

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1301-05
Bill No.: HCS for HB 394
Subject: Business and Commerce; Insurance - General; Insurance Dept.
Type: Original
Date: March 14, 2005

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
General Revenue	(\$38,271)	(\$37,430)	(\$38,388)
Total Estimated Net Effect on General Revenue Fund	(\$38,271)	(\$37,430)	(\$38,388)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2006	FY 2007	FY 2008
Insurance Dedicated	(\$22,460)	(\$110,000)	(\$85,000)
Total Estimated Net Effect on <u>Other</u> State Funds	(\$22,460)	(\$110,000)	(\$85,000)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 8 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 **Department of Health and Senior Services (DOH)** state there are 1,182 facilities in Missouri licensed under Chapter 198. Because the submission of the proof of malpractice insurance is required annually, the DOH would receive approximately 100 submissions each month. It is estimated it will require one FTE (Senior Office Support Assistant) to meet the requirements of this legislation. The Senior Office Support Assistant will do the necessary data entry, tracking, phone contacts and review all of the information provided to ensure it meets the intent of the statute.

The DOH assumes total FY 06 expenses of \$44,280; FY 07 expenses of \$44,833; and FY 08 expenses of \$45,990.

Oversight has, for fiscal note purposes only, changed the starting salary for the Senior Office Support Assistant to correspond to the second step above minimum for comparable positions in the state's merit system pay grid. This decision reflects a study of actual starting salaries for new state employees for a six month period and the policy of the Oversight Subcommittee of the Joint Committee on Legislative Research.

Oversight assumes rental space will not be required for one FTE.

ASSUMPTION (continued)

Officials from **Department of Insurance (INS)** state the department will be required to develop the risk-reporting categories and develop a database for the actual rates charged to generate the median rate.

One-time computer contracting of \$26,010 (\$85/hr X 306 hours) will be necessary to develop/update the INS database and to devise security and a method of deploying the data on the web.

Beginning in FY 07, it is anticipated that the initial costs for contracted actuarial involvement in the database and to study and make a report on the feasibility and economic impact of offering medical malpractice occurrence policies by 1/15/07 will cost approximately \$110,000, based upon past contracting rates, and \$85,000 in following years to assist with actuarial involvement in the updating of the database and generating the median rate.

Medical malpractice insurers will be required to re-file policy forms to conform with the cancellation provisions. There were approximately 71 insurers that wrote premiums for medical malpractice insurance in calendar year 2003. The INS estimates \$3,550 in one-time revenues to the Insurance Dedicated Fund from filing fees (71 insurers X \$50 filing fee).

Depending on the number of hearings and appeals additional legal/actuarial staff may be required, but are not being requested at this time

Officials from the **Office of Secretary of State (SOS)** state the proposal creates notice and reporting requirements, public market rates, and presumptions for the Department of Insurance and entities providing medical malpractice and professional negligence insurance. This proposal will result in the Department of Insurance promulgating rules to implement the legislation. These rules will be published in the Missouri Register and the Code of State Regulations. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Insurance could require as many as 32 pages in the Code of State Regulations. For any given rule, roughly one-half again as many pages are published in the Missouri Register as are published in the Code because of cost statements, fiscal notes and notices that are not published in the Code. The estimated cost of a page in the Missouri Register is \$23. The estimated cost of a page in the Code of State Regulations is \$27. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules, filed, amended, rescinded, and withdrawn. The SOS estimates the cost of the proposal to be \$1,968 [(32 pgs. X \$27) + (48 pgs. X \$23)] for FY 06.

ASSUMPTION (continued)

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

<u>FISCAL IMPACT - State Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
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GENERAL REVENUE FUND

Costs - Department of Health and Senior Services

Personal service costs (1 FTE)	(\$18,706)	(\$23,009)	(\$23,584)
Fringe benefits	(\$7,980)	(\$9,816)	(\$10,061)
Equipment and expense	(\$11,585)	(\$4,605)	(\$4,743)
Total <u>Costs</u> - Department of Health and Senior Services	(\$38,271)	(\$37,430)	(\$38,388)

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$38,271)</u>	<u>(\$37,430)</u>	<u>(\$38,388)</u>
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INSURANCE DEDICATED FUND

Income - Department of Insurance

Form filing fees	\$3,550	\$0	\$0
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Costs - Department of Insurance

Computer programming	(\$26,010)	\$0	\$0
Contracted actuarial services	\$0	(\$110,000)	(\$85,000)
Total <u>Costs</u> - Department of Insurance	(\$26,010)	(\$110,000)	(\$85,000)

ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$22,460)</u>	<u>(\$110,000)</u>	<u>(\$85,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2006 (10 Mo.)	FY 2007	FY 2008
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<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal changes the laws regarding medical malpractice insurance. Section 383.010 proposes to regulate medical malpractice insurance policies under Sections 379.321 and 383.400 to 383.412 RSMo.

Section 383.079 requires the Department of Insurance to annually report to the general assembly an "accurate report as to the actual rates charged for malpractice insurance and any changes in those rates from the previous year."

Section 383.105 required the reporting of medical malpractice claim information for all insurers and includes self-insured entities.

Section 383.112 provides for penalties for failure to comply with Section 383.105. Also provides that the Guaranty Fund will report claim information on behalf of insolvent insurers.

Section 383.160 deletes the 30-day deemer section regarding forms for 383 companies, requiring all forms be approved.

Section 383.400 defines insurer as any insurance company writing medical malpractice coverage, excluding surplus lines insurers, mutual insurance companies, the Joint Underwriting Association, any 383 companies, and any other entities providing medical malpractice insurance to any health care provider as defined under Section 538.205 RSMo and also excludes self-insured entities. Prohibits insurers from charging more than 10% in premium increases, assessments and surcharges unless a prior 60 day notice is given, fail or refuse to renew without a 60 day notice, or cease writing without providing a 180 day notice to the Department of Insurance.

Section 383.401 requires the Department of Insurance to establish categories for medical malpractice premium and promulgate regulations for such.

Section 383.402 requires medical malpractice insurers to provide the Department of Insurance an annual report of the actual rates charged for each category by 6/1/06 (includes assessments levied against members.)

Section 383.403 requires the Department of Insurance to annually publish the median market rate charged for each category by 12/31/08.

DESCRIPTION (continued)

Section 383.404 defines a reasonable rate: After 1/1/09 any medical malpractice rate that is no greater than 20% higher or lower than the market rate is presumed reasonable. Section 383.405 defines an unreasonable rate: After 1/1/09, any medical malpractice rate that is 20% higher or lower than the market rate is presumed unreasonable.

Section 383.406 defines director as the Department of Insurance director, requires the insurer to notify the director 60 days prior to the effective date when rate changes are unreasonable. The insurer must include a detailed description of the rate change, actuarial justification and other information as prescribed by rule. Within 10 days, the director shall set a date for a hearing to be held within 30 days. The insurer may provide additional support for the rate change, the public may provide information on the rate change. Within 20 days from the hearing date, the director shall determine whether the rate change is justified. If so, the director shall issue an order authorizing the rate change. If not, the director shall issue an order prohibiting the use of the rate. The insurer may appeal. If the rate is 20% lower than the median rate and the company provides a certificate of actuarial soundness, the rate is not subject to a hearing.

Section 383.407 is revised to define base rates and schedule rating.

Section 383.408 is with regard to the medical malpractice rate database. It provides that Department of Insurance shall establish reporting standards, however, the Department of Insurance is to determine what information is to be actuarially appropriate to compile. The database is to be available to the public to compare base rates by class code and be able distinguish between different types of coverage, etc.

Section 383.409(1) provides that the Department of Insurance shall establish reporting standards for insurers and advisory organizations for reporting annual medical malpractice premium information, losses, exposures and any other info the Department of Insurance may require to compile the med mal ratemaking database. All information submitted is considered to be a closed record and is not subject to the Sunshine laws.

Section 383.409(2) provides that the Department of Insurance shall collect and compile information to make available to insurers in rate development. Public disclosures of such database shall remove individual information that would identify the source of the information. The Department of Insurance may combine collected information with other financial or insurer information obtained through other Department of Insurance processes.

Section 383.410 states that the Department of Insurance Director shall use base rate information as collected under Section 383.408 as a basis of comparison and this is to be effective as of August 28, 2005.

DESCRIPTION (continued)

Section 383.411(1) sets forth limitations or caps on schedule rating starting January 1, 2006 – 50% cap for 2006; 40% for 2007; 30% for 2008 and 20% in 2009.

Section 383.411(2) provides that all schedule rating plans shall be submitted with an actuarial certification as to the total debits provided equaling the total credits offered by the insurer under that plan.

Section 383.412 provides penalty provisions for any insurer or advisory organization violating any provisions of Section 383.400 to 383.411, with that penalty being increased to \$5,000 for any willful violations. The section also provides for license suspensions for violations of Section 383.400 to 383.411, with no suspension becoming effective until all appeals are exhausted. The Director is given authority to modify, rescind or reverse any suspension order. A hearing mechanism for all suspensions with ten day's notice is provided.

Section 383.425 allows any public corporation organized under Section 287.902 RSMo to form a medical malpractice stock company under that same statute beginning 1/1/07. Disallows current 379 companies formed prior to 8/28/05 to incorporate under these provisions. The company is to operate under the regulations applied to 379 companies, but the director has the option to waive any provision. The company is not to be a member of the Guaranty Fund until it meets the capital and surplus requirements for 3 consecutive years, but in no event until its 10th anniversary. Allows 383s to merge into a company formed under these provisions.

Section 383.430 requires the Department of Insurance to define "claim" as it applies to claims made policies by regulation. Includes the rulemaking authority under Section 536.

Section 383.535 requires the Department of Insurance to study and make a report on the feasibility and economic impact of offering med mal occurrence policies by 1/15/07, including data compiled, findings and recommendations.

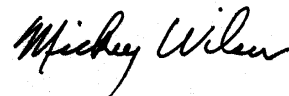
Section 383.501 requires long-term care facilities licensed under Chapter 198 to provide evidence of med mal insurance in the amount of \$500,000 annually to the department of health and senior services beginning 1/1/06.

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

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SOURCES OF INFORMATION

Department of Health and Senior Services
Department of Insurance
Office of Secretary of State

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

Mickey Wilson, CPA
Director
March 14, 2005