

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 0818-02  
Bill No.: SB 377  
Subject: Taxation and Revenue - Income; Judges; Physicians; Attorneys; Health Care  
Professionals; Health Insurance  
Type: Original  
Date: February 11, 2003

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**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
General Revenue	(\$40,053 to Unknown)	(\$56,399)	(\$57,814)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$40,053 to UNKNOWN)</b>	<b>(\$56,399)</b>	<b>(\$57,814)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Insurance Dedicated Fund	(\$23,969)	(\$44,885)	(\$46,041)
Board of the Healing Arts Fund*	\$741,293	(\$741,293)	\$0
<b>Total Estimated Net Effect on Other State Funds</b>	<b>\$717,324</b>	<b>(\$786,178)</b>	<b>(\$46,041)</b>

\*Estimated revenues of \$741,293 for FY04, \$1,482,586 for FY05 and \$1,482,586 for FY06 are offset with program costs to reduce healthcare mishaps and errors. FY04 program costs are included in FY05.

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 9 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## **FISCAL ANALYSIS**

### **ASSUMPTION**

Officials from the **Missouri Consolidated Health Care Plan, Office of Prosecution Services, State Public Defender, Attorney General's Office** and the **Department of Labor and Industrial Relations** assume this proposal would have no impact to their agencies.

Officials from the **Office of Administration, Division of Budget and Planning (BAP)** assume this bill would levy a 2% tax on medical malpractice settlements and judicial awards. For the last three years, the Missouri Department of Insurance reports that "direct paid losses" were as follows:

1999	\$63,975,010
2000	\$63,822,270
2001	\$76,730,820

BAP assumes the 2% tax would be levied on these totals. BAP assumes growth in "direct paid losses" has been erratic. BAP has no basis for estimating the growth in future years. This bill would have no impact on BAP.

ASSUMPTION (continued)

**Department of Revenue (DOR)** officials assume creation of a new tax will generate new income for the next five years. Income will be deposited in the Board of Healing Arts Fund to be used to reduce healthcare mishaps.

DOR assumes this bill creates a malpractice settlement tax to be paid on all settlements relating to health care professional liability. Reporting of settlements will go to the Department of Insurance and/or DOR (stated both ways) while the money will be received in the DOR. DOR assumes it is unclear as to who will search for non-compliance for reporting of the settlement. The agency that is responsible will then have to contact regulator agencies regarding non-compliance. If the responsibility of collections is with DOR, an additional Tax Processing Tech will be needed.

Also, DOR assumes the legislation is unclear as to what agency would be responsible for administering this proposal. The Division of Taxation and Collection's needs will vary dependent on the responsibility of DOR. If the administration of the tax is with DOR, DOR will need one Tax Processing Tech to handle the functions of discovery, billing, cashiering, correspondence, and phone calls.

Information Technology will vary depending on the responsibilities of DOR and the database needed for enforcement and collections. Therefore, the impact is unknown at this time. DOR did not estimate the revenue impact, but assumes the BAP will estimate the impact.

**Oversight** assumes DOR will be responsible for the collection and administration of this tax and will include the requested FTE and corresponding expenses for DOR. **Oversight** has, for fiscal note purposes only, changed the starting salary for the two Tax Processing Technicians 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.

Officials from the **Department of Health and Senior Services (DHSS)** assume the bill levies a tax of two percent on settlement and judicial awards for health care professional liability to be deposited in the Board for Healing Arts Fund. The DHSS will have access to the fund after the first year to use in the efforts to reduce the incidence of health care mishaps and errors. All parties of a settlement agreement must report the amount to the Director of the Department of Insurance. Failure to report such settlements shall result in a penalty and mandated reporting to a regulatory agency.

ASSUMPTION (continued)

DHSS can not estimate the amount it might receive from the fund. This proposal would not create a negative fiscal impact for DHSS.

Officials from the **Department of Insurance (INS)** assumes SB 377 would amend Missouri law by enacting one new section which would impose a 2% tax on all settlements and judicial awards for health care professional liability [Sec. 538.211.1]. The tax would apply to any settlement against a health care provider licensed by a state department or agency whether the settlement is reached through arbitration, mediation, judicial action or mutual consent [Sec. 538.211.1]. However, only those health care providers subject to jurisdiction in a Missouri state or federal court would be subject to the tax [Sec. 538.211.1]. Litigants would be required to pay the malpractice tax prior to the disbursement of settlement funds [Sec. 538.211.1]. If the settlement is judicially approved, the court would be required to order the tax owed withheld from the settlement and paid to the Department of Revenue before settlement funds are disbursed [Sec. 538.211.2].

Litigants would be required to report all settlements subject to the proposed tax to the Director of the Department of Insurance who would be charged with forwarding a list of settlements and their amounts to the Department of Revenue for collection [Sec. 538.211.1, .2]. A penalty of \$250 or 5% of the settlement, whichever is greater, would be imposed for failing to report a settlement. The penalty would be imposed on each “offending beneficiary” of the settlement and collected by the Director of Revenue [Sec. 538.211.2]. Although it is unclear, it appears the Department of Revenue would also be required to report any failure to remit the tax by a litigant/party to the appropriate regulatory/licensing agency [Sec. 538.211.2].

All money collected pursuant to the tax would be deposited in the Board of Registration for the Healing Arts Fund and used to reduce the incidence of “healthcare mishaps and errors” [Sec. 538.211.1]. The Board of Healing Arts would be solely authorized to use the money collected from the tax the first year following the imposition of the tax [Sec. 538.211.1]. Afterwards, the fund could be used by the Board, the Department of Health and Senior Services or the Department of Insurance under the same stipulations for use as imposed on the Board of Healing Arts. Additionally, the tax could be used by any newly created agency that is dedicated to reducing healthcare errors [Sec. 538.211.1].

The Department of Insurance will experience some fiscal and administrative expense as a result of the requirement that INS collect and report information regarding settlements subject to the tax to the Department of Revenue. This will require INS to establish a database for the collection/collation of the material submitted and guidelines for the submission of such information.

ASSUMPTION (continued)

An additional Research Analyst I would be required to collect the data from parties to medical malpractice actions, analyze the information received and to transmit such information to the Department of Revenue on whatever time basis that such information is required. This will be additional duties and workload. A computer database will be created to hold and transfer this information to the Department of Revenue.

Current data submitted to INS shows that \$74,129,276 was reported by insurance companies and compliant self-insured entities in 2001 for closed cases. INS has shared this information with Professional Registration and they are preparing estimates of revenue to the Professional Registration Fund.

Officials from the **Department of Economic Development, Professional Registration (DPR)** assume this legislation creates a 2% tax on settlements and judicial awards for healthcare professional liability (malpractice).

In accordance with this proposal, all monies collected shall be dedicated to an effort to reduce the incidence of health care mishaps and errors that lead to such settlements or judgements. The money shall be deposited in the Board of Registration for the Healing Arts Fund and shall be used by either the board, the Department of Health and Senior Services, the Department of Insurance or by a newly created agency as a result of legislative action. For the purposes of this fiscal note, future expenditures have not been identified or estimated as it is assumed that the Task Force will develop a plan and submit such to the General Assembly for appropriation.

Annual Malpractice Settlement Awards: The Department of Insurance reported \$74,129,276 in closed medical malpractice claims in 2001. NOTE: This total does not include any settlements or awards by self-insured providers as they are not currently required to report to the Department of Insurance. DPR estimates that in FY04, the Board of Registration for the Healing Arts Fund will receive a minimum amount of \$741,293. This estimate is based on the fact that the effective date of this proposal is January 1, 2004. ( $\$74,129,276 \times 2\%$  divided by 12 months x 6 months)

DPR estimates that a contract employee will be utilized by the Board of Registration for the Healing Arts in the first year following the establishment of the tax to assist with the task force meetings, as well as respond to any inquiries relating to the law. DPR estimates that this position will continue to be utilized for the following years even though the proposal requires that an appropriation be established for subsequent years.

DPR assumes that a task force committee will be established to determine how the money collected from the tax will be dedicated to the effort of reducing the incidence of health care mishaps and errors. The committee is estimated to be comprised of at least 7 members. A representative from each of the following: Board of Healing Arts, Department of Insurance,

ASSUMPTION (continued)

Department of Revenue, Department of Health and Senior Services, Board of Nursing, Board of Pharmacy, and the Missouri Bar. DPR estimates that the task force committee will meet at least 4 times each year. All meetings will be held in Jefferson City, MO. The principal assistant of the State Board of Registration for the Healing Arts, an attorney general representative and the contract employee will also attend.

DPR estimates that the Attorney General's Office would provide approximately 60 hours of assistance at a cost of \$3,652 per year ( $60 \times \$60.87 = \$3,652$ ).

Since this legislation does not specifically require a task force committee, **Oversight** will not show the costs associated with the committee at this time. If it is later determined necessary, DPR can request funding for this committee through the normal budget process.

Officials from the **State Courts Administrator, Supreme Court of Missouri** assume this proposal would create a medical malpractice settlement tax. Whenever such a settlement is a result of judicial action or has the approval of the court, the court shall order the tax withheld from the settlement and paid to the Director of the Department of Revenue. This will result in a slight increase in the workload of the court, but not enough to have a fiscal impact.

Officials from the **University of Missouri System, Office of Risk & Insurance Management (UM)** believe this proposal will add some \$50,000 annually. However, in a year like last year with some unusually high claims, the cost will be more like \$125,000 to \$150,000 in costs. Additionally, UM assumes their excess insurance will go up as insurers build this into their premium. Any built in cost in the premium is grossed up by 50%, so the 2% will become 3% in premium needs.

While the language states it is a tax on settlements, UM assumes the settlements will just get grossed up to cover the 2% so it becomes a cost instead of an efficient way to reduce the number of incidents. UM estimates the increased cost for The University of Missouri will easily be more than \$100,000 annually.

For the purposes of this fiscal note, **Oversight** will show the revenue generated by this legislation in the Board of Healing Arts Fund. However, for FY05 and FY06 this revenue could be appropriated between either the Board of Healing Arts Fund, the Department of Health and Senior Services, the Department of Insurance or to a newly created agency as a result of legislative action. **Oversight** assumes the revenue would be used only when appropriated for program costs to reduce healthcare mishaps and errors. Unless a supplemental appropriation is granted, the FY04 revenue from the malpractice settlement tax would not be available for program costs in FY04. **Oversight** assumes the appropriation process for FY05 will make the FY04 and FY05 revenue available for program expenses in FY05.

FISCAL IMPACT - State GovernmentFY 2004  
(6 Mo.)

FY 2005

FY 2006

**GENERAL REVENUE FUND**Cost - Dept. of Revenue

Personal Service (2 FTE)	(\$18,756)	(\$39,411)	(\$40,396)
Fringe Benefits	(\$7,591)	(\$15,950)	(\$16,348)
Expense and Equipment	(\$13,706)	(\$1,038)	(\$1,070)
Programming & Postage	(Unknown)	\$0	\$0
Total Cost - DOR	(\$40,053 to Unknown)	(\$56,399)	(\$57,814)

**ESTIMATED NET EFFECT ON  
GENERAL REVENUE FUND**

<b>(\$40,053 to Unknown)</b>	<b>(\$56,399)</b>	<b>(\$57,814)</b>
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**INSURANCE DEDICATED FUND**Cost - Dept. of Insurance

Personal Service (1 FTE)	(\$13,118)	(\$26,892)	(\$27,564)
Fringe Benefits	(\$5,309)	(\$10,883)	(\$11,155)
Expense and Equipment	(\$5,542)	(\$3,555)	(\$3,661)
Total Cost - INS	(\$23,969)	(\$41,330)	(\$42,380)

**TOTAL ESTIMATED NET EFFECT  
ON INSURANCE DEDICATED  
FUND**

<b>(\$29,511)</b>	<b>(\$44,885)</b>	<b>(\$46,041)</b>
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**BOARD OF THE HEALING ARTS  
FUND**Income - Professional Registration

Malpractice settlement tax	\$741,293	\$1,482,586	\$1,482,586
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FISCAL IMPACT - State GovernmentFY 2004  
(6 Mo.)

FY 2005

FY 2006

Cost - Professional Registration

Program costs to reduce healthcare mishaps and errors

\$0      (\$2,223,879)      (\$1,482,586)

**TOTAL ESTIMATED NET EFFECT  
 ON THE BOARD OF THE HEALING  
 ARTS FUND\***

**\$741,293      (\$741,293)      \$0**

\*For FY05 and FY06 this revenue could be appropriated between either the Board of Healing Arts Fund, the Department of Health and Senior Services, the Department of Insurance or to a newly created agency as a result of legislative action.

FISCAL IMPACT - Local Government

FY 2004  
(6 Mo.)

FY 2005

FY 2006

\$0

\$0

\$0

FISCAL IMPACT - Small Business

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

DESCRIPTION

This proposal levies a tax of two percent on settlements and judicial awards for health care professional liability. The tax covers all settlements, whether they are the result of arbitration, mediation, judicial action, or mutual consent.

The Department of Revenue will be responsible for the collection of the tax. The monies from the tax will be dedicated to an effort to reduce the incidence of health care mishaps and errors that lead to such settlements or judgements.

In the first year, the money is to be used by the Board of Healing Arts for the above stated purposes. In subsequent years, the money may be appropriated to the Board of Healing Arts, the Department of Health and Senior Services, or the Department of Insurance, for the same purposes.

DESCRIPTION (continued)



Failure to report a settlement will result in a penalty of \$250 or 5% of the settlement, whichever is greater. Failure to report shall also be sent to the respective professional association of the parties involved, including that of the parties' attorneys.

In the case of a judicial award, the court shall order the tax withheld from the award prior to disbursement of the funds.

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

Division of Budget and Planning

Department of Economic Development

Professional Registration

Department of Health and Senior Services

Department of Insurance

State Courts Administrator

Attorney General's Office


Department of Labor and Industrial Relations

State Public Defender

Office of Prosecution Services

University of Missouri

MO Consolidated Health Care Plan



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Director

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