

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO.: 2777-12
BILL NO.: HS for HCS for SB 896, as amended
SUBJECT: Corporations: Business and Commerce
TYPE: Original
DATE: May 8, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue	\$7,231,518	(\$2,094,080)	(\$2,102,521)
Insurance Dedicated	\$0	\$0	\$0
School District Trust	(\$5,719)	(\$8,007)	(\$8,408)
Conservation	(\$715)	(\$1,001)	(\$1,051)
Parks and Soil	(\$572)	(\$801)	(\$841)
Total Estimated Net Effect on <u>All</u> State Funds	\$7,224,512	(\$2,103,889)	(\$2,112,821)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	(\$8,579)	(\$12,011)	(\$12,611)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 14 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials of the **Department of Labor and Industrial Relations** assume no fiscal impact.

Officials of the **Office of Attorney General** assume no fiscal impact.

Officials of the **Department of Economic Department - Division of Finance** assume no fiscal impact.

Officials of the **Office of Secretary of State** has identified several sections in this proposal that would create additional duties and would have fiscal impact.

Officials estimate that the securities division would require 3 FTE and would need 600 Square feet of additional office space at an estimated annual cost of \$5,100. SOS Officials stated the following:

Chapter 347: this legislation requires publishing notice of winding up in the Missouri Register if a dissolving company wishes to bar unknown claims against the company. Last year approximately 200 voluntary dissolutions were filed with the Missouri Secretary of State. This bill provides that the notice be published in the Missouri Register, where the estimated cost of a page is \$22.50. The actual cost could be more or less than the number given. The maximum estimated cost based on 1999 records would be \$4,500.

Chapter 351: contains certain technical changes. Also, proposed section 351.055(9) would permit a corporation to include a provision in its articles of incorporation that impacts the potential personal liability of its directors. Also, section 351.182 of this legislation permits publishing notice of winding up in the Missouri Register if a dissolving corporation wishes to bar unknown claims against the corporation. Last year approximately 2,925 voluntary dissolutions were filed with the Missouri Secretary of State. Some, but not all of these dissolving corporations will wish to publish notice in order to bar unknown claims. This office has no record of the number of companies that actually publish such a notice. This bill provides that the notice be published in the Missouri Register, where the estimated cost of a page is \$22.50. The maximum estimated cost based on 1999 records if every dissolving company chose to publish would be \$65,812.50. Also, Section 351.690(2) provides that the provisions of chapter 351 are to be applicable to banks, trust companies and safe deposit companies when chapter 351

ASSUMPTION (continued)

“supplements” chapter 362. It is unclear what this provision means. If it is interpreted to mean that entities regulated under chapter 362 must also comply with all provisions of chapter 351, then such entities would be required to submit numerous filings to SOS (such as amendments, etc.). If such broad interpretation were employed, it would result in a substantial increase in filings made with the SOS. It is likely additional FTE (and associated E & E) would be required to process such filing in a timely manner.

Chapter 359:

- 1) would permit a limited partnership to have a perpetual existence. The current SOS mainframe system would have to be modified to accommodate this change. It is possible that additional temporary FTE would be required to implement this requirement.
- 2) would permit a limited partnership to dispose of unknown claims by filing a notice of winding up with SOS. The current SOS mainframe would have to be modified to accommodate this change. It is possible that additional temporary FTE would be required to implement this requirement. This legislation also requires publishing notice of winding up in the Missouri Register if a dissolving limited partnership wishes to bar unknown claims against the limited partnership. Last year approximately 100 voluntary dissolutions were filed with the Missouri Secretary of State. Some, but not all of these dissolving limited partnerships will wish to publish notice in order to bar unknown claims. This office has no record of the number of companies that actually published such notice in a local newspaper under the current law. This bill provides that the notice be published in the Missouri Register, where the estimated cost of a page is \$22.50. The actual cost would be more or less than the number given. The maximum estimated cost based on 1999 records if every dissolving limited partnership chose to publish would be \$2,250.

SOS officials stated that this proposal would require the Securities Division to oversee implementation of the law.

The Securities Division determined that it would be necessary to add one full time clerk typist II, one full time investigator and one full time attorney.

Clerk Typist II: maintains a log of victims and a log of persons promoting business opportunities against whom complaints have been made; assists the investigator and attorney in the preparation of referrals to prosecuting attorney; assist the attorney in preparation of pleadings; conducts background checks of persons promoting business opportunities against whom complaints have been made.

Investigator II: interviews victims and witnesses; gathers evidence, corporate documents, and background information; prepares referrals to prosecuting attorneys; assists the attorney in seeking injunctions against persons violating the business opportunities legislation; testifies in court.

Attorney: supervises clerk typists and investigator; reviews and participates in referrals to the

ASSUMPTION (continued)

prosecuting attorneys; seeks injunctions against persons violating the business opportunities legislation; appears in court.

The Administrative Rules Division estimates a Range 18 Associated Editor would be necessary to work with filers and receive, review and edit these additional notices in preparation for publication.

Officials of the **Department of Insurance** stated this proposal amends the laws relating to dissolving and winding up the affairs of domestic limited liability companies, general business corporations and limited partnerships.

This proposal also creates a license for organizational credit agencies. Legislation allows employees of a licensed credit agency organization to act as agents for the following types of insurance: credit life, credit accident and health, credit property, credit involuntary unemployment and any other form of credit or credit related insurance. Credit agencies would be licensed annually and submit a list of employees to the department who could act on the agency's behalf in soliciting, negotiating and procuring credit insurance. An insurer authorized to do business in the state must appoint the credit agency and its employees. Language has been added in sections 376.350 and 379.105 that prohibits the department from disclosing information regarding compensation of any employee or officer of an insurance company.

Department of Insurance officials stated that an Organizational Credit Agency license fee is set at \$100.00 and annual renewal at \$50.00. Each licensed credit agency must pay a fee of \$18.00 annually to the department for each employee submitted on the list of those employees that are authorized to act on its behalf. The insurer would be required to pay a \$10.00 appointment or cancellation fee for each applicant designated under 375.065 2.(2). The department currently licenses 9,476 agents who do credit insurance. We are unable to determine how many of the 9,200 agencies we license are credit agencies. The department assumes that there would be minimal change within the number of agencies currently licensed. It further assumes that a minimal number of agents licensed under the current method would choose to be licensed as a organizational credit agency or would be an employee under such an organization therefore there would be minimal change within the number of agents currently licensed. The department assumes the legislation would most likely affect businesses and individuals that previously had not been licensed as either an agent or agency. These businesses and individuals might be those in retail sales who sell goods and services on credit and could now sell credit insurance in conjunction with their other business. The department anticipates an increase in the number of new businesses and individuals licensed as credit organizations. The department cannot estimate how many businesses or individuals would become licensed organizational credit agencies or how many employees acting on the agency's behalf would be submitted to the department. The department assumes there will be sufficient volume to require at least 1.00 additional licensing technician.

ASSUMPTION (continued)

The department will also require contract computer programming to modify the existing licensing system to accommodate the new license and track employees authorized to act on their behalf. This information is included in the annual statements filed with the department. The fiscal note reflects estimated cost for the department and unknown increased revenue from licensing and appointment fees.

Insurance Licensing Technicians II: Review and process original applications and annual renewal applications for organizational credit agencies, maintain information on employees authorized to conduct business on the agencies behalf, process appointments by insurers.

Department of Insurance officials stated that they expect income from fees to be in an amount sufficient to cover the costs to the Insurance Dedicated Fund.

Oversight will show costs to the Insurance Dedicated Fund as zero.

Officials of the **Office of Administration** stated there would be fiscal impact related to Section 148.064.6 of this proposal.

Division of Budget and Planning officials stated that according to the Department of Revenue there are 352 banks that would qualify for this credit, and they have outstanding shares and surplus of \$4,541,413,111. The revenue reduction to GR for a tax credit of 1/60th of 1% is \$756,902.

Oversight for the purposes of this fiscal note assumes no fiscal impact related to the changes of filing certain documents with the Recorder of Deeds. Throughout this proposal certain documents have been required to be filed with the Recorder of Deeds of the county or city in which the corporation is either located, or in which the articles of Agreement have been filed. This proposal changes this requirement and requires all filings to be done in the public records section of the Division of Finance. Oversight assumed there would be a loss of income to those funds that receive monies from Recorder of Deeds filing fees. Oversight contacted the **Boone County Recorder of Deeds** for their response and found that these filings were unheard of. The Boone County Recorder then checked with the Recorder of Deeds of St. Louis City and Jackson County and determined that they were also unaware of any filings of records found in this proposal. Therefore, if these types of record filings are not currently being filed with the proper recording authority Oversight assumes there would be no loss of income to those funds which receive a portion of recording fees.

ASSUMPTION (continued)

Section 144.815

Officials from the **Department of Revenue (DOR)** state this proposal creates a sales and use tax exemption for bullion and investment coins. The DOR states the proposal would have no administrative impact to their department, and would have unknown fiscal impact to total state revenues.

Officials from the **Office of Administration, Budget and Planning** state this proposal would have an unknown impact on total state revenues.

Oversight assumes, according to the Merchandise Product Lines report from the 1992 Census of Retail Trade, that coins, metals and other numismatic items account for roughly 0.1% of retail sales at jewelry stores. Oversight assumes this would represent coins and gold bullion as defined in this proposal. Also, total sales of jewelry in the United States totaled \$25,872,289,000.

Therefore, assuming that coins and metals sold outside of jewelry stores is proportionate to coins and metals sold within jewelry stores, the total sales of coins and metals in the United States in 1992 is estimated to be \$25,872,289. Assuming that Missouri sales represent 1.9% of this total, \$491,573 of sales in Missouri in 1992 were for coins and metals. Growing the jewelry sales by 5% for all years since 1992, estimated sales in FY's 2001, 2002 and 2003 for coins and gold bullion are estimated to be \$762,591, \$800,721 and \$840,757 respectively. This would result in a loss in sales tax revenue of \$24,165 in FY 2001 (9 months), \$33,830 in FY 2002 and \$35,522 in FY 2003. The Merchandise Lines Reports for 1997 Census of Retail Trade should be available in May, 2000.

Section 2

In response to similar legislation from this year, officials from the **Department of Revenue (DOR)** stated this would have little or no administrative impact to the Department of Revenue. The DOR states that they are unable to calculate the revenue impact of this legislation without knowing who will request a lump sum distribution if the option is given to them. The DOR anticipates a short-term revenue gain if a lump sum distribution is requested. The long-term impact, however, is unknown.

Officials from the **Missouri Lottery Commission (LOT)** state they would provide each winner electing to receive a lump-sum payment with an estimate of the present value of their remaining payments. The actual present value will depend on the market at the date the winner makes his/her election.

ASSUMPTION (continued)

The LOT assumes that in the process of the selling the separately held securities for each jackpot winner that elects the lump-sum distribution, the state would not incur any expense except for costs of bidding, which would be minimal, or bear any gain or risk of loss on these sales.

The LOT states that based on an August, 1999 letter/phone survey of their winners, they estimate that up to 50% of the winners would choose a lump-sum settlement option. This would result in a one-time increase of state revenues, as defined in Article X Section 17 of the Missouri State Constitution, of approximately \$4,606,101 in fiscal year 2001.

Analysis of Missouri Winners (as provided by the Missouri Lottery Commission)

Tickets	Face Value	Market Value		
Multi-State Lottery Assoc.	21	\$238,975,000	\$158,094,149	1
Missouri held bonds	72	\$150,518,000	\$114,994,000	1
Missouri held insurance annuities	41	\$ 50,902,415	\$ 38,685,835	1
Total	134	\$440,395,415	\$311,773,984	
Estimated cash-out value			\$155,886,992	2
Gross Income Tax due to cash-out			\$ 9,353,219	3
Less: Federal income tax deduction			<\$3,647,755>	4
Regular income tax			<u>\$1,099,363</u>	5
<i>Net increase in State Revenue FY 2001 per LOT</i>			<i>\$ 4,606,101</i>	

1. The market values were determined as follows:
 Multi-state Lottery Association as of 10/31/1999
 Missouri as of 6/30/1999
 Insurance annuities estimates based on bond values
2. LOT has estimated that approx. 50% of the ticket owners will cash out based on survey.
3. Gross state income tax effect of the cash-out is computed at 6% of the Estimated cash-out value.
4. Maximum federal income tax on cash-out proceeds shown as a deduction from Missouri income.
5. The state income tax that would have been paid if regular annuity payments had continued.

Oversight assumes the Federal income tax deduction used to determine the deduction in state revenue in FY 2001 was overestimated by the LOT and has provided an updated analysis applying the \$10,000 cap per combined filer's (lottery winner's) federal tax deduction. Oversight estimates the fiscal impact to the state in FY 2001 as a positive \$8,253,856 from income tax on the lump-sum distributions. Oversight also assumes the loss in revenue in future years from a reduction of income tax revenue from the annuities would be \$1,059,163

ASSUMPTION (continued)

Analysis of Missouri Winners (as revised by Oversight)

Estimated cash-out value	\$155,886,992
Less: Federal income tax deduction (50% of 134 winners) x \$10,000	<u><\$ 670,000></u>
Missouri taxable income	\$155,216,992
Tax (at 6%)	\$ 9,313,019
Less: Tax that would have been paid under annuity option	<u><\$ 1,059,163> 1</u>
<i>Net increase in State Revenue FY 2001</i>	<u><u>\$ 8,253,856</u></u>

1. Annual annuity payment per LOT	\$18,322,716
Less Federal income tax deduction	<u><\$ 670,000></u>
Missouri taxable income	\$17,652,716

Missouri tax on annuity payments (6%) \$ 1,059,163

Oversight used the LOT's estimate of 50 percent of current annuity recipients opting for the lump-sum distribution. Actual percentages could be higher, possibly reaching 100 percent. If 100 percent of the current annuity recipients opt for the lump-sum distribution, the fiscal impact to the state in FY 2001 would be a positive \$16,507,714. Estimated losses in revenue in the following two fiscal years from the absence of pre October 21, 1998 lottery winner annuities would be a negative \$2,118,325.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
GENERAL REVENUE FUND			
<u>Costs to Secretary of State</u>			
Personal Services (4 FTE)	(\$106,470)	(\$132,875)	(\$138,190)
Fringe Benefits	(\$32,740)	(\$40,859)	(\$42,493)
Equipment	(\$29,715)	(\$1,200)	(\$1,200)
Expense	<u>(\$79,353)</u>	<u>(\$79,059)</u>	<u>(\$79,350)</u>
Estimated net expense to Secretary of State	(\$248,278)	(\$253,993)	(\$261,233)
<u>Loss to General Revenue Fund</u>			
from tax credit of 1/60th of 1% (Section 148.064.6)	(\$756,902)	(\$756,902)	(\$756,902)
<u>Loss-Sales tax exemption for sales of gold bullion and investment coins</u>			
(Section 144.815)	(\$17,158)	(\$24,022)	(\$25,223)

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
<u>Income</u> - Income tax on lump-sum lottery distributions (Section 2)	<u>\$8,253,856</u>	<u>(\$1,059,163)</u>	<u>(\$1,059,163)</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE FUND	<u>\$7,231,518</u>	<u>(\$2,094,080)</u>	<u>(\$2,102,521)</u>

INSURANCE DEDICATED FUND

<u>Income to Insurance Dedicated Fund</u> from fees	\$79,304	\$34,362	\$35,232
<u>Costs to Insurance Dedicated Fund</u>			
Personal Service 1FTE	(\$20,041)	(\$24,660)	(\$25,277)
Fringe Benefits	(\$6,163)	(\$7,583)	\$7,773
Equipment	<u>(\$7,426)</u>	<u>\$0</u>	<u>\$0</u>
Total costs to INS	<u>(\$79,304)</u>	<u>(\$34,362)</u>	<u>(\$35,232)</u>

ESTIMATED NET EFFECT TO INSURANCE DEDICATED FUND	\$0	\$0	\$0
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***Insurance officials expect income from new fees to offset the administrative costs.**

SCHOOL DISTRICT TRUST

<u>Loss</u> - Sales tax exemption for sales of gold bullion and investment coins (Section 144.815)	(\$5,719)	(\$8,007)	(\$8,408)
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CONSERVATION

Loss-Sales tax exemption for gold bullion and investment coins (Section 144.815)	(\$715)	(\$1,001)	(\$1,051)
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PARKS AND SOIL

Loss-Sales tax exemption for sales of gold bullion and investment coins (Section 144.815)	(\$572)	(\$801)	(\$841)
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<u>FISCAL IMPACT - Local Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
	\$0	\$0	\$0

CITIES AND COUNTIES

Loss-Sales tax exemption for sales of gold bullion and investment coins (Section 144.815)	(\$8,579)	(\$12,011)	(\$12,611)
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FISCAL IMPACT - Small Business

Small business that expect to be fiscally impacted due to the numerous changes in this proposal, including tax credits for banks that filed returns after December 31, 2000.

Small businesses that sell or purchase investment coins or gold bullion would be fiscally impacted by this proposed legislation from changed collection and reporting standards.
(Section 144.815)

DESCRIPTION

This substitute modifies the law relating to business organizations. In its major provisions, the substitute:

- (1) Authorizes a \$2.50 charge for processing a notice of lien (Section 136.055, RSMo);
- (2) Requires county collectors to first apply payments for real property taxes to back delinquent taxes (Section 140.110);
- (3) Modifies the definition of a resident estate or trust to require at least one income beneficiary to be a resident of Missouri (Section 143.331);
- (4) Allows banks a tax credit for returns filed after December 31, 2000 (Section 148.064);
- (5) Allows liens on motor vehicles and boats to be effective with minor errors (Sections 301.600, 306.400);

DESCRIPTION(continued)

- (6) Modifies procedures for lienholders to secure and perfect future advances on motor vehicles and boats (Sections 306.410, 306.420);
- (7) Modifies procedures relating to the dissolution of limited liability companies (Sections 347.137, 306.141);
- (8) Extends from August 31, 2000, to August 31, 2001, the expiration date of certain provisions relating to health services corporations organized as not-for-profit corporations (Sections 351.025, 354.065);
- (9) Allows a corporation's articles of incorporation to limit the personal liability of a director and the indemnification of a director, officer, or employee when that person has been successful in an action related to the person's position with the corporation (Sections 351.355, 351.055);
- (10) Prohibits a person from being admitted to vote on shares belonging to the corporation which issued the shares (Section 351.245);
- (11) Allows a corporation to pay cash equal to the value of a fractional share (Section 351.300);
- (12) Allows publication of a corporation's notice of dissolution in the Missouri Register. At request of the corporation, the Secretary of State could publish in an electronic format. (Section 351.482)
- (13) Allows bank and trust companies to operate in the same manner as other corporations when the banking statutes do not apply (Section 351.690);
- (14) Modifies procedures for the winding up of a limited partnership (Sections 359.451, 359.481);
- (15) Modifies several sections within Chapters 361 and 362 to facilitate a centralized filing system by allowing banks to file public documents with the Division of Finance;
- (16) Requires presentation of claims under Section 361.540 to the circuit court of Cole County for determination of the priority of payment (Section 361.540);
- (17) Allows state-chartered bank and trust companies to establish subsidiaries subject to the limitations that would be applicable to national banks (Section 362.105);

(18) Adds the Federal Home Loan Bank, the Federal Farm Credit Bank, and the Student Loan Marketing Association to the list of exclusions related to bank investment limits. This section is subject to an emergency clause (Section 362.170);

DESCRIPTION(continued)

(19) Establishes procedures for banks to conduct reverse stock splits and to determine the value in a reverse stock split (Sections 362.325, 362.730, 362.740);

(20) Allows foreign corporations to establish trust representative offices (Section 362.600);

(21) Expands the definition of "motor vehicle" in the Motor Vehicle Time Sales Act to include all-terrain vehicles, motorized bicycles, mopeds, and motor tricycles (Section 365.020);

(22) Allows savings and loan associations to invest in the Federal Home Loan Bank, the Federal Farm Credit Bank, and the Student Loan Marketing Association (Section 369.219);

(23) Creates a licensing process for credit insurance companies (Sections 375.022, 375.065);

(24) Prohibits the Department of Insurance from disclosing the compensation of an employee or officer of an insurance company (Sections 376.350, 379.105);

(25) Excludes fees charged for necessary services performed in connection with residential real estate loans and second mortgages from the determination of annual percentage rates (Sections 408.052, 408.234);

(26) Regulates business opportunities and defines "business opportunity" as the sale or lease of any product, equipment, supplies, or services for which more than \$500 has been paid for the start-up of a business and in which written guarantees or other conditions are represented by the seller. A seller is prohibited from engaging in certain activities, including making certain misrepresentations and false claims. A purchaser who suffers damages as a result of violations of the provisions may bring a civil action for damages and attorney's fees (Sections 407.125, 407.2000, 407.2021, 407.2015, and 407.2021);

(27) Requires persons requesting records from a savings and loan association for civil cases to reimburse the association \$15 plus \$0.35 per page and to pay reasonable expenses if an association officer must appear in court or at a deposition (Section 427.220);

(28) Allows mortgage insurance to cover 100% of the market value of the property. Under current law, mortgage insurance may cover up to 97% of the value (Section 443.415);

(29) Updates several garnishment statutes (Sections 525.080, 525.250);

(30) Requires limited liability companies that own or lease real property in Kansas City to file with the city clerk an affidavit listing the name and address of a person who has management responsibility for that real property (Section 1); and

DESCRIPTION(continued)

(31) Requires the Speaker of the House and the President Pro Tem of the Senate to appoint a state banking association to report recommendations for the removal or replacement of a corporate trustee when the original trustee has been replaced by a subsequent corporate trustee because of a merger, acquisition, or cessation of business by the original corporate trustee. This section is subject to an emergency clause (Section 21.650).

(32) Sets forth Insurance Broker licensing procedures for out-of-state applicants and the procedures for the Department of Insurance to follow. (Section 375.017)

(33) The three year time line on Collectors of Revenue for the collection of delinquent and back taxes would not apply if any real estate having a tax exempt status and would again become taxable real property would not be allowed for sale until the transfer instrument is recorded.

(34) No person would be allowed to sell information containing both the name and the credit card number of any consumer to any person unless that consumer has expressly agreed either orally or in writing. (Section 3)

(35) This proposal exempts from state and local sales and use tax any purchase of bullion and investment coins. (Section 144.815)

(36) This proposal would allow state lottery prize winners who are currently receiving annuity payments to receive a single cash payment in lieu of remaining annuity payments. The Lottery Commission would be required to submit to the leadership of the General Assembly a plan to implement this proposal. The plan could not have a negative fiscal impact on the level of total state revenues. (Section 2)

This legislation is not federally mandated, would not duplicate any other program and would require additional capital improvements or rental space.

L.R. NO. 2777-12
BILL NO. HS for HCS for SB 896, as amended
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SOURCES OF INFORMATION

Missouri Lottery Commission
Office of Secretary of State
Office of Attorney General
Office of Administration
Department of Revenue
Department of Economic Development - Division of Finance
Department of Insurance
Department of Labor and Industrial Relations
Boone County Recorder of Deeds
Jackson County Recorder
City of St. Louis Recorder of Deeds



Jeanne Jarrett, CPA
Director
May 8, 2000