

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4180-06
Bill No.: SCS for SB 895
Subject: Insurance Dept.; Insurance - General
Type: Original
Date: March 23, 2006

FISCAL SUMMARY

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

* Collected penalties and distribution to county treasurers nets to \$0.

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Consumer Restitution	Unknown	Unknown	Unknown
Total Estimated Net Effect on Other State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 7 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 Administration (COA) - Division of Risk Management/General Services, COA - Administrative Hearing Commission, Office of State Courts Administrator, and Office of Attorney General** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Secretary of State (SOS)** state the proposal synchronizes the penalties, civil actions, and other remedies for violations of the insurance code. The director of insurance may promulgate rules to carry out the provisions of this proposal. These rules would be published in both the Missouri Register and Code of State Regulations. These rules may require as many as 48 pages in the Code of State Regulations and 72 pages in the Missouri Register because of cost statements and fiscal notes, etc. that are not repeated in the Code. The estimated cost of a page in the Missouri Register is \$23. The estimated cost of a page in the Code of State Regulations is \$27. The SOS estimates a total cost of \$2,952 [(72 pgs. X \$23) + (48 pgs. X \$27)]. These costs are estimates and costs in future years depend on the number of rules printed, rescinded, and amended.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

ASSUMPTION (continued)

Officials from the **Office of Prosecution Services** state the proposal will not have a significant direct fiscal impact on county prosecutors although it may lead to an increase in prosecutions/workloads.

Officials from the **Department of Corrections (DOC)** state the DOC cannot predict the number of new commitments which may result from the creation of the offenses(s) outlined in this proposal. An increase in commitment depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost through either incarceration (FY 05 average of \$39.13 per inmate per day or an annual cost of \$14,282 per inmate) or through supervision provided by the Board of Probation and Parole (FY 03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender per year).

DOC assumes the narrow scope of the crime will not encompass a large number of offenders. The low felony status of the crime enhances the possibility of plea-bargaining or the imposition of a probation sentence. The probability also exists that offenders would be charged with a similar but more serious offence of that sentences may run concurrent to one another.

Supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Department of Insurance (INS)** state the proposal creates the "Consumer Restitution Fund" for the purpose of preserving and distributing to aggrieved consumers funds obtained through enforcement proceedings brought by the director. As the number of cases and amount of funds recovered are not known, the fiscal impact to the fund is unknown.

The INS assumes a minimal impact will be incurred for programming changes but that these costs will be covered with current appropriations.

Oversight notes that any civil penalty or forfeiture collected by the Director of the INS as a result of violations related to insurance (Section 374.049) are to be paid to the county treasurer.

Officials from the **Office of State Public Defender** did not respond to our request for a statement of fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE			
<u>Income - Civil Penalties Collected</u>	Unknown	Unknown	Unknown
<u>Transfer-Out - County Treasurers</u> Transfer-out of penalties collected for distribution to schools	(Unknown)	(Unknown)	(Unknown)
ESTIMATED NET EFFECT ON GENERAL REVENUE*	<u>\$0*</u>	<u>\$0*</u>	<u>\$0*</u>

CONSUMER RESTITUTION FUND

<u>Income - Department of Insurance</u> Enforcement proceeding/restitution funds	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CONSUMER RESTITUTION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

* Collected penalties and distribution to county treasurers nets to \$0.

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
LOCAL GOVERNMENTS - SCHOOLS			
<u>Income - County Treasurers</u> Transfer-in of penalties collected for insurance infractions	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOLS	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

FISCAL IMPACT - Small Business

The proposal may impact small business insurance companies if they engage in practices that result in infractions and the occurrence of fines or penalties.

DESCRIPTION

This proposal substantially revises the law with respect to how the Department of Insurance enforces various violations of the state insurance code. The proposal attempts to synchronize the administrative remedies and penalties throughout the various insurance code chapters.

ADMINISTRATIVE ORDERS AND REMEDIES OF THE DEPARTMENT OF INSURANCE

- If the director of the Department of Insurance determines that a person has violated or is attempting to violate a provision of the insurance code, the director may issue: (1) An order directing the person to cease and desist from engaging in the act, practice, omission or course of business; (2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state; (3) Order a civil penalty or forfeiture; and (4) Award reasonable costs of the investigation.

The proposal provides that the director shall provide the alleged violator notice of the director's intent to issue an order unless summary action is needed to protect consumers. The proposal provides for administrative hearings so that alleged violators can contest the issuance of the administrative orders. The proposal requires the director to issue findings of fact and conclusions of law before an order becomes final. Under the proposal, the director is authorized to issue subpoenas, compel attendance of witnesses, administer oaths, hear testimony of witnesses, receive evidence, and require the production of books, papers, records, correspondence and all other written instruments or documents relevant to the proceeding and authorized in contested cases under the provisions of chapter 536, RSMo. The proposal modifies the penalty for violating a cease and desist order issued by the Department of Insurance.

Currently, the law provides that a person who violates a cease and desist order may be punished by a maximum \$1,000 fine and up to one year in jail. The proposal provides for a fine up to \$100,000 and a term of imprisonment of 10 years (section 374.046).

REVOCATION OF CERTIFICATE OF AUTHORITY - The proposal allows the director to revoke a corporation's or insurer's certificate of authority for violating a provision of the insurance code or for felony or misdemeanor convictions. The director must provide the corporation or insurer with 30 days notice before revoking the certificate of authority and must provide such entity with a hearing if so requested (Section 374.047).

PETITION OF CIRCUIT COURT - The proposal allows the director to seek redress in county circuit courts and the court may issue injunctions, freeze assets or take other remedial measures outlined in the proposal. The proposal creates the consumer restitution fund for the purpose of preserving and distributing to aggrieved consumers, disgorgement or restitution funds obtained through enforcement proceedings brought by the director (Section 374.048).

DESCRIPTION (continued)

CLASSIFICATION OF ADMINISTRATIVE PENALTIES – The proposal classifies various violations of the insurance code into five categories. The proposal establishes maximum fines for each category or level violation. All fines shall go to public schools as required by the Missouri Constitution (Section 374.049).

ADMINISTRATIVE HEARING COMMISSION HEARINGS - Under the proposal, any applicant refused a license by order of the director may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law. The director shall have the burden of proving cause for refusal. The proposal provides for hearings by the administrative hearing commission for certain revocations and suspensions of licenses (Section 374.051).

ADMINISTRATIVE HEARINGS BEFORE THE DIRECTOR - The proposal provides for administrative hearings before the director for persons aggrieved by any order of the director (Section 374.055).

SHARING OF INFORMATION WITH OTHER REGULATORY BODIES - Under this proposal, the director is authorized to share records and information with and consult with members of the National Association of Insurance Commissioners, the Commissioner of Securities, State Securities Regulators, the Commissioner of Finance, the Attorney General, federal banking and securities regulators, the NASD, the United States Department of Justice, the Commodity Futures Trading Commission, and the Federal Trade Commission to effectuate greater uniformity in insurance and financial services regulation among state and federal governments, and self-regulatory organizations. The cooperation, coordination, consultation, and sharing of records and information authorized by this proposal includes: (1) Establishing or employing one or more designees as a central electronic depository for licensing and rate and form filings with the director and for records required or allowed to be maintained; (2) Encouraging insurance companies and producers to implement electronic filing through a central electronic depository; (3) Developing and maintaining uniform forms; (4) Conducting joint market conduct examinations and other investigations through collaboration and cooperation with other insurance regulators; (5) Holding joint administrative hearings; (6) Instituting and prosecuting joint civil or administrative enforcement proceedings; and (7) Sharing and exchanging personnel (section 374.185).

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 Administration -
 Division of Risk Management/General Services
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Corrections
Department of Insurance
Office of Prosecution Services
Office of Secretary of State

NOT RESPONDING: Office of State Public Defender



Mickey Wilson, CPA
Director
March 23, 2006