

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4655-01
Bill No.: SB 1059
Subject: Banks and Financial Institutions; Licenses - Professional; Mortgages and Deeds
Type: Original
Date: February 13, 2008

Bill Summary: Creates civil and criminal penalties for mortgage fraud and imposes sanctions upon certain licensed professionals and unlicensed individuals who commit the crime.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
General Revenue	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)
Total Estimated Net Effect on General Revenue Fund	(Unknown less than \$100,000)	(Unknown less than \$100,000)	(Unknown less than \$100,000)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
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 2009	FY 2010	FY 2011
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Total Estimated Net Effect on FTE	0	0	0

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2009	FY 2010	FY 2011
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator** and **Office of State Public Defender** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Administration - Administrative Hearing Commission** state this legislation will not significantly alter its caseload. However, if other similar bills also pass, there are more cases, or more complex cases, there could be a fiscal impact.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state this legislation creates civil and criminal penalties for mortgage fraud and imposes sanctions upon certain licensed professionals and unlicensed individuals who commit the crime.

The DIFP also states that having reviewed the proposed legislation and having sought the conclusion of the appropriate board(s), they are of the opinion that this proposal, in its present form, has no fiscal impact on their organization. However, should the number of complaints increase dramatically with the implementation of the legislation, additional appropriation and/or FTE may be requested.

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal for Administrative Rules is less than \$2,500. The SOS does not expect that additional funding would be required to meet these costs. However, the SOS also 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 SOS can sustain within its core budget. Therefore, the SOS reserves the right to request funding for the costs 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 offense(s) outlined in this proposal. An increase in commitments 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 either through incarceration (FY 06 average of \$39.43 per inmate per day, or an annual cost of \$14,394 per inmate) or through supervision provided by the Board of Probation and Parole (FY 06 average of

ASSUMPTION (continued)

\$2.52 per offender per day, or an annual cost of \$920 per offender). Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Seven (7) 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 **Office of Prosecution Services (OPS)** and **Cole County Circuit Court** did not respond to our request for a statement of fiscal impact.

Oversight assumes because of the narrow scope of the legislation, that the OPS and County Prosecutors would not encounter a significant increase in the number of cases referred to them for prosecution. Therefore, it is assumed the proposal would not have a significant direct fiscal impact on the OPS.

Oversight notes that various provisions of the proposal allow the court to impose civil penalties, ranging from \$2,500 to \$5,000 per day, for violating the provisions of the legislation and that voluntary forfeitures of property/funds are to be collected and remitted to the school fund.

Oversight assumes any penalties collected will be collected and distributed according to section 7, Article IX of the Constitution. **Oversight** further assumes minimal penalties and forfeitures will be collected and, therefore, is not presenting these in the fiscal note.

<u>FISCAL IMPACT - State Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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GENERAL REVENUE FUND

Costs - Department of Corrections

Increased incarceration/supervision costs

<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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ESTIMATED NET EFFECT ON GENERAL REVENUE FUND

<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2009 (10 Mo.)	FY 2010	FY 2011
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

The proposal may impact small businesses that violate the provisions of this proposal and lose their licenses.

FISCAL DESCRIPTION

This proposal creates civil and criminal penalties for mortgage fraud and imposes sanctions upon certain licensed professionals and unlicensed individuals who commit the crime.

CRIMINAL PROVISION, Section 570.310

Under the proposal, it is unlawful for a person, in connection with the application for or procurement of a loan secured by real estate to willfully: 1) Employ a device, scheme, or artifice to defraud; 2) Make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or 3) Receive any portion of the purchase, sale, or loan proceeds, or any other consideration paid or generated in connection with a real estate closing that such person knew involved a violation of this section. Such acts constitute a Class C felony.

REAL ESTATE BROKERS AND SALESPERSONS, Sections 339.100, 339.175

Licensed real estate brokers and salespersons may be brought before the Administrative Hearing Commission and lose their license for committing mortgage fraud. Licensees who are criminally convicted of mortgage fraud will automatically have their license revoked. The Missouri Real Estate Commission may maintain an action in circuit court for anyone engaging in mortgage fraud and violators shall be subject to a civil penalty of \$2,500 per violation.

REAL ESTATE APPRAISERS, Sections 339.532, 339.542, 339.543, 339.549

Licensed real estate appraisers may also be brought before the Administrative Hearing Commission and lose their license for committing mortgage fraud. Licensees who are criminally convicted of mortgage fraud will automatically have their license revoked. These licensees may appeal the decision to the Administrative Hearing Commission.

The Missouri Real Estate Appraisers Commission may request cease and desist orders for any individual the commission believes is in violation of any law under their jurisdiction, including mortgage fraud. A hearing to determine violations will be held by the director of the commission or be referred to the Administrative Hearing Commission. The Missouri Real Estate and Appraisers Commission may petition the circuit court of Cole county to enforce any cease and desist orders. Those who willfully violate a cease and desist order shall be subject to a fine of up to \$100,000, by imprisonment of up to 10 years, or both.

FISCAL DESCRIPTION (continued)

The Missouri Real Estate Appraisers Commission may maintain an action in circuit court for anyone engaging in mortgage fraud and violators shall be subject to a civil penalty of \$2,500 per violation.

RESIDENTIAL MORTGAGE BROKERS, Section 443.809, 443.810, 443.891

The director of the Division of Finance shall have the authority to investigate the records of any licensed residential mortgage broker.

The director or the Residential Mortgage Board may also assess a civil penalty of up to \$5,000 for any violation of the law under the jurisdiction of the commission in a contested case.

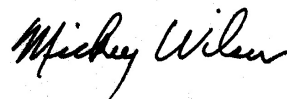
The director is allowed to issue a notice of charges in support of an order to remove persons from participating in loan brokering, mortgage brokering, or mortgage brokerage service for any loan secured by real estate under the laws pertaining to residential mortgage brokers or otherwise under the jurisdiction of the director of the Division of Finance. The director may require restitution and impose a civil penalty not to exceed \$5,000 per occurrence.

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
Office of State Courts Administrator
Department of Insurance, Financial Institutions and Professional Registration
Department of Corrections
Office of Secretary of State
Office of State Public Defender

NOT RESPONDING: Office of Prosecution Services and Cole County Circuit Court



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Director
February 13, 2008