

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4184-07  
Bill No.: SCS for SB 953  
Subject: Insurance Dept.; Housing; Insurance - Property  
Type: Original  
Date: February 27, 2006

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(Unknown less than \$100,000)</b>	<b>(Unknown less than \$100,000)</b>	<b>(Unknown less than \$100,000)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Consumer Restitution	Unknown	Unknown	Unknown
County Stock*	\$0	\$0	\$0
County Foreign Stock*	\$0	\$0	\$0
Insurance Dedicated	(\$149,576) to \$621,284	(\$176,180) to \$597,680	(\$177,715) to \$574,145
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>(\$149,576) to Unknown</b>	<b>(\$176,180) to Unknown</b>	<b>(\$177,715) to Unknown</b>

\* Income and Transfers-Out net to \$0.

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 15 pages.

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

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>
<b>Local Government</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknown</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Office of Administration (COA) - Administrative Hearing Commission, COA - General Services/Risk Management, Office of State Courts Administrator, Department of Economic Development, and Department of Revenue** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Prosecution Services** assume the proposal will not have a significant direct fiscal impact on county prosecutors.

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 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

ASSUMPTION (continued)

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).

Supervision by the DOC through probation or incarceration would result in some additional unknown costs to the department. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Insurance (INS)** state this 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.

Under the proposal, a policy issuance fee not to exceed \$2 shall be imposed on each title insurance policy issued in the state. The fee shall be deposited in the Insurance Dedicated Fund and will be established by rule by the director of the INS and be based on the INS cost of regulating the title insurance industry (Section 381.113). The number of title policies issued in the state on a five year average is 382,930. Depending on the amount established by rule, from \$0 to \$2 per policy, the INS would receive \$0 to \$765,860 in revenue deposited into the Insurance Dedicated Fund.

Under the proposal, every applicant seeking approval of continuing education (CE) courses would pay a filing fee of \$50 per course, with a \$250 cap per year for any single applicant. The INS estimates receiving 200 CE provider applications per year and with the cap, funds deposited into the Insurance Dedicated Fund are estimated to be \$5,000 to \$10,000.

The INS is requesting three (3) FTE to implement the provisions of this proposal. Two (2) Investigator IIs (\$32,580 per year) and one (1) Legal Counsel (\$42,000 per year). These FTE will be responsible for enforcing the provisions of the proposal and representing the INS before the administrative hearing commission.

The change in premium tax collection due to the provisions of the proposal are unknown.

Officials from the **Office of Attorney General (AGO)** did not respond to our request for a statement of fiscal impact. However, in response to a previous version of this proposal, the AGO assumed the proposal would have no fiscal impact on their organization.

**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
<b>GENERAL REVENUE FUND</b>			
<u>Income - Civil penalties collected</u>	Unknown	Unknown	Unknown
<u>Income - Department of Insurance</u> Increase in premium tax collection	Unknown	Unknown	Unknown
<u>Costs - Department of Corrections</u> Increase in incarcerations	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
<u>Transfer-Out - County Treasurers</u> Transfer-Out of penalties collected for distribution to schools	(Unknown)	(Unknown)	(Unknown)
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(Unknown less than \$100,000)</u></b>	<b><u>(Unknown less than \$100,000)</u></b>	<b><u>(Unknown less than \$100,000)</u></b>
<b>CONSUMER RESTITUTION FUND</b>			
<u>Income - Department of Insurance</u> Restitution funds from enforcement proceedings for aggrieved consumers	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON CONSUMER RESTITUTION FUND</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>
<b>COUNTY STOCK FUND</b>			
<u>Income - Department of Insurance</u> Increase in premium tax collection	Unknown	Unknown	Unknown
<u>Transfer-Out - Department of Insurance</u> Transfer of premium taxes to schools	(Unknown)	(Unknown)	(Unknown)
<b>ESTIMATED NET EFFECT ON COUNTY STOCK FUND*</b>	<b><u>\$0*</u></b>	<b><u>\$0*</u></b>	<b><u>\$0*</u></b>

\* Income and Transfer-Out net to \$0.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
<b>COUNTY FOREIGN STOCK FUND</b>			
<u>Income - Department of Insurance</u>			
Increase in premium tax collection	Unknown	Unknown	Unknown
<u>Transfer-Out - Department of Insurance</u>			
Transfer of premium taxes to schools	(Unknown)	(Unknown)	(Unknown)
<b>ESTIMATED NET EFFECT ON COUNTY FOREIGN STOCK FUND</b>	<b><u>\$0*</u></b>	<b><u>\$0*</u></b>	<b><u>\$0*</u></b>
<b>* Income and Transfer-Out net to \$0.</b>			
<b>INSURANCE DEDICATED FUND</b>			
<u>Income - Department of Insurance</u>			
Policy issuance fees	\$0 to \$765,860	\$0 to \$765,860	\$0 to \$765,860
Continuing education application fees	<u>\$5,000 to \$10,000</u>	<u>\$5,000 to \$10,000</u>	<u>\$5,000 to \$10,000</u>
Total <u>Income</u> - Department of Insurance	<u>\$5,000 to \$775,860</u>	<u>\$5,000 to \$775,860</u>	<u>\$5,000 to \$775,860</u>
<u>Costs - Department of Insurance</u>			
Personal service costs (3 FTE)	(\$91,533)	(\$112,585)	(\$115,400)
Fringe benefits	(\$40,329)	(\$49,605)	(\$50,845)
Equipment and expense	(\$22,714)	(\$15,990)	(\$16,470)
Total <u>Costs</u> - Department of Insurance	<u>(\$154,576)</u>	<u>(\$178,180)</u>	<u>(\$182,715)</u>
<b>ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND</b>	<b><u>(\$149,576) to \$621,284</u></b>	<b><u>(\$176,180) to \$597,680</u></b>	<b><u>(\$177,715) to \$574,145</u></b>

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
<b>LOCAL GOVERNMENTS - SCHOOLS</b>			
<u>Transfer-In - Schools</u>			
Income from premium taxes deposited in the County Stock Fund	Unknown	Unknown	Unknown
Income from premium taxes deposited in the County Foreign Stock Fund	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
Total <u>Transfer-Ins</u> - Schools	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>Income - County Treasurers</u>			
Transfer-in of penalties collected	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<b>ESTIMATED NET EFFECT ON LOCAL GOVERNMENTS - SCHOOLS</b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>	<b><u>Unknown</u></b>

FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal substantially revises the title insurance act and modifies the enforcement powers of the Department of Insurance. The proposal reenacts numerous provisions that were contained in SB 894 (2000). They were found unconstitutional due to clear title violations. The unconstitutional provisions remain in the statute books whereas the pre-SB 894 provisions are not contained in the statute books.

**ENFORCEMENT OF INSURANCE LAWS** – This proposal revises the law with respect to how the Department of Insurance enforces various violations of the state insurance code. 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.

DESCRIPTION (continued)

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 to contest the issuance of the administrative orders and 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. 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 in determining whether an applicant is disqualified by statute. The proposal provides for hearings by the Administrative Hearing Commission for certain revocations and suspensions of licenses (Section 374.051).

DESCRIPTION (continued)

DEFINITIONS THAT APPLY TO TITLE INSURANCE CODE - This proposal revises the definition section of the insurance code by adding new terms such as abstract of title, affiliated business, and other terms. The term "premium" is defined as the consideration paid on behalf or on behalf of the insured for the issuance of a title insurance policy, closing protection, or any endorsement or special coverage. It does not include any sales commission, underwriting charge, title examination fees, escrow service fees, other types of fees (Section 381.009).

TYPES OF TITLE INSURANCE POLICIES - This proposal requires a statement notifying the owner of exceptions when a title insurance commitment includes an offer to issue an owner's policy covering the resale of owner-occupied residential property. 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 its agents to sell title insurance policies unless there is a written contract between the agent and the insurer. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency. The title insurer shall have on file proof that the title agency or title agent is licensed by this state. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency. If a title insurer terminates its agency with a title agency, the insurer shall, within seven days of the termination, notify the director of the reasons for termination (Section 381.018).

DISCLOSURE OF CHARGES – Under this proposal, a title insurer, title agency or title agent participating in residential closings using the Housing and Urban Development settlement statement shall provide clear and conspicuous disclosure of charges. The director may adopt rules not in conflict with provisions of RESPA to implement disclosure of premium, abstract or title search fee, settlement or closing fees, policy issuance fees, and any other associated fees along with a concise description (Section 381.019).

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. 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. Under the proposal, it is unlawful for any person to commingle personal or any other moneys with escrow funds, use escrow funds



DESCRIPTION (continued)

to pay or indemnify against debts of the title insurance agent or of any other person, use escrow funds for any purpose other than to fulfill the terms of the individual escrow after the necessary conditions of the escrow have been met, disburse any funds held in an escrow account unless the disbursement is made pursuant to a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or pursuant to an order of a court of competent jurisdiction; or disburse any funds held in a security deposit account unless the disbursement is made pursuant to a written agreement (section 381.022).

PERIODIC ONSITE REVIEWS OF TITLE AGENTS BY TITLE INSURERS - A title insurer shall, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of the title insurance agency or agent with which it has a contract. If the agency or agent does not maintain separate fiduciary trust accounts for each title insurer 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 agency or agent. Each title insurer shall adopt and utilize standards and procedures for the on-site review of title insurance agents and agencies. On-site review documentation, work papers, summaries and reports shall be maintained by each title insurer for a period of at least four years and shall be made available to the director for examination upon request (Section 381.023).

ACCESS TO RECORDS OF UNAFFILIATED AGENT – Under this proposal, it is unlawful for any title agency or title agent not affiliated with an agency to deny reasonable access or in any manner fail to cooperate with its underwriters in the title insurers' reviews of the agency's or agent's escrow, settlement, closing and security deposit accounts (Section 381.024).

PROHIBITION ON REFERRAL FEES – Under the proposal, it is unlawful for any title insurer, title agency, title agent or other person to give or receive any consideration for the referral of title insurance business, escrow, closing or other service provided by a title insurer, title agency or title agent. Under the proposal, a title insurer or agent may seek injunctive relief if the department fails to take action within 45 days of receiving notice of the violation (Section 381.025).

RECORDING OF DEEDS - Under this proposal, a settlement agent shall record all deeds and security instruments for real estate closings handled by it within five business days after completion of all conditions precedents (Section 381.026).

LIABILITY FOR DEFALCATIONS – Under this proposal, a title insurer is liable for the defalcation, conversion, or misappropriation by a licensed title insurance agent or agency of funds held in trust by the agent or agency. If the agent or agency is an agent or agency for two or

DESCRIPTION (continued)

more title insurers, any liability shall be borne by the title insurer upon which a title insurance commitment or policy was issued prior to the illegal act (Section 381.027).

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. The proposal makes it unlawful for any title insurer or title agent to offer payments, rebates or other types of inducements as part of a title insurance policy transaction (Section 381.028).

PREMIUM RATES – Under the proposal, premium rates shall not be excessive, inadequate or unfairly discriminatory. Premium rates are excessive if they are likely to produce a long-run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. Premium rates are inadequate when they are clearly insufficient to sustain projected losses and expenses and the use of such rates, if continued, will tend to create a monopoly in the market. Unfair discrimination exists if price differentials fail to reflect equitably the differences in expected losses and expenses. Due consideration shall be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to events or trends within and outside of this state, and to all other relevant factors. Premium rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and reserves (Section 381.032).

FILING OF PREMIUM RATES – Under this proposal, every title insurer shall file with the director all premium rates and supplementary rate information which is to be used in this state. Such rates and supplementary rate information and supporting information required by the director shall be filed before the effective date. All rates, supplementary rate information and any supporting information shall be open to public inspection at any reasonable time (Section 381.033).

DISAPPROVAL OF PREMIUM RATES - A rate may be disapproved at any time subsequent to the effective date. The director may disapprove a rate if the director finds that the rate is inadequate, excessive or unfairly discriminatory. The insurer whose rates have been disapproved shall be given a hearing upon a written request made within 30 days after the disapproval order. Whenever an insurer has no legally effective rates as a result of the director's disapproval of rates or other act, the director shall specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by the director (Section 381.034).

DESCRIPTION (continued)

ISSUANCE OF TITLE INSURANCE POLICIES (EVIDENCE OF TITLE, LIENS, RECORD KEEPING, TIME LIMITS FOR ISSUANCE) – Under the proposal, no title insurance policy shall be written unless and until the title insurer, title agent, or agency has caused a search of title to be made from the evidence prepared from a title plant or under other circumstance the policy shall be based upon the best title evidence available. No title insurance policy shall be written unless the insurer has made a determination of insurability of title in accordance with sound underwriting practices.

No title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

Evidence of the examination of title and determination of insurability generated by a title insurer shall be maintained by such insurer for as long as appropriate to the circumstances but, in no event less than 15 years after the policy has been issued. Records relating to escrow and security deposits shall be retained for a minimum of seven years. All title insurance policies shall be issued promptly, but no more than 45 days, after closing, unless there are special circumstances that prevent the issuance of the policy (Section 381.038).

RULES AND REGULATIONS – The proposal authorizes the director of the Department of Insurance to promulgate rules to implement the provisions of the title insurance chapter (Section 381.042).

ENFORCEMENT OF TITLE INSURANCE LAWS - If the director determines that a person has engaged, is engaging, or is about to engage in a violation of the title insurance laws, the director may issue administrative orders (cease and desist, curative orders, etc.), suspend or revoke the license of a producer or the certificate of authority of any title insurer for any such willful violation. The director may bring an action in a court of competent jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act (Sections 381.045 and 381.048).

TRANSACTION OF TITLE INSURANCE BUSINESS - No person other than a domestic, foreign or non-U.S. title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state (Section 382.052). A title insurer shall have the power to do only title insurance business, reinsure title insurance policies, and perform ancillary activities such as examining titles to property and any interest in property and procuring and furnishing related information and information about relevant real and personal property, when not in contemplation of, or in conjunction with, the issuance of a title insurance policy (Section 381.055). Only title insurance companies can issue title insurance policies. A

DESCRIPTION (continued)

title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages (Section 381.058).

**CLOSING OR SETTLEMENT PROTECTION** - Under the proposal, a title insurer is required to issue closing or settlement protection to protect the buyer, lender and seller's interest if the title insurer issues a commitment, binder or title insurance policy. The closing or settlement protection shall indemnify the proposed insured for theft of settlement or escrow funds by the title agent or for the title agent's failure to comply with the closing instructions. The charge for issuance of the closing or settlement protection letter shall be filed as a rate with the director as a component of premium. The entire charge for the closing or settlement protection letter shall be retained by the title insurer. A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services (Section 381.058).

**CAPITAL AND SURPLUS REQUIREMENTS** – Under this proposal, a title insurer shall establish and maintain a minimum paid-in capital of not less than \$800,000 and, in addition, surplus of at least \$800,000 (Section 381.062).

**NET RETAINED LIABILITY OF TITLE INSURER** - 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 (Section 381.065).

**FINANCIAL SOLVENCY** - In determining the financial condition of a title insurer, the general provisions of Sections 379.080 to 379.082 shall apply except that an investment in title plants equal to an amount to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed 20% of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director (Section 381.068).

**LIQUIDATION AND INSOLVENCY OF TITLE INSURERS** - The Missouri Uniform Insurers 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 the title insurer or its agents to pay the premiums to the liquidator (Section 381.075).

DESCRIPTION (continued)

ASSESSMENTS TO PAY LIQUIDATED INSURANCE COMPANY CLAIMS - As a condition of doing business in this state, each title insurer shall be liable for an assessment to pay all unpaid title insurance claims on real property in this state for any title insurer which is liquidated with unpaid outstanding claims. The director, as receiver, shall assess all title insurers on a pro rata basis determined by their writings in this state for amounts necessary to pay the claims. A title insurer is not required to pay an amount in excess of one-tenth of its surplus as to policyholders (Section 381.076).

FORM FILING - Title insurance forms shall be approved by the Director of Insurance 30 days before they are used (Section 381.085).

POLICY ISSUANCE FEE – Under the proposal, a policy issuance fee not to exceed \$2 shall be imposed on each title insurance policy issued in the state. The fee shall be deposited in the Department of Insurance Dedicated Fund (Section 381.113).

LICENSING OF TITLE AGENTS/CONTINUING EDUCATION – All title insurance agencies and agents must be licensed as insurance producers. 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 agents 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.

Title insurance agents shall take 16 hours of continuing courses of education related to insurance every two years. 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 act (Sections 381.115 and 381.118).

AUDITING OF BOOKS AND RECORDS – Under the proposal, the director may during normal business hours examine, audit and inspect any and all books and records maintained by a title agency or title agent (Section 381.122).

AFFILIATED BUSINESS ARRANGEMENTS - Whenever the business to be written constitutes affiliated business, prior to commencing the transaction, the title insurer, title agency or title agent shall ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title insurer, agency or agent. The director may

DESCRIPTION (continued)

require each title insurer, agency and agent to file on forms prescribed by the director reports setting forth the names and addresses of those persons, if any, that have a financial interest in the insurer, agency or agent and who the insurer, agency or agent knows or has reason to believe are producers of title insurance business or associates of producers. Nothing shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as: (1) The title insurer, title agency, title agent or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section; (2) The person being referred is not required to use a specified title insurer, agency or agent; and (3) The only thing of value that is received by the title insurer, agency, agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest (Section 381.029).

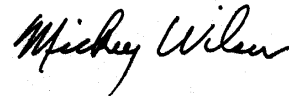
GOOD FUNDS - This proposal modifies the definition of "financial institution" for purposes of closing real estate transactions and settlement agents. The proposal modifies the "good funds" provision by restricting title insurers or agents from making payments or withdrawals from a settlement escrow account unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees. This restriction applies regardless of the amount of the payment or withdrawal. The current restriction only applies to payments or withdrawals that exceed \$10,000 (Sections 381.410 and 381.412).

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 Administration -  
    Administrative Hearing Commission  
    Division of General Services/Risk Management  
Office of State Courts Administrator  
Department of Economic Development -  
    Division of Credit Unions  
    Division of Finance  
Department of Corrections  
Department of Revenue  
Department of Insurance  
Office of Prosecution Services  
Office of Secretary of State

**NOT RESPONDING: Office of Attorney General**



Mickey Wilson, CPA  
Director  
February 27, 2006