

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4180-09
Bill No.: Perfected SS for SCS for SB 895
Subject: Insurance Dept.; Insurance - General
Type: Original
Date: April 13, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	\$270,763	\$324,915	\$324,915
Total Estimated Net Effect on General Revenue Fund	\$270,763*	\$324,915*	\$324,915*

* 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
County Foreign/County Stock	\$0	\$0	\$0
Insurance Dedicated	\$840,628	\$957,213	\$953,145
Insurance Examiners	(\$1,547,212)	(\$1,856,654)	(\$1,856,654)
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown less than \$706,584)	(Unknown less than \$899,441)	(Unknown less than \$903,509)

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	Unknown exceeding \$270,762	Unknown exceeding \$324,914	Unknown exceeding \$324,914

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Public Safety (DPS) - Director’s Office, Office of Administration - Administrative Hearing Commission, Missouri Consolidated Health Care Plan, Missouri Department of Transportation, and Missouri Department of Conservation** assume the proposal will have no fiscal impact on their organizations.

Officials from the **DPS - Missouri State Highway Patrol** defer to the Missouri Department of Transportation for response regarding the fiscal impact of the proposal on their organization.

Officials from the **Department of Social Services (DOS) - Division of Medical Services** state an HMO participating in the Medicaid program would not be considered a “health carrier providing a group health benefit plan.” Therefore, the proposal has no fiscal impact on the DOS.

Officials from the **Office of Attorney General** assume costs related to this proposal can be absorbed with existing resources.

In response to an earlier version of this proposal, officials from the **Office of Prosecution Services** states the proposal would not have a significant direct fiscal impact on county prosecutors although it may lead to an increase in prosecutions/workloads.

ASSUMPTION (continued)

In response to an earlier version of this proposal, officials from the **Department of Corrections (DOC)** states 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 **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 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.

Officials from the **Department of Insurance (INS)** state the proposal would increase various fees charged by the INS to health service corporations, health maintenance organizations and insurance companies. The total increase in revenue by the department from these changes is estimated to be \$1,087,290, deposited into the Insurance Dedicated Fund.

ASSUMPTION (continued)

The proposal would require the department only charge direct costs of examinations to insurance companies. The 15% administrative fee and any indirect labor charged for management staff and support to insurance companies as part of the exam assessment would be funded through the Insurance Dedicated fund. The INS estimates that \$1,856,654 less would be billed and deposited into the Insurance Examiners Fund. The difference in Exam Fund revenue and Dedicated Fund revenue would be covered by existing revenue in the Insurance Dedicated Fund. This change would need to be reflected in the FY 2007 Supplemental Budget should this proposal pass and signed into law.

Insurance companies can take a credit against premium taxes for the costs of examinations conducted by the department. The department estimates that due to retaliatory taxes, only 35% of these credits will be redeemed in a given year. By moving \$1.8 million in expenditures from examination charges, premium tax collection would increase by approximately \$649,829. Premium tax is split 50/50 between General Revenue and School Funds.

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.

In order to enforce the provisions of Sections 385.300 - 385.212, the INS would require one Financial Analyst Specialist II to process product service provider registrations, review company financial statements, examine reserve accounts, review any 10K filed and verify company net worth of those issuing product service contracts. The department estimates that an additional Investigator II would be required to handle the provisions of Section 385.310, which allows for conducting investigations and examinations for the protection of policyholders. The INS will also be required to receive and review the reimbursement contracts used by the providers of the motor vehicle and product service contracts. With the addition of product service contract providers using reimbursement contracts under this proposal, the workload of INS product analysts will increase. It is anticipated that the department will receive an influx of filings so that providers can be in compliance. The department is requesting one Insurance Product Analyst I/II to review reimbursement contracts received. The department cannot estimate how many companies will register but estimates it will be around 100. If numbers are considerably more (or less), additional (or fewer) staff will need to be requested.

Revenue will be generated as a registration fee for product service contracts is required to be paid annually, up to a \$300 annual fee. The INS estimates that approximately 100 companies will be registered, for a yearly revenue amount of \$30,000. The proposal does not indicate where fees will be deposited, but the INS has assumed it would be deposited into the Insurance Dedicated Fund where other such fees are deposited.

ASSUMPTION (continued)

Subsection 385.301.5. exempts provider fees from premium taxes but requires tax be paid on premiums for reimbursement insurance policies. Premium tax is currently collected for premiums for reimbursement insurance policies handled through insurance companies. The department has not made any estimates for additional revenues being collected.

The provisions of Section 385 of the proposal are effective January 1, 2007.

A minimal impact on Information Systems for programming changes will be incurred, but the INS assumes these costs will be covered with current appropriations.

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>Income - Department of Insurance</u> Premium tax collections	\$270,763	\$324,915	\$324,915
<u>Transfer-Out - County Treasurers</u> Transfer-out of penalties collected for distribution to schools	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE*	<u>\$270,763</u>	<u>\$324,915</u>	<u>\$324,915</u>
* Collected penalties and distributions to county treasurers nets to \$0.			
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>

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
COUNTY FOREIGN /COUNTY STOCK FUNDS			
<u>Income - Department of Insurance</u>			
Premium tax collections	\$270,763	\$324,915	\$324,915
<u>Transfer-out - Department of Insurance</u>			
Transfer-out of premium taxes to schools	<u>(\$270,763)</u>	<u>(\$324,915)</u>	<u>(\$324,915)</u>
ESTIMATED NET EFFECT ON COUNTY FOREIGN/COUNTY STOCK FUNDS	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Increase in fees	\$931,075	\$1,117,290	\$1,117,290
<u>Costs - Department of Insurance</u>			
Personal service costs (3.0 FTE)	(\$49,661)	(\$101,806)	(\$104,351)
Fringe benefits	(\$21,881)	(\$44,856)	(\$45,977)
Equipment and supplies	<u>(\$18,905)</u>	<u>(\$13,415)</u>	<u>(\$13,817)</u>
Total <u>Costs</u> - Department of Insurance	<u>(\$90,447)</u>	<u>(\$160,077)</u>	<u>(\$164,145)</u>
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>\$840,628</u>	<u>\$957,213</u>	<u>\$953,145</u>
INSURANCE EXAMINERS FUND			
<u>Loss - Department of Insurance</u>			
Decrease in administrative fees	<u>(\$1,547,212)</u>	<u>(\$1,856,654)</u>	<u>(\$1,856,654)</u>
ESTIMATED NET EFFECT ON INSURANCE EXAMINERS FUND	<u>(\$1,547,212)</u>	<u>(\$1,856,654)</u>	<u>(\$1,856,654)</u>

<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	Unknown	Unknown	Unknown
<u>Transfer-in - County Foreign/County Stock Funds</u>			
Transfer-in of premium taxes	<u>\$270,762</u>	<u>\$324,914</u>	<u>\$324,914</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOLS			
	<u>Unknown exceeding \$270,762</u>	<u>Unknown exceeding \$324,914</u>	<u>Unknown exceeding \$324,914</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

DESCRIPTION (continued)

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).

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).

DESCRIPTION (continued)

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).

MOTOR VEHICLE SERVICE CONTRACTS AND PRODUCT SERVICE AGREEMENTS - The proposal modifies the laws regarding motor vehicle service contracts and product service agreements. The proposal places the existing provisions relating to motor vehicle extended service contracts into a new chapter (chapter 407 to chapter 385) and creates similar provisions for product service agreements, to wit, the proposal prohibits persons from issuing or selling product service agreements without registering and paying a fee with the Director of the Department of Insurance; sets forth financial reserve requirements for service agreement providers; and requires providers to furnish written statements to consumers outlining their obligations, conveying terms and restrictions. The proposal requires providers of product service agreements to maintain accurate records of every transaction for a period of at least three years after the specified period of coverage has expired. Records must be made available to the department upon request.

FILING FEES - The proposal revises the fee schedules for health services corporations, health maintenance organizations and insurance companies. The proposal revises the filing fees for certain documents paid by those types of organizations. The proposal also provides that the

DESCRIPTION (continued)

assessments made against insurance companies for examination purposes shall include: (1) The costs of compensation, including benefits, for the examiners, analysts, actuaries, and attorneys contributing to the examination of the company; (2) Reasonable travel, lodging and meal expenses related to an on-site examination; and (3) Other expenses related to the examination.

The proposal requires the director, if requested by the company being examined, to prepare an itemized report indicating all expenses that are assessed by the Department of Insurance. The proposal requires the director to pay such expenses from the insurance examiners fund. The proposal modifies the Department of Insurance Dedicated Fund to provide that the fund may be used for the regulation of the business of insurance and the operation of the division of consumer affairs (sections 354.150, 354.495, 374.150, 374.160, and 374.230).

The proposal repeals sections 374.261 to 374.267 which deal with the "Insurance Examiner's Sick Leave Fund".

REPORT OF CLAIMS PAID - This proposal requires health carriers to provide a report of the total of number of claims paid for previous 3 years and the total dollar amount of those claims when requested by an employer. In the case of an employer with multiple plans, the total dollar amounts shall be aggregated into one report. The report shall be provided within thirty days of the request. The information provided to the employer or the employer's producer of record shall be furnished in a manner that does not individually identify any employee or other person covered by the health benefit plan and shall comply with all applicable federal and state privacy laws regarding the disclosure of health records (Section 375.435).

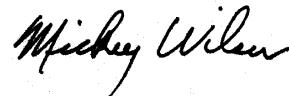
WEATHER-RELATED CLAIMS AND CLAIM INQUIRIES - This proposal prohibits homeowner insurance companies from considering as a claim any inquiry made by the insured as to whether the policy covers a certain loss or whether the policy provides a certain type or level of coverage. Insurers are also prohibited from canceling, refusing to write, or refusing to renew a policy on the basis of a weather-related claim. Further, insurers are prohibited from using a rating plan or a rating system which surcharges the insured's dwelling fire or homeowners insurance premium based upon the insured's weather-related claims or upon inquiries into whether the policy covers certain losses.

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 -
 Administrative Hearing Commission
Office of State Courts Administrator
Department of Corrections
Department of Social Services
Missouri Department of Transportation
Department of Public Safety -
 Director's Office
 Missouri State Highway Patrol
Missouri Consolidated Health Care Plan
Department of Insurance
Missouri Department of Conservation
Office of Prosecution Services
Office of Secretary of State

NOT RESPONDING: Office of State Public Defender



Mickey Wilson, CPA
Director
April 13, 2006