

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4844-02
Bill No.: Perfected SB 1058
Subject: Motor Vehicles; Insurance Dept.
Type: Original
Date: April 11, 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
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

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 State Courts Administrator** assume the proposal will have no fiscal impact on their organization.

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

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)** state this proposal is substantially similar to SB 1233 passed and signed in the 2004 session. The provisions of SB 1233 are effective January 1, 2007 and the INS will have staff in place to administer those provisions as of July 1, 2006. SB 1233 language is based on the NAIC model law for vehicle service contracts.

ASSUMPTION (continued)

The current proposal caps the registration fee at \$250 (Section 385.409.3) which is less than the INS's proposed registration fee of \$500 to implement SB 1233. This may create less revenue to offset the cost of implementation than was originally estimated. However, since SB 1233 has not yet become effective, the INS can not estimate if there will be a significant difference in the fiscal impact from what was originally estimated. The INS assumes this proposal will have no fiscal impact.

<u>FISCAL IMPACT - State Government</u>	FY 2007 (6 Mo.)	FY 2008	FY 2009
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2007 (6 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

This proposal would prohibit a person from selling or offering for sale a vehicle protection product in Missouri unless the seller, warrantor, and any administrator comply with the provisions of the proposed proposal. A vehicle protection product warrantor, a seller of a vehicle protection product, or a warranty administrator that complies with the proposal shall not be subject to any other provisions of the state insurance code.

The proposal would apply to all warranted products sold or offered for sale on or after January 1, 2007. The failure of any person to comply with the proposal before its effective date would not be admissible in any court proceeding, administrative proceeding, arbitration, or alternative dispute resolution proceeding and may not be used to prove that the action of any person or the vehicle protection product was unlawful or otherwise improper.

DESCRIPTION (continued)

REGISTRATION AND FILING REQUIREMENTS OF WARRANTORS - A person could not act as a warrantor or represent to the public that the person is a warrantor without registering with the Department of Insurance. A warrantor shall file warrantor registration records annually and update them within 30 days of any change. The proposal delineates what types of information that the registration records must contain. The department shall make information regarding the warrantor's name and the name and address of its designated agent for service of process available to the public.

The department may charge each registrant a reasonable fee to offset the cost of processing a registration and maintaining the records. The fee shall not exceed \$250 per year. If a registrant failed to register by the renewal deadline established by the department, the department shall give the registrant written notice of the failure and the registrant will have 30 days to complete the renewal before being suspended from acting as a warrantor in Missouri.

FINANCIAL RESPONSIBILITY - No vehicle protection product may be sold or offered for sale in Missouri unless the vehicle protection product warrantor acquires insurance under a warranty reimbursement insurance policy or maintains a net worth or stockholder's equity of \$50,000,000.

WARRANTY REIMBURSEMENT POLICY REQUIREMENTS - Under this proposal, the warranty reimbursement policy must provide that the insurer would reimburse or pay on behalf of the warrantor all covered sums that the warrantor was legally obligated to pay or would provide all services the warrantor was legally obligated to perform according to the warrantor's contractual obligations under its vehicle protection product warranty. The policy must provide that, if payment due under the warranty were not provided by the warrantor within 60 days after the warranty holder filed proof of loss according to the terms of the warranty, the warranty holder may file proof of loss directly with the warranty reimbursement insurance company for reimbursement. The policy must provide that the premium for the policy would be considered paid if the warranty holder paid for the warranted product and the insurer's liability under the policy shall not be reduced or relieved by a failure of the warrantor, for any reason, to report the issuance of a warranty to the insurer. The proposal also delineates certain requirements regarding cancellation of the policy.

DISCLOSURE TO WARRANTY HOLDER - A person could not sell or offer for sale in Missouri a warranted product unless the warranty on the warranty is written in clear, understandable language and was printed or typed in easy-to-read type, size, and style. The warranty shall state that the obligations of the warrantor to the warranty holder are guaranteed under a warranty reimbursement insurance policy or are backed by the warrantor's net assets. The warranty must state that, if a warranty holder must make a claim against a party other than

DESCRIPTION (continued)

the warranty reimbursement insurance policy issuer, the warranty holder is entitled to make a direct claim against the insurer upon the failure of the warrantor to pay any claim or meet any obligation under the terms of the warranty within 60 days after proof of loss was filed with the warrantor. The proposal delineates other provisions that the warranty must contain.

WARRANTY CANCELLATION - The proposal prohibits a person from selling or offering for sale a vehicle protection product warranty unless it clearly states the terms and conditions governing the cancellation of the sale and warranty. A warrantor may cancel a warranty only if the warranty holder did any of the following: (1) Fails to pay for the warranted product; (2) Makes a material misrepresentation to the seller or warrantor; (3) Commits fraud; or (4) Substantially breaches the warranty holder's duties under the warranty.

A warrantor canceling a warranty shall mail written notice of cancellation to the warranty holder at his or her last known address in the warrantor's records at least 30 days before the effective date of a cancellation. The notice shall state the effective date of the cancellation and the reason for it.

PROHIBITED ACTS - Unless licensed as an insurance company, a vehicle protection product warrantor could not use in its name, contracts, or literature the word "insurance", "casualty", "surety", or "mutual" or any other words descriptive of the insurance, casualty, or surety business. A warrantor also may not use any name or words in its name that were deceptively similar to the name or description of any insurer or surety or any other vehicle protection product warrantor. A vehicle protection product seller or warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a vehicle protection product that was not installed on the vehicle at the time of sale.

RECORD KEEPING - A vehicle protection product warrantor must keep accurate accounts, books, and records concerning transactions regulated under the proposed act. The proposal delineates what the records must include. A warrantor shall retain all required accounts, books, and records pertaining to each warranty holder for at least two years after the specified period of coverage had expired. A warrantor discontinuing business must maintain its records until it furnished the department satisfactory proof that it had discharged all obligations to warranty holders in Missouri.

A warrantor would have to make its accounts, books, and records available to department for the purpose of examination.

DESCRIPTION (continued)

SANCTIONS/ADMINISTRATIVE PENALTIES - Under the proposal, the Department may conduct examinations of warrantors, administrators, or other people to enforce the proposed act and protect warranty holders in Missouri. The department may take any action that is necessary or appropriate to enforce the act and rules and orders to protect warranty holders in Missouri. If a warrantor engaged in a pattern or practice of conduct that violated the proposal and the department reasonably believes threatens to render the warrantor insolvent or cause irreparable loss or injury to the property or business of any person or company, the department may issue an order directed to the warrantor to cease and desist from engaging in further acts, practices, or transactions that were causing the conduct. The department may issue an order prohibiting the warrantor from selling or offering for sale warranted products in violation of the proposal. The department may issue an order imposing a civil fine on the warrantor.

Unless the department reasonably believes that the warrantor is, about to become insolvent, the department shall provide written notice of the order to the warrantor and the opportunity for a hearing before the order's effective date. The department shall hold the hearing within 10 business days after delivery of the notice. The department may bring an action in any court of competent jurisdiction for an injunction or other appropriate relief to enjoin threatened or existing violations of the proposed act. The Department also could seek restitution on behalf of people aggrieved by a violation of the proposal.

A person found to have violated the proposal or DLEG orders or rules could be ordered to pay to the Department a civil fine in an amount determined by the Department. The fine could not be more than \$500 per violation and could not exceed \$10,000 in the aggregate for all violations of a similar nature.

RULEMAKING POWER - The proposal authorizes the department to promulgate rules that are necessary to implement and administer the proposed act. The rules must include disclosure requirements for the benefit of warranty holders, record-keeping requirements, and procedures for public complaints.

The proposal contains a severability clause and has an effective date of 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.

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SOURCES OF INFORMATION

Office of Attorney General
Office of State Courts Administrator
Department of Insurance
Office of Secretary of State

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive style with a large, prominent "M" and "W".

Mickey Wilson, CPA
Director
April 11, 2006