

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2965-02  
Bill No.: SCS for SB 809  
Subject: Insurance Dept.; Insurance - General; Evidence  
Type: Original  
Date: March 5, 2004

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
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 STATE FUNDS</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Total Estimated Net Effect on <u>All</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 5 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

### FISCAL ANALYSIS

#### ASSUMPTION

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

Officials from the **Office of Attorney General (AGO)** state costs which may arise from this proposal are unknown, but expected to be less than \$100,000 annually. The AGO anticipates additional costs related to obtaining documents in civil or criminal cases where “audit privileged” documents are at issue because the proposal provides for additional in-camera review procedures.

Officials from the **Office of Prosecution Services (OPS)** did not respond to our request for a statement of fiscal impact. However, in response to a similar proposal, the OPS assumed increases in workload attributable to the proposal will be absorbable within current funding/staffing levels.

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
<b>GENERAL REVENUE</b>			
<u>Costs -Office of Attorney General</u>			
Additional Litigation Expense	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE</b>	<b><u>(Unknown less than \$100,000)</u></b>	<b><u>(Unknown less than \$100,000)</u></b>	<b><u>(Unknown less than \$100,000)</u></b>
<u>FISCAL IMPACT - Local Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
	<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 makes information collected in the course of an insurance compliance audit privileged information and not discoverable in civil, criminal or administrative proceedings unless an exception applies.

Insurance compliance self-evaluative documents submitted to the Director of Department of Insurance in conjunction with other examinations are confidential. Audit documents submitted to the department of insurance remain property of the insurer and are not subject to disclosure under the Sunshine Law. Persons preparing the audit documents shall not be examined in civil, criminal or administrative hearings unless the documents are not privileged (Section 375.1064).

The privilege established in this proposal shall not apply to documents which are expressly waived. In a civil or administrative proceeding, a court may require disclosure of materials, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose or that the privilege does not apply. A court may order disclosure of materials in a criminal proceeding, after in-camera review, if it determines that the privilege was asserted for a fraudulent purpose, that the privilege does not apply or that material contains relevant evidence of a crime which is not otherwise available (Section 375.1065).

DESCRIPTION (continued)

The privilege is deemed to be waived by the insurer 30 days after receiving a request for disclosure of a self- evaluative audit by a prosecutor or the attorney general, unless the insurer files a petition for an in camera examination. After conducting an in-camera review of the insurance compliance audit document, the court may require disclosure of any portion of the document it determines is not privileged. Any compelled disclosure of an audit will not make the audit a public document or be deemed a waiver of the privilege for any other civil, criminal or administrative proceeding (Section 375.1066).

An insurer has the burden of demonstrating the applicability of the privilege (Section 375.1067).

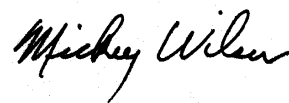
The privilege shall not apply to: (1) Documents expressly required to be collected, maintained or reported to regulatory agencies pursuant to law; (2) Information obtained by observation or monitoring by any regulatory agency; or (3) Information obtained from an independent source. The privilege created by this proposal shall apply to all litigation or administrative proceedings pending on the effective date of this act (section 375.1069).

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 Attorney General  
Office of State Courts Administrator  
Department of Insurance

**NOT RESPONDING: Office of Prosecution Services**

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

Mickey Wilson, CPA

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