

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1301-11
Bill No.: SCS for HCS for HB 394
Subject: Insurance - General; Insurance Dept.; Health Care Professionals
Type: Original
Date: April 29, 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 |
| 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 **Office of State Courts Administrator** and **Department of Health and Senior Services** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Office of Secretary of State (SOS)** state the proposal modifies the law regarding medical malpractice insurance and malpractice associations. The 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 28 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 \$1,722 [(28 pgs. X \$27) + (42 pgs. X \$23)] for FY 06.

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

ASSUMPTION (continued)

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.

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.

This proposal will result in an increase in total state revenue.

| <u>FISCAL IMPACT - State Government</u> | FY 2006 (10 Mo.) | FY 2007 | FY 2008 |
|---|--------------------------|---------------------------|--------------------------|
| INSURANCE DEDICATED FUND | | | |
| <u>Income - Department of Insurance</u> | | | |
| Form filing fees | \$3,550 | \$0 | \$0 |
| <u>Costs - Department of Insurance</u> | | | |
| Computer programming | (\$26,010) | \$0 | \$0 |
| Contracted actuarial services | \$0 | (\$110,000) | (\$85,000) |
| Total <u>Costs</u> - Department of Insurance | <u>(\$26,010)</u> | <u>(\$110,000)</u> | <u>(\$85,000)</u> |
| ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND | <u>(\$22,460)</u> | <u>(\$110,000)</u> | <u>(\$85,000)</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

The proposal makes several changes to the laws regarding malpractice insurance, particularly medical malpractice insurance.

INCREASED OVERSIGHT OVER MALPRACTICE INSURANCE - This proposal deletes the provision which excludes professional malpractice insurance policies within the definition of commercial casualty insurance under Sections 379.882 and 379.888. This proposal subjects insurers writing professional malpractice insurance to the provisions of Section 379.321, RSMo, regarding the filing of rating plans with the Department of Insurance. Insurers writing medical malpractice insurance will also be subject to the provisions of Sections 383.400 to 383.412. The proposal also allows long-term care facilities to become members of 383 associations (Section 383.010).

This proposal subjects certain malpractice associations (383s) to Section 379.321 dealing with rate filing and notice requirements of commercial casualty insurance, Sections 374.202 to

DESCRIPTION (continued)

374.207 on the examination powers of the Director of the Department of Insurance, and sections 383.400 to 383.412 relating to notification, data reporting, and rating requirements (Section 383.035).

REPORTING OF MALPRACTICE RATES - This proposal requires the director, beginning December 31, 2005, and annually thereafter, to report to the General Assembly the actual rates charged for malpractice insurance and a comparison to the rates of the previous year (Section 383.079). This provision is contained within a group of sections entitled legal malpractice insurance.

REPORTING OF MEDICAL MALPRACTICE CLAIMS - This proposal modifies the term "insurer" to include every entity operating under Chapter 383 including self-insured health care providers for the purposes of reporting medical malpractice claims with the Department of Insurance (Section 383.105). Any insurer that fails to timely report medical malpractice claim information shall be subject to penalties under Section 374.215 (Section 383.112).

MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION - Under this proposal, all policy forms issued by the joint underwriting association shall be approved by the director. Under the current law, the association can use the policy form after 30 days have elapsed and the director has not delivered written disapproval to the association (Section 383.160). This proposal requires the additional first-year association charge of joint underwriting association policyholders to be in the form of cash or a cash equivalent and not in the form of a promissory note (Section 383.165).

NOTICE OF NONRENEWAL OR CANCELLATION - This proposal prohibits insurance companies and other entities providing medical malpractice insurance from: (1) increasing premiums and other surcharges more than 25% without 60 days' prior notice to the insured; (2) refusing to renew policies without 60 days' prior notice, unless the refusal to renew is based upon nonpayment of insurance premiums or license termination or suspension or a material change in the insured's health care practice; and (3) ceasing to issue insurance policies without 180 days' prior notice to the Department. Any insurer that fails to provide the required notice, at the option of the insured, shall be required to continue the coverage (Section 383.400).

DEPARTMENT OF INSURANCE OVERSIGHT OF SETTING MEDICAL MALPRACTICE INSURANCE RATES - This proposal requires the Department of Insurance to establish risk-reporting categories for medical malpractice insurance premiums and regulations for their reporting by May 30, 2006 (Section 383.401). The proposal requires insurance companies providing malpractice insurance to provide the Department of Insurance, by June 1, 2006, and annually thereafter, reports on premium rates charged by category (Section 383.402). The

DESCRIPTION (continued)

Department of Insurance, by December 31, 2008, and annually thereafter, shall establish and publish a market rate reflecting the median of the actual rates charged for each risk-reporting category for the preceding year (Section 383.403).

ESTABLISHMENT OF RATES - This proposal provides that, after January 1, 2009, insurance premium rates charged by insurance companies and other entities providing malpractice insurance to health care providers in Missouri which are no greater than 30% higher or lower than the published market rate will be presumed reasonable, and rates greater than 30% higher or lower will be presumed unreasonable. The proposal authorizes medical malpractice insurers to adjust insurance premium rates by scheduled rating or individual risk rating credits or debits (Section 383.404 and Section 383.405).

The proposal establishes a procedure by which medical malpractice insurers can make premium rate changes otherwise presumed unreasonable under Section 383.405 (greater than 30%), including: prior notice to the Director (60 days prior to the effective date of the proposed rate change); a hearing (within 30 days after receipt of the insurer's notice); and an appeals process for the insurer if the Director determines the rate change to be unjustified.

The proposal requires the department to establish reporting standards for insurers to report base rates for health care provider classifications in categories determined to be actuarially appropriate. The department will create a database, available to the public, comparing base rates charged by insurers. The database may distinguish between rates for different types of coverage (Section 383.408).

The proposal requires the department to establish reporting standards for insurers or an advisory organization designated by the department to report annually on medical malpractice insurance premiums, losses, exposures, and other information the department requires for the purpose of compiling a rate-making database. The information collected will be used in assisting medical malpractice insurers in developing future rates and will be considered confidential. The department shall remove any information that identifies a particular insurer (Section 383.409).

PENALTIES - The proposal establishes penalties (not to exceed \$500 per violation or \$5,000 if determined to be a wilful violation) for violations of the legislation. The proposal also authorizes the director to suspend the license of any rating organization or insurer that fails to comply with the provisions of this proposal (Section 383.412).

DEFINITION OF CLAIM - The proposal requires the Department of Insurance to promulgate rules defining the term "claim" as it applies to claims made for medical malpractice (Section 383.430).

DESCRIPTION (continued)

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.

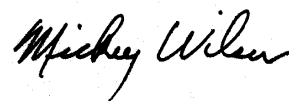
If an insurer does intervene, the court shall finally determine the extent of coverage before proceeding with the merits of the underlying action. The judgment of the trial court as to coverage shall be immediately appealable, notwithstanding issues relating to the underlying action remaining unresolved. 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).

JOINT AND SEVERAL LIABILITY IN MEDICAL MALPRACTICE CLAIMS - Under this proposal, the principles of joint and several liability established in section 537.067 shall be applied (Section 38.230).

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



Mickey Wilson, CPA

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