

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1818-02
Bill No.: Perfected SB 352
Subject: Attorney General, State; Business and Commerce; Courts; Crimes and Punishment; Criminal Procedure
Type: Original
Date: April 20, 2015

Bill Summary: This proposal allows the Attorney General to institute civil and criminal proceedings related to criminal enterprises and racketeering.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	(\$413,831)	(\$671,810)	(\$1,092,708)
Total Estimated Net Effect on General Revenue	(\$413,831)	(\$671,810)	(\$1,092,708)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 10 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
General Revenue	3 FTE	3 FTE	3 FTE
Total Estimated Net Effect on FTE	3 FTE	3 FTE	3 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any Of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2016	FY 2017	FY 2018
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Corrections (DOC)** assume this proposal would grant jurisdiction to the Missouri Attorney General to institute civil and criminal proceedings related to criminal enterprises and racketeering. Racketeering, as defined, is "to engage in, attempt or conspire to engage in, or to solicit, coerce, or intimidate another person to engage in any activity defined as "racketeering activity" under 18 USCA Section 1961(1), or any felony offense of chapter 195, 409, 566, 567, 568, 570, 573, 575, or 579" {RMSo}.

Section 574.210 details situations in which a person is considered to have committed the offense of racketeering and proposes a class B felony penalty. Section 574.220 details authorization of the Attorney General for investigation and subpoena with reasonable cause before beginning civil or criminal proceedings. A Class D felony (class E, Jan. 2017) provision is added for anyone with "the intent to avoid, evade, or prevent, or obstruct the compliance in whole or in part of any person with, a duly served investigative demand of the attorney general, knowingly remove to any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any documentary material or materials that are the subject of the demand".

The federal Racketeer Influenced and Corrupt Organizations Act (RICO, 18 USCA Chapter 96 Section 1961-1962) was enacted in 1970 to provide criminal penalties for those engaged in a "pattern of racketeering activity" through a criminal enterprise or organization (Marine 2009, Finklea 2010). Since 1972, thirty-three states have enacted similar laws. The primary focus of these laws is to control organized crime by implementing greater criminal penalties than that of the individual offenses, and to allow for civil litigation and forfeiture (Floyd 2011). Title 18 USCA Section 1961 alone lists offenses from over 100 Title 18 sections that can be considered predicate acts for charges under RICO. SB 352 references this federal act as well as RSMo chapters containing over 300 active charge codes. Offenses cover nearly all categories of violent and non-violent crimes, and acts from mail fraud to murder. Additionally, organized crime has adapted and increasingly takes the form of more loosely structured gangs and cyber scams. As such, it is not feasible to ascertain the numerous combinations of new, diverted, additional or increased sentences under this bill.

ASSUMPTION (continued)

However, information from the Bureau of Justice Statistics (BJS) indicates that of an annual average 82,269 federal felony convictions from 2010-2012 (Motivans 2013, 2015), RICO charges accounted for 297 convictions per year as the most serious offense (BJS website). Given these statistics, federal racketeering violations comprised 0.36% of total federal felony convictions. Information from state level statutes may be more appropriate, and statistics from Colorado Dept. of Corrections indicate that in a similar three year period organized crime accounted for an annual average of 0.45% of total admissions (Barr et al. 2011, 2012; unk. 2013).

Unfortunately, data specific to racketeering or organized crime convictions could not be obtained for most states with comparable laws. While Colorado data indicates a higher rate of racketeering offenses than the federal rate, this is likely a more reasonable basis for estimation for several reasons. Floyd (2011) reports that state RICO statutes bear more similarity to other state statutes than to federal statutes. Further, Finklea (2010) suggests that with increasing globalization, national law enforcement agencies are shifting more attention to inter- and transnational organized crime than has been the case in the past. This would also lead to greater state-level prosecutions for more local and regional enterprises.

To obtain an estimate, Missouri Dept. of Corrections data from FY 2011- 2013 was used to determine annual average total felonies sentenced (12,951). Given a rate of 0.45% racketeering implementation of this bill could result in an annual increase of 58 class B felonies. While this may seem excessive, racketeering generally applies to larger groups. For this reason, multiple, even dozens of individuals may be convicted in a single case. Although this is a reasonable assumption, some individuals may have received multiple class C felony convictions if no racketeering statute were available. Due to this, a portion of the class B charges would simply be additional time for a sentence that would have been served even without this bill. With the exhaustive list of offenses covered in this bill, perhaps as much as one-half (29) of convictions would actually be increased sentencing from what would have been class C felonies, rather than new additional charges.

From FY `14 data, B felonies have an average sentence of 8 years, with approximately 4 years incarceration and 4 years parole. Average class C felony sentence was 5 years, with 2 years incarceration and 3 years parole. The D felony for obstruction or evasion included in this bill is likely to result in probation at the same conviction rate. From FY14 data, this would result in 16 new probations with a 4 year sentence. The cumulative effect on DOC could be an increase of 174 incarcerations and 296 field supervisions. The cost are listed in the table below.

ASSUMPTION (continued)

	# of Offenders	Cost per year	Total Cost	# to Probation or parole	Cost per year	Total cost of P&P	Grand Total
Year 1	29	\$6,105	\$177,045	16	\$2,453	\$39,248	\$180,244
Year 2	58	\$6,105	\$354,090	32	\$2,453	\$78,496	\$441,238
Year 3	116	\$6,105	\$708,180	48	\$2,453	\$117,744	\$859,291

*The DOC assumes this proposal will result in on going cost.

Officials from the **Department of Revenue - OA-ITSD** assume this proposal would require 239.76 hours to have a file of these accounts (revocations) go through the system similar to the sales tax revocations because of a withholding tax delinquency at a cost of \$17,982 to the General Revenue Fund

Officials from the **Attorney General's Office (AGO)** assume this proposal creates the crime of racketeering wherein the AGO would have original jurisdiction to commence criminal actions throughout the state. Under this proposal, the new crime includes racketeering activity under various chapters of the existing criminal code. The proposal also allows the AGO to institute civil proceedings to provide relief and to enjoin violations with certain investigatory powers. While the total fiscal impact of the proposal on the AGO is unknown, the AGO estimates that the initial workload would require at least two (2) additional AAG I and one (1) investigator. The AGO may seek additional appropriations if the need exceeds existing resources.

ASSUMPTION (continued)

Officials from the **Department of Economic Development, Department of Economic Development, Public Service Commission, Office of the Public Council, Department of Elementary and Secondary Education, Department of Higher Education, Department of Insurance, Financial Institutions and Professional Registration, Department of Mental Health, Department of Natural Resources, Department of Labor and Industrial Relations, Department of Public Safety (Capitol Police, Fire Safety, Gaming Commission, Missouri Highway Patrol, State Emergency Management Agency and the Veterans Commission) Department of Social Services, Office of the Governor, Joint Committee on Administrative Rules, Joint Committee on Public Employee Retirement, Legislative Research, Missouri Lottery Commission, Missouri Consolidated Health Care Plan, Missouri Department of Conservation, Missouri Ethics Commission, Office of the Lieutenant Governor, Office of Prosecution Services, Office of Administration (Administrative Hearing Commission and Budget and Planning), Office of the State Courts Administrator, Office of the State Auditor, Office of the Secretary of State, Office of the State Public Defender, Office of the State Treasurer and the State Tax Commission** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Office of Administration - Budget and Planning** defer to the Attorney General's Office and the Department of Corrections for potential fiscal impact to their department.

<u>FISCAL IMPACT - State Government</u>	FY 2016 (10 Mo.)	FY 2017	FY 2018
GENERAL REVENUE			
<u>Cost - DOC</u>	(\$180,244)	(\$441,238)	(\$859,291)
Cost of incarceration and supervision			
<u>Cost - DOR</u>	(\$17,982)	\$0	\$0
IT cost			
<u>Cost - AGO</u>			
Personal Service	(\$105,625)	(\$128,018)	(\$129,298)
Fringe Benefits	(\$54,930)	(\$66,576)	(\$67,241)
Expense and Equipment	<u>(\$55,050)</u>	<u>(\$35,978)</u>	<u>(\$36,878)</u>
<u>Total Cost - AGO</u>	<u>(\$215,605)</u>	<u>(\$230,572)</u>	<u>(\$233,417)</u>
FTE Change - AGO	3 FTE	3 FTE	3 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$413,831)</u>	<u>(\$671,810)</u>	<u>(\$1,092,708)</u>
Estimated Net FTE Change to the General Revenue Fund	3 FTE	3 FTE	3 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2016 (10 Mo.)	 FY 2017	 FY 2018
	<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.

FISCAL DESCRIPTION

This act creates the Missouri Criminal Enterprise Act.

FISCAL DESCRIPTION (continued)

Under this act, a person commits a Class B felony offense of racketeering if he or she participates in the affairs of an enterprise through a pattern of racketeering activity or the collection of an unlawful debt, acquires an interest in an enterprise or property through a pattern of racketeering activity, or has received any proceeds derived from a pattern of racketeering activity and uses the proceeds to acquire, establish, or operate any enterprise or real property. It is also a Class B felony offense of racketeering to conspire or attempt to commit the offense. The Attorney General may commence criminal racketeering actions.

Any person found guilty of racketeering, through which the person derived pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine of up to three times the gross value gained or gross loss caused, whichever is the greater. The person may also be fined court costs and the reasonably incurred costs of investigation and prosecution, as determined by the court.

This act allows the Attorney General to institute civil proceedings to provide relief and enjoin violations of racketeering. If the Attorney General proves the alleged violation by a preponderance of the evidence and the court has made due provision for the rights of innocent persons, the court may issue appropriate orders and judgments. This act provides a non-exhaustive list of the dispositions the court may make.

Under this act, all property, real or personal, used in the course of, intended for use in the course of, derived from, or realized through racketeering is subject to civil forfeiture pursuant to the Criminal Activity Forfeiture Act.

This act gives the Attorney General authority to investigate racketeering. The Attorney General may subpoena witnesses before the commencement of any civil or criminal proceeding, and may compel the attendance of witnesses, examine witnesses under oath, require the production of evidence or documentary materials, and require answers to written interrogatories to be furnished under oath.

This act makes it a Class D felony until December 31, 2016, and a Class E felony beginning January 1, 2017, for a person to knowingly move, conceal, withhold, destroy, mutilate, alter, or falsify any documentary material that is the subject of a demand by the Attorney General with the intent to avoid, evade, prevent or obstruct compliance with an investigative demand of the Attorney General.

FISCAL DESCRIPTION (continued)

In the event a witness subpoenaed under this section fails or refuses to appear, or to produce documentary materials, or to give testimony relevant or material to an investigation, the Attorney General may petition the circuit court in the county where the witness resides for an order requiring the witness to attend and testify, or to produce the documentary materials. Any failure or refusal by the witness to obey an order of the court may be punishable by the court as contempt.

This act provides definitions for "documentary materials", "enterprise", "pattern of racketeering activity", "personal property", "racketeering", "real property", and "unlawful debt".

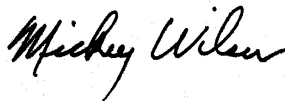
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Attorney General's Office
Department of Economic Development
Department of Economic Development
 Public Service Commission
 Office of the Public Council
Department of Elementary and Secondary Education
Department of Higher Education
Department of Social Services
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Labor and Industrial Relations
Department of Revenue
Department of Public Safety
Department of Public Safety
 Office of the Director
 Capitol Police
 Fire Safety
 Gaming Commission
 Missouri Highway Patrol
 State Emergency Management Agency
 Veterans Commission

SOURCES OF INFORMATION (continued)

Department of Social Services
Office of the Governor
Joint Committee on Administrative Rules
Joint Committee on Public Employee Retirement
Legislative Research
Missouri Lottery Commission
Missouri Consolidated Health Care Plan
Missouri Department of Conservation
Missouri Ethics Commission
Office of the Lieutenant Governor
Office of Prosecution Services
Office of Administration
Office of Administration
 Administrative Hearing Commission
 Office of Administration - Budget and Planning
Office of the State Courts Administrator
Office of the State Auditor
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
State Tax Commission



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