

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5239-01
Bill No.: HB 1837
Subject: Insurance - General; Insurance - Medical; Insurance Dept.; Physicians
Type: Original
Date: February 28, 2006

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Insurance Dedicated	(\$84,663)	(\$120,524)	(\$123,555)
Consumer Restitution	Unknown	Unknown	Unknown
Total Estimated Net Effect on <u>Other</u> State Funds	(Unknown less than \$84,663)	(Unknown less than \$120,524)	(Unknown less than \$123,555)

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2007	FY 2008	FY 2009
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of Administration - Division of General Services/Risk Management, Office of State Courts Administrator, Missouri Consolidated Health Care Plan, Missouri Department of Transportation, Department of Public Safety (DPS) - Director's Office, DPS - Missouri State Highway Patrol, Missouri Department of Conservation, and Office of State Treasurer** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Department of Economic Development - Division of Professional Registration** state having reviewed the proposed legislation and having sought the conclusion of the appropriate board(s), they are of the opinion the proposal, in its present form, has no fiscal impact on their organization.

Officials from the **Office of Secretary of State (SOS)** state the fiscal impact for this proposal to the SOS for administrative rules is less than \$1,500. The SOS does not expect additional funding would be required to meet these costs. However, the SOS recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the Governor.

ASSUMPTION (continued)

Officials from the **Department of Insurance (INS)** state the department will be required to develop risk-reporting categories, collect data to calculate median base rates, review rates to median base rate to determine whether the rate is reasonable or unreasonable, develop a database to report on base rates charged by insurers and annually report medical malpractice rates to the governor and general assembly. In addition, the department will review additional policy forms for surplus lines carriers regarding cancellations/non-renewals/premium increases.

One Insurance Product Analyst II FTE (beginning in FY2007) will review additional policy forms for surplus lines carriers regarding cancellations/non-renewals/premium increases, assist with development of risk-reporting categories, prior approve all medical malpractice rates and report medical malpractice rates to the governor and general assembly (beginning in FY2007).

A half-time actuary (0.5 FTE) would be required to be hired in FY2007 to begin development of risk reporting categories, review detailed information of any rate change deemed unreasonable including actuarial justification and other information as prescribed by the department and assist the director in making recommendations on the determination of whether a rate change is justified.

One-time computer contracting of \$27,540 (\$90/hr X 306 hours) will be necessary to implement the provisions of the proposal. Requirements identified include: 1) Receipt of data electronically from insurers: actual rates for defined categories; base rate information; and premium, loss, exposure and other information, 2) A database to store the rates and other information electronically, along with functionality to process the data as described in the proposed language, 3) Adding security to the database to make it a protected database due to the confidential nature of some of the data, 4) Make the data collected per this proposal available to MO insurers through PDF files and on the MDI website, and 5) Various reporting requirements, including rate increase/decrease reports for the governor and general assembly per 383.198.6.

Medical malpractice insurers will be required to re-file policy forms to conform with the cancellation provisions. There were approximately 89 insurers that have written premium for medical malpractice insurance in calendar year 2004. The INS estimates one-time revenues to the Insurance Dedicated Fund of \$4,450 (89 insurers x \$50 filing fee).

Insurance contracts typically contain "duty to defend" provisions. It appears that with this proposal (Section 507.091), these provisions will be voided and as such every insurance contract would need to be changed. Each insurance company files an "interline" endorsement that would delete the duty to defend provision in the insurance contract. There are currently 738 Property and Casualty insurers reporting premium in Missouri. The INS estimates one-time additional revenue to the Insurance Dedicated Fund of \$36,900 (738 insurers X \$50 filing fee). This number may be greater if the insurer decides not to file an interline filing, but rather files an endorsement for each line of insurance it writes.

ASSUMPTION (continued)

This proposal creates the "Consumer Restitution Fund" for the purpose of preserving and distributing to aggrieved consumers funds obtained through enforcement proceedings brought by the director. As the number of cases and amount of funds recovered are not known, the fiscal impact to the fund is unknown.

Oversight assumes the INS would not need additional equipment and expenses for the 0.5 Actuary FTE that would be contracted/hired in FY 07.

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

<u>FISCAL IMPACT - State Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
INSURANCE DEDICATED FUND			
<u>Income - Department of Insurance</u>			
Form filing fees	\$41,350	\$0	\$0
<u>Costs - Department of Insurance</u>			
Personal service costs (1.5 FTE)	(\$65,979)	(\$81,154)	(\$83,183)
Fringe benefits	(\$29,070)	(\$35,756)	(\$36,650)
Equipment and supplies	(\$30,964)	(\$3,614)	(\$3,722)
Total <u>Costs</u> - Department of Insurance	<u>(\$126,013)</u>	<u>(\$120,524)</u>	<u>(\$123,555)</u>
ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND	<u>(\$84,663)</u>	<u>(\$120,524)</u>	<u>(\$123,555)</u>
CONSUMER RESTITUTION FUND			
<u>Income - Department of Insurance</u>			
Enforcement proceedings/restitution funds	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
ESTIMATED NET EFFECT ON CONSUMER RESTITUTION FUND	<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2007 (10 Mo.)	FY 2008	FY 2009
	<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 changes the laws regarding malpractice insurance. The proposal: (1) Allows licensed long-term care facilities, limited liability companies, corporations, limited liability partnerships, partnerships, and other entities formed for the practice of law or medicine to become members of an association providing malpractice insurance to its members; (2) Makes associations writing malpractice insurance subject to reporting, notification, and rating requirements; (3) Requires the Director of the Department of Insurance to submit an annual report to the General Assembly regarding the actual and base rates charged for malpractice insurance and any changes from the previous year's rates; (4) Requires insurers writing medical malpractice insurance to Missouri health care providers to submit an annual report by March 31 of each year containing policy information including the following: (a) Number of policies written, canceled, renewed, and not renewed; (b) Total premiums collected and losses paid; and (c) Claims pending, paid, and closed; (5) Requires insurers to report to the director and the appropriate licensing board any malpractice claims paid; (6) Specifies that any malpractice insurer failing to report required claims information in a timely fashion will be subject to penalties applicable to insurance companies under Section 374.215, RSMo; (7) Removes the 30-day period the director has to approve a malpractice insurance policy to be used by an association; (8) Requires the surcharge paid to the association by policyholders in the first year to be paid in the form of cash or cash equivalent and not in the form of a promissory note; (9) Requires medical malpractice insurers to obtain rate approval from the director and specifies the review procedure considered in approving or rejecting rates. Rates cannot be excessive, inadequate, or unfairly discriminatory. Rates will be based upon Missouri loss experience only, not experience from other states unless the failure to do so will jeopardize the financial stability of the insurer; (10) Allows insurers to charge an additional premium surcharge or discount based on the health care provider's loss experience, training, and other factors. Applications will be deemed approved if not rejected within 60 days; (11) Specifies that no insurer can increase malpractice insurance rates by more than 25% or refuse to renew policies without at least 60 days' written notification. Insurers cannot cease issuing policies in this state without 180 days' written notice to the insured and the director. If an insurer fails to give notice, the policyholder has the right to continue coverage under the policy; (12) Requires, by June 30, 2007, the department to establish risk-reporting categories by physician specialty for medical malpractice insurance base rates. Annually, insurers will report actual rates charged including assessments for each risk-reporting category. The department will annually publish a report containing market rates reflecting the median actual rates charged for each risk-reporting category; (13) Defines "base rate" and "schedule rating or individual risk rating credits or debits"; (14) Allows the department to establish reporting standards for premiums received and policies written by category. The department will publish this information in a manner appropriate for assisting

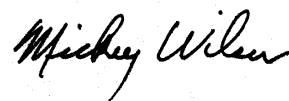
DESCRIPTION (continued)

insurers in developing future base rates; (15) Considers rate increases or decreases of more than 25% to be unreasonable; (16) Establishes penalty provisions for violations of Sections 383.100 - 383.125 and 383.300 - 383.314; (17) Prohibits insurers from using claims experience incorporating other states' claims experience in setting higher rates in Missouri; (18) Requires, by January 1, 2011, all insurers writing medical malpractice insurance to offer policies which will apply to injuries resulting from acts or omissions occurring during the policy period, regardless of the timing of the filing of a claim; and (19) Allows insurers who may be obligated to provide defense in a civil action to request the court to determine the extent of the insurer's coverage obligations.

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 Administration -
 Division of General Services/Risk Management
Office of State Courts Administrator
Department of Economic Development -
 Division of Professional Registration
Missouri Department of Transportation
Department of Public Safety -
 Director's Office
 Missouri State Highway Patrol
Missouri Consolidated Health Care Plan
Department of Insurance
Missouri Department of Conservation
Office of Secretary of State
Office of State Treasurer



Mickey Wilson, CPA
Director
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