek awards for compensatory damages. The fiscal note assumes that most cases filed against the state will be settled prior to reaching state court and thus not require an additional appropriation for legal services support from the Department of Law.

**Judicial Branch.** The fiscal note assumes that this expanded application of employment discrimination law will result in an increase in the filing of such cases, particularly given the availability of the prevailing party to recover attorney fees. The weighted caseload standards for district court judges indicate that a judge can handle approximately 549 civil cases per year. Therefore, about 150 new employment discrimination cases will have to be filed in the state courts to create a significant level of judicial officer need. While these cases will be some of the most complex civil cases in the district court, it is expected that the overall number of new and transfer cases will be within this limit and that the resulting increase in workload can be addressed within existing appropriations.

### **Expenditures Not Included**

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 3. These numbers are estimated using assumptions for FY 2014-15 and FY 2015-16 so may change prior to implementation.

<b>Table 3. Expenditures Not Included Under HB13-1136*</b>			
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$0	\$1,342	\$2,683
Supplemental Employee Retirement Payments	0	603	1,364
<b>TOTAL</b>	<b>\$0</b>	<b>\$1,945</b>	<b>\$4,047</b>

\*More information is available at: <http://colorado.gov/fiscalnotes>

### **Local Government Impact**

Local governments are expected to see an increase in discrimination claims taken to court for discrimination based on age and sexual orientation beginning after January 1, 2015. Because the bill prohibits awards for punitive damages for governmental entities, few cases are expected. The size of potential damages allowed will depend on the size of the local governments involved and cannot be estimated.

### **Departments Contacted**

Law  
Regulatory Agencies

Judicial  
Personnel and Administration