

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0287-01
Bill No.: SB 55
Subject: Insurance Dept.; Insurance - General; Evidence
Type: Original
Date: January 3, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(Unknown under \$100,000)	(Unknown under \$100,000)	(Unknown under \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown under \$100,000)	(Unknown under \$100,000)	(Unknown under \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 4 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** and **Department of Insurance** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Prosecution Services** assume the proposal would have no significant direct fiscal impact on county prosecutors.

Officials from the **Office of Attorney General (AGO)** state the proposal will create additional costs related to obtaining documents in civil or criminal cases where “audit privileged” documents are at issue. Because the proposal provides for new responsibilities for requesting audit privileged documents and for additional in-camera review procedures, the AGO assumes the costs of this proposal are unknown, but will not exceed \$100,000.

<u>FISCAL IMPACT - State Government</u>	FY 2006	FY 2007	FY 2008
	(10 Mo.)		

GENERAL REVENUE

Costs - Office of Attorney General

Additional document procurement costs	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

DESCRIPTION

This proposal makes information collected in the course of an insurance compliance audit privileged information and not discoverable in civil, criminal or administrative proceedings unless an exception applies.

Insurance compliance self-evaluative documents submitted to the Director of Department of Insurance in conjunction with other examinations are confidential. Audit documents submitted to the department of insurance remain property of the insurer and are not subject to disclosure under the Sunshine Law. Persons preparing the audit documents shall not be examined in civil, criminal or administrative hearings unless the documents are not privileged (Section 375.1064).

The privilege established in this proposal shall not apply to documents which are expressly waived. In a civil or administrative proceeding, a court may require disclosure of materials, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose or that the privilege does not apply. The court can also require the disclosure of materials if the court finds that the material contains evidence relevant to the breach of a civil duty owed by the insurer to others and the following factors are present:

(1) The person requesting the information has a compelling need for it; (2) The information is not otherwise available; and (3) The person requesting the information is unable to obtain the substantial equivalent of the information by any means without incurring unreasonable cost and delay.

A court may order disclosure of materials in a criminal proceeding, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose, that the privilege does not apply or that material contains relevant evidence of a crime which is not otherwise available (Section 375.1065).

DESCRIPTION (continued)

The privilege is deemed to be waived by the insurer 30 days after receiving a request for disclosure of a self-evaluative audit by a prosecutor or the attorney general, unless the insurer files a petition for an in camera examination. After conducting an in-camera review of the insurance compliance audit document, the court may require disclosure of any portion of the document it determines is not privileged. Any compelled disclosure of an audit will not make the audit a public document or be deemed a waiver of the privilege for any other civil, criminal or administrative proceeding (Section 375.1066).

An insurer has the burden of demonstrating the applicability of the privilege (Section 375.1067).

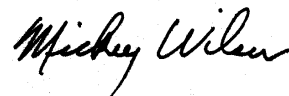
The privilege shall not apply to: (1) Documents expressly required to be collected, maintained or reported to regulatory agencies pursuant to law; (2) Information obtained by observation or monitoring by any regulatory agency; or (3) Information obtained from an independent source.

The privilege created by this proposal shall apply to all litigation or administrative proceedings initiated after the effective date of this proposal.

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 Attorney General
Office of State Courts Administrator
Department of Insurance
Office of Prosecution Services



Mickey Wilson, CPA
Director
January 3, 2005