

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4317-05
Bill No.: Truly Agreed To and Finally Passed HCS for SS for SCS for SB 892
Subject: Banks and Financial Institutions; Consumer Protections; Credit and Bankruptcy;
Mortgages and Deeds; Motor Vehicles; Boats and Water craft; Manufactured
Housing; Revenue Dept
Type: Original
Date: June 7, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
General Revenue	(\$4,572 to Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$4,572 to Unknown)	\$0 to (Unknown)	\$0 to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 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** assume there will be no fiscal impact on the Courts.

Officials from the **Department of Insurance** assume the act will not fiscally impact their agency.

Officials from the **Office of Attorney General** assume that any potential costs arising from this act can be absorbed with existing resources.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this proposal for Administrative Rules is less than \$1,500. The SOS recognizes this is a small amount and does not expect additional funding would be required to meet these costs. However, SOS also recognizes that many such bills may be passed in a given year and that collectively the costs may be in excess of what the SOS can sustain with their core budget. Any additional required funding would be handled through the budget process.

ASSUMPTION (continued)

SECTION 143.471, 148.655, 146.657

Officials from the **Office of Administration - Budget and Planning (BAP)** state this legislation will allow tax credits for the total franchise tax due from a Sub-Chapter S Corporation (S-Corp). An S-Corp is a partnership operating as a corporation throughout the year. At the end of the year, and for tax purposes, the S-Corp reverts back to a partnership for distribution of tax liability. This legislation will grant tax credits to the individual partners of an S-Corp equal to the taxes due of the S-Corp. Because this legislation deals with a financial institution, said institution is required to pay franchise taxes in lieu of corporate income taxes. Franchise taxes are calculated by taking 7% of the S-Corporations net income (Section 148.620, RSMo.)

BAP does not know the number of filers that may qualify for the proposed credit. This proposal would lower general and total state revenues by an unknown amount. BAP notes that \$2.7 million in gross bank franchise taxes and \$116.7 million of gross corporate franchise taxes were collected in FY 2005.

Officials from the **Department of Revenue (DOR)** state this legislation creates a tax credit for shareholders of S corporation savings and loan associations with a carry-forward provision of five years. DOR assumes the proposal would reduce the amount of tax due, therefore, reducing the amount of state revenues.

DOR assumes this legislation expands an existing credit to individuals who are shareholders of the S corporation. Personal Tax would need 1 Tax Processing Technician for every 4,000 credits claimed, since there are carry-forward provisions and this credit is administered by DOR. Since DOR does not expect to receive 4,000 returns of this nature, the credit will be processed using existing resources.

The Bank Tax Credit for S Corporation Shareholders has had tax credits redeemed of \$1.1 million in FY 2003, \$1.2 million in FY 2004 and \$941,460 in FY 2005. Oversight assumes this proposal will increase the amount of tax credits utilized in a given year, but can not estimate an amount. Therefore **Oversight** will state that the proposal will potentially result in a loss to the General Revenue fund of an unknown amount.

SECTIONS 301.215, 306.435, 700.385

Officials from the **Department of Revenue (DOR)** state this legislation will modify the requirements for issuing repossession titles for motor vehicles pursuant to section 301.215, for title for boats pursuant to 306.435 and for manufactured homes pursuant to section 700.385. For

ASSUMPTION (continued)

motor vehicles the lienholder must have a notice of lien on file with the director of revenue in addition to the current security agreement or contract for security. The applicant for repossession title must submit the repossession application, a notice of lien or the original certificate of ownership reflecting the holder's lien and an affidavit regarding legal process or notice. The lienholder must give 10 days prior notice to all owners or lienholders on the last certificate of title at the address on such title or at the most recent address on the lienholder's records that an application for repossession title will be made or the lienholder may use the UCC notice, with the required information regarding repossession, ten days prior to applying for a repossession title.

For boats, outboard motors, and manufactured homes, this proposal makes the repossession title process/requirements consistent with those for motor vehicles and trailers as outlined above.

DOR assumes the legislation will require their department to revise policies, procedures and notify dealers and lienholders of this new requirement. DOR assumes they will incur the cost for the notices, envelopes and postage at approximately \$4,572.

This act will require programming changes to the General Registration System, to mark the system that the manufactured home has been converted to real property, and to generate a notice to the lienholder and the assessor to notify them of the conversion. In addition, the processing area will need to modify policy, procedures and notify the assessors of this new requirement. The programming costs and processing impact associated with this proposal will be absorbed internally.

Officials from the **Department of Public Safety - State Water Patrol** assume the act will not fiscally impact their agency.

Officials from the **Department of Economic Development - Public Service Commission** state this act will not have a fiscal impact on their agency.

SECTIONS 361.711, 361.715, 362.275, 362.445

Officials from the **Department of Revenue** state this part of the act has no fiscal impact on their agency

Officials from the **Department of Economic Development - Division of Credit Unions** state this act will have no fiscal impact on their agency.

Officials from the **Department of Economic Development - Division of Finance** assume this

ASSUMPTION (continued)

act will require additional effort on the Division of Finance; however, they believe this can be done with existing staff and resources. Very little fee income, if any, would be generated by the optional fee for applications to amend and reissue licenses. There are only two to five license application/renewals per year. Regarding the fee increase for copy of process, the service of process is only done three or four times a year, therefore is not a significant source of revenue.

SECTIONS 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4-411A, 456.4-411B, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 469.600, 473.333, 473.787, 475.092, 475.130, and 475.190

Officials from the following agencies indicated this portion of the act will have no fiscal impact on their respective agencies: **Department of Economic Development - Division of Finance and Division of Credit Unions; Department of Social Services - Division of Medical Services and Division of Legal Services.**

SECTION 408.555

Officials from the **Department of Economic Development - Division of Finance and Division of Credit Unions** stated this portion of the act will have no fiscal impact on their respective agencies.

Officials from **Hickory County** state this act will have no fiscal impact on their county.

A fiscal impact request was sent to the counties of Boone, Laclede, St Charles, and others who did not respond to a request for fiscal impact of the proposal.

Officials from the Office of Prosecution Services and Office of State Public Defender did not respond to a request for fiscal note.

This proposal will reduce Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
GENERAL REVENUE			
<u>Costs - Department of Revenue</u>			
Notices, envelopes and postage (Sections 301.215, 306.435, 700.385)	(\$4,572)	\$0	\$0
<u>Loss - Tax credits for S corporations that are associations or credit institutions (Sections 143.471, 148.655, 146.657)</u>			
	\$0 to (Unknown)	\$0 to (Unknown)	\$0 to (Unknown)
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$4,572 TO (UNKNOWN))</u>	<u>\$0 TO (UNKNOWN)</u>	<u>\$0 TO (UNKNOWN)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2007	FY 2008	FY 2009
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

Small businesses that qualify for the tax credit outlined in Sections 143.471, 148.655, and 148.657 could be fiscally impacted by this proposal.

The proposal will impact financial institutions or other lienholders who perfect liens on motor vehicles, boats or manufactured homes and then have a need to repossess the vehicles.

DESCRIPTION

This act allows a financial institution to charge for processing refused negotiable instruments and payment orders. This act also provides that a debtor is not entitled to receive notice of the right to cure, in the case of a second mortgage loan, after the third default before the lender can enforce the security interest. Upon the third default, the debtor may no longer cure.

This act also adds late charges and expenses of foreclosures incurred by the lender to the definition of "current obligation of the debtor," which must be paid to cure a default on a second mortgage loan.

DESCRIPTION (continued)

Under current law, applicants for licensure to issue or sell checks must post a twenty-five thousand dollar corporate surety bond. This act raises that amount to one hundred thousand dollars. The bond may be used to pay costs incurred by the Division of Finance to remedy breaches of obligations by the applicant or pay examination costs not paid by the applicant.

For all licensees selling payment instruments or stored value cards, the required amount of the bond for renewal of the license shall be five times the high outstanding balance from the previous year with a minimum of one hundred thousand dollars and a maximum of one million dollars.

For all licensees receiving money for transmission, the required amount of the bond for renewal of the license shall be five times the greatest amount transmitted in a single day during the previous year with a minimum of one hundred thousand dollars and a maximum of one million dollars.

The Director of Finance may, when necessary, examine any licensee and the cost shall be paid by the licensee.

The director shall investigate the character and fitness of each licensee before initial licensure and renewal. The director may charge up to \$100 for applications to amend and reissue licenses.

Under current law, financial institutions must submit a list showing all paper past due thirty days or more at their monthly meetings. This act allows the institutions, in the alternative, to submit a list of the total past due ratio for loans that are thirty days or more past due, nonaccrual loans divided by the total loans, and a list of past due loans in excess of a minimum amount set by the board not to exceed five percent of the bank's legal loan limit but the minimum amount may not be less than ten thousand dollars. Collateral to the indebtedness does not have to be described as of the date of the lists.

The act specifies that financial institutions shall be served process according to the Missouri Rules of Civil Procedure describing service of corporations. State or federally chartered banks, trust companies, and thrift institutions may appoint a service agent and register that person with the Director of Finance.

The act allows the Director of Finance to receive service of process for out-of-state banks or trust companies. Currently the Director of Revenue shall collect \$2 for each copy of process. This act raises the amount to be collected by the director to \$10.

This act provides for an income tax credit for shareholders of S corporation savings and loan

DESCRIPTION (continued)

association holding companies and credit institutions based on the pro rata share of corporate franchise tax paid by such association or institution.

The act bars industrial loan companies and industrial banks from operating in Missouri.

The act also provides that a person seeking a repossession title to a motorboat, vessel or water craft, or a manufactured home must present a notice of lien receipt or the original certificate of ownership reflecting the holder's lien. The act removes the requirement that the lienholder must present the original or photostatic copy of the security agreement. Instead, the act requires presentation of an affidavit that the lienholder has the written consent of all owners or lienholders of record to repossess the vessel, motorboat or water craft or has provided such parties with written notice of the repossession. The act also imposes specific notice requirements upon the lienholder that are similar to the requirements for persons repossessing motor vehicles. The lienholder must give 10 days written notice by 1st class U.S. mail to the owners and other lienholders.

The act modifies certain provisions of the Uniform Trust Code. The act defines "ascertainable standard" as one relating to an individual's health, education, support, or maintenance under the Internal Revenue Code. The "power of withdrawal" is redefined to encompass the power of a beneficiary to withdraw assets from the trust without the consent of the trustee or any other person. Similarly, "revocable" as applied to trusts means that the settlor has the legal power to revoke the trust without consent of the trustee or person holding an adverse interest regardless of whether the settlor has the mental capacity to do so in fact.

Settlors may designate by the terms of the trust permissible distributees to receive notification of the trust and other information related to its administration. In trusts where a gift tax marital deduction has been claimed, and the settlor's marriage has been dissolved or annulled, beneficial terms of a trust in favor of the former spouse or fiduciary appointment of the spouse shall not be revoked. Such a situation shall not result in an incomplete gift for federal gift tax purposes or the inclusion of assets of a trust in the gross estate of a settlor for federal estate tax purposes.

A beneficiary who is not a qualified beneficiary may be represented and bound by a qualified beneficiary, as long as there is no conflict of interest between such persons with regard to the question or dispute.

Noncharitable irrevocable trusts may be modified or terminated upon consent of the settlor and all beneficiaries without court approval, unless the trust has been established by a court under certain provisions of law.

DESCRIPTION (continued)

The act also makes Section 456.4-411B, which provides that the court may terminate or modify the terms of a noncharitable trust in certain instances, applicable to trusts that become irrevocable on or after January 1, 2005, and makes Section 456.590, which allows the court to confer certain powers on trustees in certain instances, applicable to all trusts that become irrevocable prior to January 1, 2005.

A beneficiary's interest in a trust that is subject to the trustee's discretion shall not constitute an interest in property or enforceable right. A creditor or claimant may not attach distributions from such a right, if it exists, regardless of whether or not the interest is subject to a spendthrift provision.

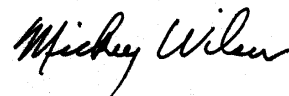
Additionally, the act abolishes the doctrine of worthier title and the Rule in Bingham's case as a rule of law and as a rule of construction.

SOURCES OF INFORMATION

Office of Administration
 Division of Budget and Planning
Office of State Courts Administrator
Department of Economic Development
 Division of Finance
 Division of Credit Unions
 Public Service Commission
Department of Revenue
Department of Insurance
Office of the Secretary of State
 Administrative Rules Division
Department of Social Services
 Division of Legal Services
 Division of Medical Services
Department of Public Safety
 Office of the Director
 State Water Patrol
Office of Attorney General
Hickory County

NOT RESPONDING

Office of Prosecution Services
Office of State Public Defender
Counties
 Boone
 Laclede
 St Charles
 Other counties



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Director
June 7, 2006