

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3296-04
Bill No.: SB 888
Subject: Insurance - Property; Insurance Dept.; Housing
Type: Original
Date: January 31, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Insurance Dedicated	(\$272,649)	(\$236,634)	(\$243,242)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$272,649)	(\$236,634)	(\$243,242)

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal to the SOS for administrative rules is less than \$1,500. The SOS does not expect additional funding would be required to meet these costs. However, the SOS recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the Governor.

Officials from the **Department of Insurance (INS)** provide the following assumptions regarding the proposal:

New Revenue for Insurance Dedicated Fund: Continuing education requirements will result in biennial filing fees for 5,000 title agents or approximately \$25,000 annually ($\$10 \times 5,000 = \$50,000/2$). Provider filing fee revenue for title courses is estimated to be approximately \$5,000 ($\$50 \times \100) and licensing fee revenue for rating organizations is estimated to be \$3,000 (2 organizations \times \$1,500) once every three years. Therefore, the total revenue to the Insurance Dedicated Fund for FY 07 would be \$33,000; \$30,000 for FY 08; and \$30,000 for FY 09.

ASSUMPTION (continued)

Section 381.115 allows a licensed insurance agent or agency to name employees to act on their behalf and be either individually licensed or be named on the employing agent's license. Employees of title insurers need not be licensed under the proposed legislation. This could potentially reduce the number of title agents being licensed individually, but no estimates have been made on loss of revenue to the Insurance Dedicated Fund.

Revenue Reduction and Expenses to Insurance Dedicated Fund: The INS states the number of individuals licensed as title producers has remained relatively constant. Licenses are renewed biennially and currently there are around 5,000 individuals licensed. The INS estimates 150 licenses may not be renewed due to the new licensing exemptions. Revenue would decrease by \$7,500 per year (150 individuals/2 X \$100).

The INS estimates the proposal will require the following additional personnel: One (1) Research Analyst II to review and enter rate filings and statistical data filed by title insurers, rate organizations, and title agencies and assist the actuary in preparing analysis and reports; 0.5 Actuary to review rate filings and conduct actuarial analysis of data submitted justifying rates, determine the reasonableness of rates, recommend approval or rejections of rates, and assist in any compiling of information for hearings required on rate filings; one (1) Investigator II to implement additional enforcement provisions of the proposal; and one (1) Legal Counsel to pursue legal actions and represent the INS during appeals. Expense and equipment associated with the additional staff would be needed as well as \$74,538 for contracted programming to make modifications to the oracle system due to the renewal process for title agents, the continuing education requirements, and to automate the process of naming/listing employees acting on the agents' behalf.

This proposal will result in an increase in total state revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Licenses and filing fees	\$25,500	\$22,500	\$22,500
<u>Costs - Department of Insurance</u>			
Personal service costs (3.5 FTE)	(\$131,518)	(\$161,767)	(\$165,811)
Fringe benefits	(\$57,947)	(\$71,275)	(\$73,056)
Equipment and supplies	(\$34,146)	(\$26,092)	(\$26,875)
Contract programming	<u>(\$74,538)</u>	<u>\$0</u>	<u>\$0</u>
Total <u>Cost</u> - Department of Insurance	<u>(\$298,149)</u>	<u>(\$259,134)</u>	<u>(\$265,742)</u>
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$272,649)</u>	<u>(\$236,634)</u>	<u>(\$243,242)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<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

The proposal makes numerous changes to and reorganizes the Missouri Title Insurance Act. The Missouri Title Insurance Act was substantially modified in 2000 by SB 894 but was later declared unconstitutional by the Missouri Supreme Court due to Hammerschmidt problems.

LICENSING EXEMPTIONS - This proposal exempts certain employees of a title agency or title insurer from possessing a title insurance license. An employee will not be required to hold a license if: (1) He or she is an escrow processor whose primary responsibility is to obtain and prepare figures for closing real estate transactions; (2) The employee's primary duties are limited to clerical functions; or (3) The employee's primary duties are limited to providing technical support or advice regarding business systems, software or other business equipment. In order to qualify for the license exemptions, the employee cannot quote or negotiate title insurance rates or determine title insurance policy coverages (Section 381.008).

DESCRIPTION (continued)

DEFINITIONS - This proposal sets forth the definitions to be used in Chapter 381 (Section 381.009).

LENDER POLICY NOTIFICATION - Under this proposal, a lender's title insurance policy issued in conjunction with a mortgage loan shall give notice to the purchaser that the lender's policy protects the lender and does not protect the purchaser and that the purchaser could be protected through the purchase of an owner's policy of title insurance (Section 381.015).

DUTIES OF INSURERS UTILIZING SERVICES OF TITLE AGENCIES - A title insurer shall not allow agents to sell title insurance policies or issue commitments unless there is a written contract between the agent and the insurer. Each title insurer shall maintain a statement of an unaffiliated agent's financial condition of the previous calendar year on file. The title insurer must conduct a review of the agent's underwriting, claims and escrow practices. If an agent does not maintain a separate bank or trust account for each insurer that it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title agency or agent. A title insurer must conduct reviews of its agencies and agents at least every three years. If a title insurer terminates a contract with an unaffiliated title agency or agent, it must provide notice of the termination to the Director of the Department of Insurance within 30 days. The title insurer must maintain records that its title insurance agents are licensed in the state of Missouri (Section 381.018).

CONDITIONS FOR MAINTAINING ESCROW AND SECURITY DEPOSIT ACCOUNTS - In order for a title insurer or title agent to operate as an escrow, security, settlement, or closing agent, it must deposit such related funds into a separate fiduciary trust account no later than the next business day after receipt of the funds. The funds deposited in the accounts shall be the property of the persons as set forth under the escrow, settlement, security deposit or closing agreement. Funds held in a separate account shall be disbursed only pursuant to a written agreement. Interest received on escrow, settlement, security deposit, or closing funds may be retained by the title insurer or agent as compensation for the administration of the account unless the instructions for funds or governing statute provides otherwise. The proposal requires title agencies and agents to cooperate with underwriter reviews of such accounts. The proposal allows the director of insurance to promulgate rules with respect to how account reviews should be conducted and reported (Section 381.022).

PROHIBITION ON REFERRING TITLE INSURANCE BUSINESS - A title insurer or agent shall not receive any consideration for the referral of title insurance business. Any title insurer or title agent doing business in the same county as title insurer, agency or agent who is referring business for consideration shall have standing to seek injunctive relief against such insurer, agency or agent if the department fails to enforce this section within 45 days (Section 381.025).

DESCRIPTION (continued)

FAVORED TITLE AGENCY OR TITLE INSURER - No title insurer or agent shall participate in any transaction in which it knows the other party requires that a party obtain a title insurance policy from a particular insurer or agent (Section 381.028).

PREMIUM RATE FINDINGS AND STANDARDS - Under this proposal, no title insurer may charge rates except in accordance with the premium rate schedule and manual filed with the Director of Insurance. The Director may establish rules for the reporting of revenue and loss experience in order to establish rates and fees. The Director may have an audit conducted, at the expense of the title insurer, to verify the information. Information relating to the experience of a particular title agent shall be kept confidential unless the Director finds it in the public interest to disclose the information (Section 381.032).

FALSE OR MISLEADING INFORMATION - No title insurer or agent shall knowingly withhold information from, or give false information to the Director regarding information which will affect the rates established by this proposal (Section 381.035).

DEADLINES FOR ISSUING TITLE INSURANCE POLICIES - After January 1, 2008, title insurers, agencies and agents must issue title insurance policies within 120 days of the date that all commitment requirements have been met or within 120 days of closing if such insurer, agency or agent performs the closing. After January 1, 2009, such policies must be issued within 90 days of the respective dates. After January 1, 2010, such policies must be issued within 60 days of the respective dates (Section 381.037).

RECORD RETENTION REQUIREMENTS - Evidence of the examination of title and the determination of insurability shall be preserved for a minimum of 15 years after the title insurance policy has been issued. Records relating to escrow and security deposits shall be preserved for a minimum of five years after the account has been closed (Section 381.038).

PENALTIES AND LIABILITIES - If the Director of Insurance determines that a title insurer or other person has violated this act, the Director may assess a monetary penalty (up to \$1,000 per violation for a Class A violation) and/or revoke or suspend the title insurer's license (Section 381.045).

VIOLATIONS OF RESPA - Under this proposal, the Director of Insurance or the Attorney General may bring an action to enjoin violations of the Real Estate Settlement Procedures Act (Section 381.048).

DESCRIPTION (continued)

CORPORATE FORM REQUIRED - No person other than a domestic, foreign or non-U.S. title insurer licensed by the Director of Insurance shall transact title insurance business in Missouri (Section 381.052).

AUTHORIZED ACTIVITIES OF TITLE INSURERS - Title insurers shall only have the power to transact title insurance business, reinsure title insurance policies, and perform ancillary activities related to the issuance of a title insurance policy (Section 381.055).

LIMITATIONS ON POWERS - No insurer that transacts other types of businesses other title insurance shall be eligible for the issuance or renewal of a title insurance license. Title insurance shall not be transacted, underwritten, or issued by any insurer transacting other types of insurance business. A title insurer shall not engage in the business of guaranteeing payment of principal or the interest of bonds or mortgages. Under the terms of the proposal, a title insurer shall issue closing or settlement protection to a proposed insured. The closing protection coverage may indemnify a proposed insured against the loss of settlement funds due to the title insurer's agent theft of funds and the agent's failure to comply with written closing instructions (Section 381.058).

MINIMUM CAPITAL AND SURPLUS REQUIREMENTS - A title insurer must establish and maintain a minimum paid-in capital of not less than \$400,000 and a paid-in initial surplus of at least \$400,000 before becoming licensed in Missouri (Section 381.062).

RETAINED LIABILITY/REINSURANCE - The title insurer's net retained liability for a single risk shall not exceed the aggregate of 50% of the surplus as it regards policyholders plus the statutory premium reserve less the company's investment in title plants. A single risk is the insured amount of any title insurance policy. Where there are two or more policies which are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the policies. A title insurer may obtain reinsurance for all or any part of its liability provided the reinsurance company is licensed and has a combined capital and surplus of at least \$800,000 (Section 381.065).

INVESTMENT RESTRICTIONS - In determining the financial condition of a title insurer, the general provisions of Sections 376.300 to 376.305 shall apply except than an investment in title plants equal to an amount to the actual cost shall be allowed as an admitted asset for title insurers (Section 301.068).

FINANCIAL CONDITION OF TITLE INSURANCE COMPANIES/RESERVE REQUIREMENTS - This proposal provides that the general provisions of the insurance code

DESCRIPTION (continued)

requiring the establishment of reserves sufficient to cover all known and unknown liabilities shall apply when determining the financial condition of a title insurer. The proposal also outlines other reserve requirements that are uniquely applicable to title insurance companies. The proposal requires the establishment of a known claim reserve, an unearned premium reserve and a supplemental reserve (Section 381.072).

LIQUIDATION AND INSOLVENCY OF TITLE INSURERS - The Missouri Insurers, Supervision, Rehabilitation and Liquidation Act shall apply to all title insurers. Security and escrow funds held by title insurers shall not become general assets and shall be administered as secure claims. Title insurance policies shall not be canceled during a period of liquidation unless good cause is shown to the court. Premiums paid, due or to become due under a title insurance policy at the date of order of insolvency shall be fully earned and it is the duty of title insurer or its agents to pay the premiums to the liquidator or rehabilitator (Section 381.075).

DISTRIBUTION OF DIVIDENDS - A title insurer shall only declare or distribute dividends to its shareholders with the written approval of the Director of Insurance (Section 381.078).

FORM FILING - Title insurers shall not issue title insurance forms unless the forms are first filed with the director and either approved by the director or 30 days have elapsed and have not been disapproved by the director as misleading or violating public policy. The director may withdraw approval of a form after giving notice and opportunity to be heard to the insurer (Section 381.085).

FILING BY RATING ORGANIZATIONS - A title insurer may satisfy its obligation to file premium rates, rating manuals, and forms by becoming a member of a rate service organization. That organization may make the title insurer's required filings (Section 381.088).

APPROVAL OF RATES BY DIRECTOR - Title insurers shall propose premium rates that are not excessive nor inadequate for the safety and soundness of the title insurer. If the Director finds that the premium rates filed by the title insurer are not unreasonably high or unfairly discriminatory, the Director shall approve the rates. Before issuing an order of disapproval of a proposed rate, the director shall hold a hearing to review the premium rates filed by the title insurer. The proposal also allows persons or organizations aggrieved by a filing to request a hearing with the director (Sections 381.092 and 381.095).

TITLE INSURANCE RATING ORGANIZATIONS - A corporation, an unincorporated association, partnership, or an individual may apply to the Director for a license as a rating organization for title insurance companies. The Director shall issue the applicant a license

DESCRIPTION (continued)

authorizing it to act as a rating organization if the director finds that the applicant is qualified. The licenses to act as a rating organization shall be valid for three years. The fee for such a license shall be \$1,500 (Section 381.098). Every subscriber to a title insurance rating organization shall adhere to the filings made on its behalf by such organization (Section 381.102). Any subscriber to a title insurance rating organization may appeal to the Director from decisions of the rating organization (Section 381.105).

EXPERIENCE REPORTING - The proposal requires the director to promulgate rules and statistical plans to be used by title insurers in the recording and reporting of the composition of its business, its loss, and countrywide experience. No title insurer shall be required to report its expense and loss experience on a classification basis that is inconsistent with the rating system field by it. The director may designate rating organizations to assist the director in gathering and compiling the experience data (Section 381.108).

PREMIUM TAX - This proposal provides that the premium income received by a title insurer shall mean the amount of premium actually remitted to the insurer and shall not include any amount of the premium retained by the title agent (Section 381.112).

TITLE INSURANCE AGENTS - Title insurance agents must be licensed. Employees of the title insurance agent shall either be licensed themselves or be named on the title insurance agent's license if they engage in the functions of a title insurance agent. Title insurance agencies must eliminate the word insurer or underwriter from their business name unless the word "agency" is part of the name. If the title insurance agent delegates a title search to a third party, the agent must obtain proof that the third party is qualified by the rules and regulations established by the Director of Insurance (Section 381.115).

CONTINUING EDUCATION OF TITLE AGENTS - Under this proposal, title insurance agents are required to take eight hours of continuing courses of education related to title insurance every two years. All qualifying education courses must be approved by the director. For good cause, an agent may be granted an extended period of time to complete the educational requirements. Those title agents who reside in a state with mandatory continuing education requirements do not have to comply with this portion of the proposal.

AUDITING - This proposal allows the director to examine and audit all books and records maintained by a title agency (Section 381.122).

DISCLOSURE OF AFFILIATED BUSINESS - This proposal requires title agents and title agencies to disclose certain affiliated business arrangements. Affiliated business arrangements

DESCRIPTION (continued)

are not prohibited so long as the title agent making a referral discloses the arrangement, the person being referred is not required to use a specified agent or insurer, and the only thing received in value by the agent is a return on an ownership interest (Section 381.125).

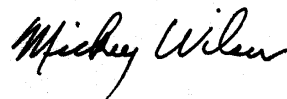
GOOD FUNDS - This proposal modifies the good fund provisions of the title insurance code (Sections 381.410 and 381.412). Under this proposal, no title insurer or agent shall close a transaction or make any payment from an escrow account unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees and those funds are finally settled and credited to the escrow account.

This proposal becomes effective January 1, 2007.

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 State Courts Administrator
Department of Economic Development -
 Division of Credit Unions
 Division of Professional Registration
 Division of Finance
Department of Insurance
Office of Secretary of State



Mickey Wilson, CPA
Director

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