

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 578-04  
Bill No.: HCS for SB 288  
Subject: Secretary of State- Corporations, Recorder of Deeds, Circuit Clerks  
Type: Corrected  
Date: May 7, 2001  
**# Corrected to add footnote.**

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
General Revenue *	(\$22,647)	(\$23,214)	(\$23,794)
Unemployment Compensation Trust	(Unknown)	(Unknown)	(Unknown)
Statutory County Recorder's	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> State Funds#</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

**\* General Revenue totals do not include income from additional UCC filing fees, and costs to the Office of Secretary of State. Both are indeterminable.**

**# Oversight assumes, based on information submitted, fiscal impact would exceed (\$100,000.)**

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
Administrative Fund	(Unknown)	(Unknown)	(Unknown)
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>(Unknown)</b>	<b>(Unknown)</b>	<b>(Unknown)</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>FY 2004</b>
<b>Local Government</b>	<b>Unknown</b>	<b>Unknown</b>	<b>Unknow</b>

## FISCAL ANALYSIS

### ASSUMPTION

Officials of the **Office of Administration, Department of Revenue, Department of Economic Development, Office of State Courts Administrator, Department of Insurance, and the Department of Agriculture** assume no fiscal impact.

Officials of the **Office of Secretary of State-Division of Uniform Commercial Code** assume this proposal would have fiscal impact to the UCC Division. Officials stated that there are no aggregate totals available from the counties that would indicate the number of filings made annually. Therefore, it is not possible to estimate the amount of revenue that would be generated by this proposal. Income from filing fees is Unknown

Officials stated that costs for their division would come from several sources: **1)** technological changes required for filing of UCC material could not be implemented in the current mainframe environment. The costs of technology equipment that would be required cannot be estimated at this time; **2)** depending upon the number of new filings, the division could require additional FTE along with additional equipment and expense and storage space.. Section 400.9-519(h) requires UCC to process all filings within 2 business days after receipt. In order to comply with this provision additional FTE would be required. The number of FTE required is indeterminable. **3)** Section 400.9-526 requires the SOS to adopt and publish rules to implement this proposal. Section 400.9-526 (b) requires such rules to be in harmony with the rules of other states. Further the rules must be such that not only the practices, but also the technology of the UCC Division must be in harmony with the practices and technologies of other jurisdictions. There will be a significant time and expense involved in developing such rules, and it is not possible to predict the total number of pages would be used in publishing the new rules. The costs for publishing rules in the Missouri Code is \$27.00 per page, and \$23.00 per page in the Missouri Register. Further, to the extent the technology of this office is required to be compatible with the technology of other jurisdictions would have significant expense. Officials stated it is not possible to predict this expense; **4)** this proposal requires the SOS to report annually to the Governor and General Assembly on the operation of the UCC Division. The report shall include a statement comparing Missouri rules to the rules of other filing offices in other jurisdictions that have enacted all or substantially all of this act, along with reasons for variations and also report on any rules not in harmony with the most recent revision of the Model Rules promulgated by the International Association of Corporate Administrators. Preparation of this report would require significant legal resources if in fact it is contemplated that the laws of all 50 states must be researched and compared to Missouri's law. Current SOS legal staff would not be able to undertake this sort of comprehensive analysis of the laws of all 50 states. Officials assume that additional legal FTE along with necessary equipment and expense would be required to produce this report. **5)** Officials noted that current fees include a \$5.00 fee, ( the Technology Fund ). The

ASSUMPTION (continued)

fee charged under this section is scheduled to sunset on 12/31/01, after which time all current fees would be reduced by \$5.00.

Officials of the **State Treasurer's Office** stated that this proposal creates the Statutory County Recorder's Fund and the State Treasurer is named as the custodian of the fund. Officials stated that this proposal outlines additional duties for the Treasurer's Office. Officials stated that their office is not able to absorb the expense of administering the new fund. Officials stated that they would require an additional .50 FTE to perform the new duties. Officials stated that they would need an Accounting Analyst I, who would have an annual salary of \$16,986. Fringe Benefits would total \$5,661. Officials assume that equipment and expense can be absorbed with existing appropriations. Officials assume that fiscal impact would first occur in FY 2002 and would total \$22,647; in FY 2003 \$23,214; and \$23,794 in FY 2004.

Officials of the **Department of Labor and Industrial Relations - Divisions of Employment Security** stated that currently the Division of Employment Security (DES) is not subject to Article 9 of the Uniform Commercial Code (UCC). As provided by law the State of Missouri DES is allowed preferential treatment to receive money collected through the courts from individuals overpaid unemployment benefits and delinquent employers when other debtors are involved. This allows DES to replenish the Unemployment Compensation Trust Fund (UCTF) for benefits paid and contribution amounts owed. Unemployment benefits are paid from the UCTF. The UCTF is funded by employer payments of contributions and benefit charges due. The proposal could impede tax collection which could adversely affect the fund. Once the trust fund balance is reduced to a specified amount, surcharges would be triggered to all Missouri employers in order to replenish the fund.

The DES is not able to determine or project the potential impact to the UCTF. It is believed the impact could be substantial, since in the calendar year 2000 the DES was able to collect through the garnishment process approximately \$286,000 for restitution on fraud overpayments. In addition \$11,000,000 in delinquent contributions were subject to assessment, much of which was collected through the garnishment procedure or were secured by the filing of a lien.

The DES is not able to determine or project the potential impact to the administrative funds, but believes an increase of staff time, collection time, could result due the complexities and provisions of the UCC.

**Oversight assumes that the \$1 fee collected by county Recorder of Deeds would be sufficient to cover the loss of fees from the procedural change in filing requirements of the UCC. The County Employees Retirement System did not respond to this proposal.**

FISCAL IMPACT - State Government

FY 2002  
(10 Mo.)

FY 2003

FY 2004

**GENERAL REVENUE**

**Income** to Secretary of State  
from UCC filing fees

Unknown

Unknown

Unknown

**Cost** to Secretary of State  
for FTE, Fringe Benefits, Equipment and  
Expense \*

(Unknown)

(Unknown)

(Unknown)

**\*Oversight assumes costs would exceed  
\$100,000**

**Cost** to State Treasurer

Personal Service ( .50 FTE )

(\$16,986)

(\$17,411)

(\$17,846)

Fringe Benefits

(\$5,661)

(\$5,803)

(\$5,948)

Total Cost to State Treasurer  
(Chapter 59 )

(\$22,647)

(\$23,214)

(\$23,794)

**ESTIMATED NET EFFECT TO  
GENERAL REVENUE FUND \***

(\$22,647)

(\$23,214)

(\$23,794)

**\* Oversight assumes cost would exceed  
\$100,000.**

**\* Totals do not include income from  
UCC filing fees or costs to SOS, both  
are Unknown.**

**UNEMPLOYMENT  
COMPENSATION TRUST FUND**

**Loss** to Unemployment Compensation  
Trust Fund

impeded tax collections \*

(Unknown)

(Unknown)

(Unknown)

**\* Oversight assumes cost could exceed  
\$100,000.**

**STATUTORY COUNTY  
RECORDER'S FUND**

**Income** from County Recorder of Deeds  
from \$7 Recording Fee (Section 59.800)

Unknown

Unknown

Unknown

**FISCAL IMPACT - State Government**

FY 2002  
(10 Mo.)

FY 2003

FY 2004

**Transfer** to County Recorder's Fund  
 \$1.50 of fee to Counties

(Unknown)

(Unknown)

(Unknown)

**Transfer** to County General Revenue  
 Fund  
 from \$2.00 of fee

(Unknown)

(Unknown)

(Unknown)

**Transfer** to County Employees  
 Retirement Fund  
 from \$1 fee.

(Unknown)

(Unknown)

(Unknown)

**Transfer** to Certain Counties  
 from \$2.50 fee. For subsidies

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT TO  
 STATUTORY COUNTY  
 RECORDER'S FUND**

**\$0**

**\$0**

**\$0**

**FEDERAL FUNDS**

**Cost** to DOLIR Administrative Fund

**(Unknown)**

**(Unknown)**

**(Unknown)**

**FISCAL IMPACT - Local Government**

FY 2002  
(10 Mo.)

FY 2003

FY 2004

**LOCAL GOVERNMENT GENERAL  
 REVENUE**

**Income** to County Recorder's Fund  
 from \$1.50 recording fee \*

Unknown

Unknown

Unknown

<u>FISCAL IMPACT - Local Government</u>	FY 2002 (10 Mo.)	FY 2003	FY 2004
<b><u>Income</u></b> to County GR Fund from \$2 recording fee. (Section 59.800)*	Unknown	Unknown	Unknown
<b><u>Income</u></b> to Certain Charter Counties and City of St. Louis from \$2 and \$1 fees per (Section 59.800)	Unknown	Unknown	Unknown
<b><u>Income</u></b> to Certain Counties from State Treasurer Subsidy (Section 59.800)*	Unknown	Unknown	Unknown
<b><u>Income</u></b> to County Recorder of Deeds from \$7 Recording Fee *	Unknown	Unknown	Unknown
<b><u>Transfer</u></b> of \$7 fee income to Statutory County Recorder's Fund in the State Treasurer's Office *	(Unknown)	(Unknown)	(Unknown)
<b><u>Loss</u></b> of Income to Recorder's Fund from UCC Recordings *	(Unknown)	(Unknown)	(Unknown)
<b><u>Loss</u></b> of Income to County GR Fund from UCC Recordings *	(Unknown)	(Unknown)	(Unknown)
<b><u>Cost</u></b> to Certain Counties from separation of Circuit Clerk and Recorder of Deeds (Section 59.800) *	(Unknown)	(Unknown)	(Unknown)
<b>ESTIMATED NET EFFECT TO LOCAL GOVERNMENTS **</b>	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>

**\* Oversight assumes the Unknown income from fees provided for in Section 59.800 would be in an amount sufficient to defray all Unknown costs or loss of income. Therefore, Oversight assumes that they will offset each other resulting in a zero fiscal impact.**

**\*\* County Employees Retirement System is not considered local funds for fiscal note purposes, therefore, fiscal impact does not include CERF's statement of fiscal impact, please see assumption section for explanation.**

### FISCAL IMPACT - Small Business

Section 59.800 provides for an increase of \$7 per instrument recorded pursuant to Section 59.330, Subdivisions (1) and (2). Therefore, small businesses would be impacted to the extent when they would file a certain instrument with the Recorder of Deeds they would pay an additional \$7 fee.

Currently, employers who are delinquent in the payment of contributions owed to the Division of Employment Security (DES), are subject to collection including garnishments. Under the proposal, the priority DES has in comparison to other creditors could be impacted. A loss of priority could 1) create a delay in repayment, which could increase the amounts owed by delinquent employers due to increased interest and penalties accrued and could, 2) create a permanent loss to the Unemployment Compensation Trust Fund (UCTF). Once the UCTF is reduced to a specified amount, surcharges would be triggered to Missouri employers to replenish the fund. The amount of impact to small business cannot be determined.

### DESCRIPTION

This act revises various business procedures regulated by the Secretary of State.

**RECORDER OF DEEDS** - Allows the governing body of the county rather than the voters to separate the office of the Circuit Clerk and Recorder of Deeds in counties of the second class. In other counties a public vote may authorize the separation of the two offices. If the offices are separated the Circuit Clerk will be appointed by the Circuit Court en banc. Every Recorder of Deeds shall be liable on their official bond for all fees collected and not accounted for. An additional fee of 7 dollars is authorized for all recordings and its distribution is specified

**LIMITED LIABILITY COMPANIES** - Any limited liability company that owns or rents real property in Kansas City must file an affidavit with the City Clerk that specifies a person with management control.

**CORPORATIONS** - This act would allow a correction to an annual registration report to be filed if the information on file has changed during after the report has been filed and before the next report is due. Notice requirements for a postponed meeting are changed and state that notice of the new date and place will be provided to shareholders and it may be by public notice. The previous language required public notice.

This act provides a designation of "constituent corporation" for corporations proposing to merge or those corporations proposing to consolidate. Articles of merger or consolidation shall be filed with the Secretary of State and shall be effective pursuant to Section 351.048 (usually the date it is filed). The act also provides what documentation shall be necessary for a consolidation or merger of a foreign corporation to become effective in this state.

## DESCRIPTION

UNIFORM COMMERCIAL CODE - This act substantially revises Article 9 of the Uniform Commercial Code regulating secured transactions. The scope of Article 9 is expanded to include additional types of property in which a security interest can be taken by a creditor and additional kinds of collateral, including sales of payment intangibles and promissory notes, security

interests created by governmental debtors, health insurance receivables, consignments, and commercial tort claims.

The act clarifies that filing a financing statement perfects a security interest, even if another method of perfection exists. Current law authorizes control, in which the debtor cannot transfer the property without the creditor's consent, as the method of perfection for only investment property. The act also allows control as a method of perfection for letter of credit rights and deposit accounts. Automatic perfection for a purchase money security interest is increased from the current ten days to twenty days. Attachment of a purchase money security interest is perfection for the duration of the twenty-day period, then another method of perfection is necessary to continue the perfected security interest. A purchase money security interest in consumer goods, however, remains perfected automatically for the duration of the security interest.

Current law establishes a basic choice of law rule, as to which state's law governs perfection, its effect, and a creditor's priority, of the state in which the collateral is found. The act chooses the state that is the location of the debtor. If the debtor is an entity created by state registration, the location of the debtor is the location in which the entity is created by registration. If the entity is a corporation, the location of the debtor is the state in which the corporate charter is filed or registered.

The act allows the transition from paper filing to electronic filing. The only local filing of financing statements occurs in the real estate records for fixtures; all other filings are centralized with the Secretary of State's office.

The act changes certain aspects of enforcing a security interest that is included in a consumer transaction: a consumer cannot waive redemption rights in a financing agreement; a consumer is entitled to disclosure of the amount of any deficiency assessed against him or her; a consumer buyer of goods who pre-pays in whole or in part has an enforceable interest in the purchased goods and may obtain the goods as a remedy; and a secured creditor cannot accept collateral as partial satisfaction of a consumer obligation.

The act also provides new rules for guarantors, for the interests of subordinate creditors with security interests in the same property, and for aspects of enforcement when the debtor is a consumer debtor.



## DESCRIPTION

The act provides rules for disposition of secured property. Conditions for pre-effective-date financing statements are established. Procedures for dealing with former article 9 records are established.

The repeal of the existing Article 9 provisions and the enactment of the new provisions take effect July 1, 2001.

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

Department of Revenue  
Office of Administration  
Department of Economic Development  
Department of Insurance  
Department of Labor and Industrial Relations  
Office of State Courts Administrator  
Department of Agriculture  
Office of Secretary of State  
Office of State Treasurer



Jeanne Jarrett, CPA  
Director  
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