

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1286-02
Bill No.: SCS for HB 417
Subject: Insurance - Automobile; Civil Procedure; Motor Vehicles; Insurance - General;
 Insurance Dept.
Type: Original
Date: May 9, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
State Legal Expense	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	Unknown	Unknown	Unknown

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

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

Officials from the **Office of Prosecution Services** state the proposal is not expected to have a significant direct fiscal impact on county prosecutors.

Officials from the **Office of Administration (COA) - Administrative Hearing Commission** anticipates that this proposal will not significantly alter its caseload and, therefore, will have no fiscal impact on their organization.

Officials from the **COA -Division of General Services** state the proposal has the potential for savings to the State Legal Expense Fund by requiring payment of economic damages only in a motor vehicle accident where the claimant is found to be operating a motor vehicle without liability insurance. Currently, when an uninsured motor vehicle is involved in an accident, the claimant has the right to pursue recovery for pain and suffering. The amount of the savings cannot be determined at the present time.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
STATE LEGAL EXPENSE FUND			
<u>Savings - Office of Administration</u>			
Reduction in economic damage claim payments	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON STATE LEGAL EXPENSE FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
	<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 modifies the law with respect to insurance claims adjudication practices and establishes the Uninsured Motorist Stipulation of Benefits Act of 2005.

An uninsured motorist involved in an accident with an insured motorist will waive his or her right to recover nonneconomic damages. The uninsured motorist's right to recovery would be limited to economic damages. This waiver will not apply if it can be proven that the insured motorist caused the accident and was under the influence of drugs or alcohol or is convicted of vehicular assault or homicide. The proposal will not apply to a motorist whose insurance policy was terminated for failure to pay the premium unless notice of termination for failure to pay was provided by the insurer at least 30 days prior to the time of the accident. Under this proposal, passengers in the uninsured motor vehicle are not subject to the waiver (Section 303.390).

This proposal enacts various provisions relating to the disclosure and confidentiality of certain insurance-related documents.

NONPUBLIC RECORDS HELD BY THE DEPARTMENT OF INSURANCE - Under this proposal, certain records held by the Department of Insurance are classified as nonpublic records

DESCRIPTION (continued)

and not available for public disclosure. The nonpublic records are: (1) Documents or materials contained in any consumer complaint file maintained by the Department of Insurance; and (2) Documents and other materials submitted by insurance companies and producers relating to a department investigation.

These nonpublic records are not confidential and not subject to disclosure unless sought by subpoena by the appropriate body. The director may only produce the documents to another state or federal agency pursuant to a subpoena, lawful request or formal discovery material. The documents may become public once they are admitted into evidence in any administrative, civil or criminal proceeding. The director may release records related to a insurance company examination if the director finds the release to be in the public interest. No waiver of applicable privileges or claims of confidentiality shall result from the director's disclosure to governmental agencies, the National Association of Insurance Commissioners, or law enforcement authorities (section 374.071).

INSURANCE COMPLIANCE AUDITS - 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 and the prosecuting attorney or attorney general has made a good faith request or lawful subpoena for the information.

An administrative hearing officer or a court in any administrative hearing or civil proceeding initiated by the director may require public disclosure, after in-camera review, if the administrative hearing officer or court finds: (1) The privilege is asserted for a fraudulent

DESCRIPTION (continued)

purpose; (2) The material is not subject to the privilege; or (3) The material contains evidence relevant to a breach of a civil duty owed by the insurer to others, and the director is unable to obtain the substantial equivalent of the information by independent means without incurring unreasonable cost and delay (Section 375.1065).

The privilege is deemed to be waived by the insurer 45 days after receiving a request for disclosure of a self-evaluative audit, 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 or after the effective date of this act (Section 375.1069).

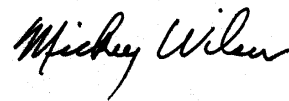
INSURANCE COMPANY INTERVENTION TO DETERMINE COVERAGE- Under this proposal, whenever a civil action is filed and an insurer may be obligated to provide a defense to such action or indemnity for any judgment rendered, the insurer shall have the right to intervene in such action and request the court to determine the extent of the it's coverage obligations, while reserving its rights with regard to providing coverage for the claims in the underlying civil action.

If an insurer does intervene, the court shall finally determine the extent of coverage before proceeding with the merits of the underlying action. The judgment of the trial court as to coverage shall be immediately appealable, notwithstanding issues relating to the underlying action remaining unresolved. When a judgment on the issues of coverage becomes final, the insurer shall be dismissed from the underlying action. If the insurer previously has undertaken the defense of the person named as a defendant in the underlying action and the final judgment on the coverage issues determines that it has no obligation to provide such defense, it may withdraw such defense (section 507.091).

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 Administration -
 Administrative Hearing Commission
 Division of General Services
Office of State Courts Administrator
Department of Revenue
Department of Insurance
Office of Prosecution Services



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Director
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