

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 4444-02  
Bill No.: HB 1480  
Subject: Consumer Protection; Insurance - General; Insurance - Property; Insurance Dept.  
Type: Original  
Date: February 13, 2006

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**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                       |
| Insurance Dedicated   | (\$124,576) to \$646,284      | (\$148,180) to \$622,680      | (152,715) to \$618,145        |
|   |                               |                               |                               |
| <b>Total Estimated Net Effect on <u>Other</u> State Funds</b> | <b>(\$124,576) to Unknown</b> | <b>(\$148,180) to Unknown</b> | <b>(\$152,715) to Unknown</b> |

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 8 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 - Administrative Hearing Commission, Office of State Courts Administrator, Department of Economic Development, and Department of Revenue** assume the proposal will have no fiscal impact on the 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)** stated 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.

ASSUMPTION (continued)

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 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).

Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. 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 Department of Insurance Dedicated Fund and will be established by rule by the director of INS and be based on INS cost of regulating the title insurance industry (Section 381.113). The number of title policies issued in the state on a five year avg. is 382,930. Depending on the amount established by rule from \$0 to \$2 dollars per policy, the INS would receive \$0 - \$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. INS estimates receiving 200 CE provider applications per year and with the cap, funds deposited into the Insurance Dedicated Fund are estimated to be \$5000 - \$10,000.

Continuing education filing fee for 5,000 title agents  $\$10 \times 5,000 = \$50,000/2$  (biennial) = \$25,000 (annually).

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

ASSUMPTION (continued)

The proposal does not change the way premium tax is calculated so there would be no increase or decrease in the amount of premium tax deposited into General Revenue and the County School Funds.

The INS assumes there will be a minimal impact on Information Systems for programming changes, but the impact will be covered with current appropriations.

Officials from the **Office of Attorney General (AGO)** did not respond to our request for a statement of fiscal impact. However, in response to similar legislation from the current session (SB 953), 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<br>(10 Mo.)                             | FY 2008   | FY 2009   |
|---|---|---|---|
| <b>GENERAL REVENUE FUND</b>   |   |   |   |
| <u>Income - Civil penalties collected</u>                                 | Unknown   | Unknown   | Unknown   |
| <u>Costs - Department of Corrections</u>                                  |   |   |   |
| Increase in probation and/or<br>commitment costs                          | (Unknown less<br>than \$100,000)                | (Unknown less<br>than \$100,000)                | (Unknown less<br>than \$100,000)                |
| <u>Transfer-Out - County Treasurers</u>                                   |   |   |   |
| Transfer-out of penalties collected for<br>distribution to schools        | (Unknown)                                       | (Unknown)                                       | (Unknown)                                       |
| <b>ESTIMATED NET EFFECT ON<br/>GENERAL REVENUE FUND</b>                   | <b><u>(Unknown less<br/>than \$100,000)</u></b> | <b><u>(Unknown less<br/>than \$100,000)</u></b> | <b><u>(Unknown less<br/>than \$100,000)</u></b> |
| <b>CONSUMER RESTITUTION FUND</b>  |   |   |   |
| <u>Income - Department of Insurance</u>                                   |   |   |   |
| Restitution funds from enforcement<br>proceedings for aggrieved consumers | <u>Unknown</u>                                  | <u>Unknown</u>                                  | <u>Unknown</u>                                  |
| <b>ESTIMATED NET EFFECT ON<br/>CONSUMER RESTITUTION FUND</b>              | <b><u>Unknown</u></b>                           | <b><u>Unknown</u></b>                           | <b><u>Unknown</u></b>                           |

| <u>FISCAL IMPACT - State Government</u>                            | FY 2007<br>(10 Mo.)                       | FY 2008                                   | FY 2009                                   |
|--|---|---|---|
| <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 filing fees                                   | \$25,000                                  | \$25,000                                  | \$25,000                                  |
| Continuing education application fees                              | <u>\$5,000 to</u><br><u>\$10,000</u>      | <u>\$5,000 to</u><br><u>\$10,000</u>      | <u>\$5,000 to</u><br><u>\$10,000</u>      |
| Total <u>Income</u> - Department of Insurance                      | <u>\$30,000 to</u><br><u>\$800,860</u>    | <u>\$30,000 to</u><br><u>\$800,860</u>    | <u>\$30,000 to</u><br><u>\$800,860</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  | <u>(\$22,714)</u>                         | <u>(\$15,990)</u>                         | <u>(\$16,470)</u>                         |
| Total <u>Costs</u> - Department of Insurance                       | <u>(\$154,576)</u>                        | <u>(\$178,180)</u>                        | <u>(\$182,715)</u>                        |
| <b>ESTIMATED NET EFFECT ON<br/>INSURANCE DEDICATED FUND</b>        | <u>(\$124,576) to</u><br><u>\$646,284</u> | <u>(\$148,180) to</u><br><u>\$622,680</u> | <u>(\$152,715) to</u><br><u>\$618,145</u> |
| <br><u>FISCAL IMPACT - Local Government</u>                        |   |   |   |
|  | FY 2007<br>(10 Mo.)                       | FY 2008                                   | FY 2009                                   |
| <b>LOCAL GOVERNMENTS -<br/>SCHOOLS</b>                             |   |   |   |
| <u>Income - County Treasurers</u>                                  |   |   |   |
| Transfer-in of penalties collected                                 | <u>Unknown</u>                            | <u>Unknown</u>                            | <u>Unknown</u>                            |
| <b>ESTIMATED NET EFFECT ON<br/>LOCAL GOVERNMENTS -<br/>SCHOOLS</b> | <u>Unknown</u>                            | <u>Unknown</u>                            | <u>Unknown</u>                            |
| <br><u>FISCAL IMPACT - Small Business</u>                          |   |   |   |

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

## DESCRIPTION

This proposal changes the laws regarding the enforcement powers of the Department of Insurance and establishes the Missouri Title Insurance Act.

### ENFORCEMENT POWERS OF THE DEPARTMENT OF INSURANCE

The proposal: (1) Revises the department's enforcement procedures for various violations of the state insurance code. If the department director determines that a person has violated or is attempting to violate a provision of the code, the director may: (a) Issue an order directing the person to cease and desist; (b) Issue a curative order or order directing the person to take other necessary action to comply with the insurance laws; (c) Order a civil penalty or forfeiture; and (d) Award reasonable costs of the investigation. (2) Requires the director, unless summary action is needed to protect consumers, to provide notice of intent to issue an order. The notice will specify the reasons for the action and the director will schedule a hearing at least 10 days after the notice; (3) Changes the penalty for violating a cease and desist order from a maximum \$1,000 fine and up to one year in jail to a maximum \$100,000 fine and up to 10 years in jail; (4) Allows the director to revoke a corporation's or insurer's certificate of authority for violations of Missouri's insurance laws or for a felony or misdemeanor conviction; (5) Allows the director to maintain an action in county circuit courts to issue injunctions, freeze assets, or take other appropriate or ancillary relief. The Consumer Restitution Fund is created to make restitution to aggrieved consumers of funds obtained through enforcement proceedings; (6) Classifies various violations of insurance laws into five categories from level one through level five. Maximum fines are established at each level with level one being the least and level five the highest. All fines collected will go to fund public schools as required by Article IX, Section 7, of the Missouri Constitution; and (7) Allows any applicant who is refused a license to file a petition with the Administrative Hearing Commission. The director will have the burden of proof for the refusal.

### MISSOURI TITLE INSURANCE ACT

The proposal establishes the Missouri Title Insurance Act. In its main provisions, the proposal: (1) Requires a title insurer or title agent issuing a lender's title insurance policy, when no owner's policy has been requested, to give written notice to a purchaser/mortgagor that the lender's policy does not protect the purchaser; (2) Requires a written contract specifying the responsibilities between a title insurer and a title insurance agent and the title insurer's supervisory responsibilities regarding title insurance agents; (3) Permits a title insurer or title insurance agent to operate as an escrow, security, settlement, or closing agent if certain listed requirements are met; (4) Requires title insurers to conduct on-site reviews at least annually on the practices and procedures of title insurance agencies or agents with which they contract. Reports will be maintained for at least four years and made available to the director upon request; (5) Makes it

DESCRIPTION (continued)

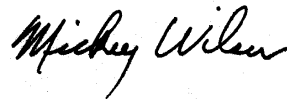
unlawful for any title agency or agent not affiliated with an agency to deny reasonable access or fail to cooperate with its underwriters in the title insurers' review of its accounts; (6) Prohibits title insurers, agencies, agents, or other persons from receiving any consideration for the referral of any title services provided; (7) Requires settlement agents to record all deeds and security instruments within five business days after completion; (8) Specifies that a title insurer is liable for the conversion or misappropriation of funds held in trust by a licensed title insurance agent or agency who is acting as an agent for the insurer. If more than one title insurer is involved, the insurer or insurers having coverage prior to the illegal act will be liable; (9) Prohibits title insurers or agents from participating in transactions in which they know the loan producer requires a party to obtain title insurance from a particular insurer or agent. Offering payments or rebates as an inducement to contract for title insurance is also prohibited; (10) Requires title insurers to file all premium rates and supplementary rate information with the director before the rates become effective. If any rates are found to be excessive, inadequate, or unfairly discriminatory, the director can disapprove the rate. If an insurer's rates are disapproved, he or she may request a hearing. Rate information is a public record; (11) Requires that no title insurance policy be written until a title search has been completed and the property found insurable. Once completed, all required outstanding, enforceable recorded liens, or other interests against the title must be shown; (12) Allows the director, if it is determined that a person has or may engage in a violation of title insurance laws, to issue administrative orders as authorized under Section 374.046, RSMo, to suspend or revoke the license of a producer or the certificate of authority of any title insurer for the violations and bring action in court to enjoin violations of the Real Estate Settlement Procedures Act; (13) Prohibits an insurer that transacts any other class, type, or kind of business from obtaining a title insurance license, except that a title insurer can issue closing or settlement protection; (14) Requires title insurers to maintain at least \$800,000 each of paid-in capital and surpluses; (15) Prohibits the net retained liability of a title insurer for a single risk from exceeding 50% of the surplus of all risks insured; (16) Requires when determining the financial condition of a title insurer that the general investment provisions of Sections 379.080 to 379.082 will apply except that an investment in a title plant equal to the cost will be allowed as long as the aggregate amount of all investments does not exceed 20% of the surplus to policyholders; (17) Prohibits the use of listed title insurance forms unless the forms have been approved by the director; (18) Allows the director to establish a policy issuance fee, not to exceed \$2, on each title insurance policy; (19) Requires all title insurance agents to be licensed, lists their responsibilities and obligations for licensure, and specifies the title insurance continuing education requirements; (20) Allows the director to inspect the records of title agencies, insurance agencies, and agents; and (21) Requires titled insurers, agencies, or agents to disclose and provide required information on any affiliated businesses involved in the transaction prior to commencing the transaction.

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 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**

A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA  
Director  
February 13, 2006