

Fiscal Estimate Narratives

DWD 8/29/2019

LRB Number	19-0286/1	Introduction Number	SB-366	Estimate Type	Original
Description actions in circuit court alleging discrimination in employment, unfair honesty testing, or unfair genetic testing					

Assumptions Used in Arriving at Fiscal Estimate

Under current law, a person alleging discrimination in employment or alleging unfair honesty or genetic testing may file a complaint with the Department of Workforce Development (DWD) seeking action to effectuate the purpose of the fair employment law. This may include reinstating the employee, providing back pay, and paying costs and attorney fees but does not include compensatory or punitive damages.

This bill allows DWD or a person who is alleged or was found to have been discriminated against or subjected to unfair honesty or genetic testing to bring an action in circuit court in addition to or in lieu of filing an administrative complaint. However, civil action cannot be taken against a local governmental unit or against an employer that employs fewer than 15 individuals for each working day in each of 20 or more calendar weeks in the current or preceding year.

Under the bill, if a circuit court finds a defendant committed an act of discrimination or unfair honesty or genetic testing, the court may award back pay, in addition to any relief that could have been awarded through administrative proceedings. The bill also requires the courts to order the defendant to pay the person discriminated against compensatory and punitive damages equal to a level deemed appropriate by the court. The punitive damage limits set in the bill vary in amount by the number of employees employed by the defendant. This bill also requires DWD to annually review these caps and revise them upward if a positive change in the consumer price index has occurred.

If enacted, the bill gives complainants a private right of action by removing the requirement that complainants file discrimination complaints directly with the department's Equal Rights Division (ERD). There would be a one-time cost to the ERD of \$5,000 to revise existing fair employment publications. The department Office of Legal Counsel would refer these cases to the Department of Justice. Costs associated with these activities and revising the damage caps, as required by the bill, would be absorbed within the agency's budget.

Long-Range Fiscal Implications