

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 2892-02  
Bill No.: SB 706  
Subject: Civil Procedure; Courts; Health care; Health Care Professionals; Insurance - General; Evidence; Physicians; Liability; Attorneys; Insurance Dept.  
Type: Original  
Date: January 26, 2004

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
General Revenue	(\$15,176,928)	(\$15,104,315)	(\$15,106,536)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$15,176,928)</b>	<b>(\$15,104,315)</b>	<b>(\$15,106,536)</b>

<b>ESTIMATED NET EFFECT ON STATE FUNDS</b>			
FUND AFFECTED	FY 2005	FY 2006	FY 2007
Insurance Dedicated	(\$532,228)	(\$397,359)	(\$407,399)
Missouri Patients' Compensation*	\$0*	\$0*	\$0*
<b>Total Estimated Net Effect on All State Funds</b>	<b>(\$532,228)</b>	<b>(\$397,359)</b>	<b>(\$407,399)</b>

\* Revenues and expenditures could exceed \$62 million annually. All expenses of the fund are to be paid from the fund. Revenues and expenditures are assumed to net to \$0.

Numbers within parentheses: ( ) indicate costs or losses.  
This fiscal note contains 11 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</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 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

**FISCAL ANALYSIS**

**ASSUMPTION**

Officials from the **Office of the Governor, Missouri Senate, Office of State Courts Administrator, Department of Economic Development - Professional Registration, Missouri Consolidated Health Care Plan, Missouri Department of Conservation, Office of Attorney General, Missouri Department of Transportation** and **Office of State Treasurer** assume the proposal will have no fiscal impact on their organizations.

Officials from the **Department of Public Safety - Missouri State Highway Patrol** defer to the Missouri Department of Transportation for response regarding the fiscal impact of the proposed legislation on their organization.

Officials from the **State Auditor's Office (SAU)** state an audit of the Missouri Patients' Compensation Fund would require at least 750 audit staff hours each year. The SAU believes this is the average amount of time needed to audit specific funds with dedicated taxes. The SAU anticipates personal service costs to the General Revenue Fund of \$22,344 in FY 05; \$27,484 in FY 06; and \$28,170 in FY 07.

**Oversight** assumes the SAU would not hire part-time personnel to perform an audit of the Missouri Patients' Compensation Fund. **Oversight** assumes the SAU could perform the duties of the proposal within its current staffing levels.

ASSUMPTION (continued)

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** state section 135.161.1 creates a tax credit for physicians, not to exceed \$10,000, in order to offset 10% of their increases in malpractice insurance premiums. Section 135.163.2 provides a five-year carry-forward provision. Section 135.163.4 limits the total credits issued at \$15 million per year.

According to the Department of Economic Development - Division of Professional Registration, there are 21, 553 permanently licensed physicians in Missouri. BAP does not have a methodology to forecast increases in malpractice insurance rates.

Officials from the **Office of the Secretary of State (SOS)** state this proposal enacts various medical malpractice measures. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Insurance could require as many as 12 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 cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal 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 this legislation to be \$738 [(12 pp x \$27) + (18 pp x \$23)].

**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.

Officials from the **Department of Revenue (DOR)** state the proposal will have an administrative impact on the DOR. Personal Tax will need one (1) Tax Processing Tech I for every 4,000 credits claimed for verification and processing. One (1) Tax Processing Tech I will be needed for every 3,000 additional peices of correspondence generated on this credit. Two (2) Tax Season Temporaries will be needed to key the additional line on the tax return. Business Tax will need one (1) Tax Processing Tech I for every 3,600 credits claimed for verification and Processing. To modify the tax systems, processing and electronic filing, DOR estimates 2,076 hours of programming will be needed to modify and create all necessary systems at a cost of \$69,255. DOR estimates total personal service, fringe benefit, and equipment and expense costs of FY 05 of \$195,388; \$125,565 for FY 06; and \$128,186 for FY 07.

ASSUMPTION (continued)

**Oversight** has, for fiscal note purposes only, changed the starting salary for the three (3) Tax Processing Tech Is 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** also assumes the DOR would not require additional space for three (3) FTE and two (2) Seasonal Tax Temporaries.

Officials from the **Department of Insurance (INS)** state this proposal provides various measures to reform the medical malpractice insurance industry, including a Patient Compensation Fund and tax credits to health care providers for their malpractice premiums. The following assumptions related to the fiscal impact of this proposal were provided:

**Section 135.161** - sets forth the definitions of those covered by the proposed malpractice insurance tax credit. This proposal's coverage is wide - including not only physicians and surgeons, but also various other professions within the health care industry - nurses, dentists, optometrists, pharmacists, chiropractors, psychologists, etc.

**Section 135.163** – The tax credit provision would require additional staffing and database development to administer this credit. For the INS, this would involve processing tax credit certifications for roughly 37,000 (approximately 22,000 physicians and surgeons and 15,000 other health care professionals) health care professionals in the State. There would be both data entry and analysis involved in this process. It would require a new database system to compile the data and issue certifications. The INS would require **one (1) Accountant I** to analyze and certify tax credits and **one (1) Clerk Typist** would be required for data entry and clerical support. Development of a tax credit database for this purpose would require approximately **1,960 contract computer programming hours at a cost of \$186,000.**

**Section 383.312** - Currently the INS does not collect all of the data that will be necessary for formulating the fees and surcharges. Specifically, the INS does not have statistical or claims information relating to self-insurers and this information will now need to be collected. Section 383.200 (6) states that the Director shall provide an annual report as to annual rate increases or decreases approved or disapproved in the medical malpractice market. The proposal states that INS shall provide all technical and administrative assistance as well as whatever expertise the Fund may require, including evaluating claims or potential claims. These duties will require at a minimum **one (1) Research Analyst II** for data compilation and analysis.

ASSUMPTION (continued)

Additional outside consultation costs may be necessary depending on expertise needed. These costs have not been estimated.

**Section 383.200 (1)** states that all medical malpractice insurance rates are to be subject to prior approval by the Director of INS. This is an expansion of authority and responsibility for the INS. This provision will result in a need for greater actuarial involvement in the rate review process as it would specifically require approval or disapproval prior to implementation by the insurer. In addition, it is anticipated that in light of these provisions, hearings would be required to adjudicate appeals by insurers of disapprovals by the INS of proposed rates.

The INS would require **one (1) additional full-time Actuary and one (1) Economist** to handle the increase workload for approval of rate filings. They would be responsible for collecting and analyzing market competitiveness, claims data, and other criteria used to establish rates. They would also be responsible for reviewing and approving rates based on the analysis of this data. In addition to the actuary, **one (1) Attorney** would be required to oversee the rate hearings and provide legal counsel to the INS.

**Section 383.303** - The fiscal impact to the Fund itself is difficult to determine at this time. It is unknown what the Fund participation will be in Missouri and what Fund staffing will be necessary. However, the State of Kansas has a similar Fund that has been in existence since the 1970's. We can utilize its budgetary information for comparative purposes. The Health Care Stabilization Fund ("HCSF") had an annual budget of \$41 million as of the end of FY 02. HCSF maintains 16 full-time employees in addition to its Board of Directors. Its FY 02 actual wage and salary expenditure was \$678,180. In addition to these in-house personnel, they also employ outside legal counsel and consultation services. The FY 02 expenditure for contractual services was \$2,874,299. We would expect that Missouri's fiscal impact would be greater than that of Kansas. This would be due to the larger number of medical providers practicing in Missouri, and as such, Missouri participation would be greater.

The INS would anticipate that the budget for such a Fund in Missouri would likely be somewhere around \$62 million. The INS would anticipate Missouri staffing to be, at a minimum, **24 full-time employees, in addition to the Fund's Board Members**. The INS would anticipate the salaries and wages to be around \$1 million. The fringe benefits would be approximately \$366,700 per year. Employee on-going expenses for supplies, professional development, office supplies and State Data Center for 24 FTE and 9 Board Members would be about \$136,383 per year. One-time expenses, excluding building/housing for the Fund, would be approximately \$530,533. The INS would anticipate the outside legal and consultation services to be about

ASSUMPTION (continued)

\$4 million per year. The INS would, therefore, estimate that the total cost for the initial year of implementation of this proposal would be approximately \$6,033,616. Again, this figure would be excluding the building/housing expense for the Fund. These costs are provided for Oversight's information and have not been included in the fiscal estimates for the INS as they will be part of the Fund.

Using the information provided by INS, **Oversight** has estimated start-up and continuing costs for Missouri Patients' Compensation Funds and Board, including office space rental costs for 24 FTE. Although actual costs may be significantly different from the estimates provided, **Oversight** assumes the Missouri Patients' Compensation Board would set membership fees and premium surcharges at rates sufficient to cover all cost of operations and any claims, settlements and judgements that may be imposed on covered health care providers. For fiscal note purposes only, **Oversight** assumes revenues and expenses of the Fund will net to \$0.

**Oversight** notes this proposal contains a sunset provision for December 31, 2008. Tax credits for malpractice insurance premiums are capped at \$15 million per fiscal year but may be carried-forward for a maximum of five years. Therefore, unused credits may affect General Revenue through FY 2014. **Oversight** has, for fiscal note purposes, assumed the maximum \$15 million in tax credits will be issued and used each fiscal year.

**Oversight** also notes, if the sunset provision is not extended after 12-31-08 (FY 09), the INS will have two FTE positions that will no longer be necessary - the Accountant I and Clerk Typist positions. In addition, the DOR will have three (3) Tax Processing Technician Is and two (2) Seasonal Tax Temporaries that may phased-out or transferred to other duties. However, since the tax credits may be carried forward for up to five (5) years, **Oversight** cannot determine when the number of tax credit claims would be sufficiently reduced to allow the phase-out or transfer of the additional staff.

**This proposal will increase Total State Revenue.**

<u>FISCAL IMPACT - State Government</u>	FY 2005 (10 Mo.)	FY 2006	FY 2007
<b>GENERAL REVENUE FUND</b>			
<u>Costs - Department of Revenue</u>			
Personal Service Costs (3 FTE)	(\$66,063)	(\$77,676)	(\$79,227)
Fringe Benefits	(\$20,904)	(\$25,712)	(\$26,354)
Equipment and Expenses	(\$20,706)	(\$927)	(\$955)
Computer Programming Costs	<u>(\$69,255)</u>	\$0	\$0
Total <u>Costs</u> - Department of Revenue	<u>(\$176,928)</u>	<u>(\$104,315)</u>	<u>(\$106,536)</u>
<u>Loss - Department of Revenue</u>			
Reduction in Personal Income Tax Receipts	<u>(\$15,000,000)</u>	<u>(\$15,000,000)</u>	<u>(\$15,000,000)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>	<b><u>(\$15,176,928)</u></b>	<b><u>(\$15,104,315)</u></b>	<b><u>(\$15,106,536)</u></b>
<b>INSURANCE DEDICATED FUND</b>			
<u>Costs - Department of Insurance</u>			
Personal Service Costs (5 FTE)	(\$216,207)	(\$265,934)	(\$272,583)
Fringe Benefits	(\$89,510)	(\$110,097)	(\$112,849)
Expense and Equipment	(\$40,511)	(\$21,328)	(\$21,967)
Contract Programming	<u>(\$186,000)</u>	\$0	\$0
Total <u>Costs</u> - Department of Insurance	<u>(\$532,228)</u>	<u>(\$397,359)</u>	<u>(\$407,399)</u>
<b>ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND</b>	<b><u>(\$532,228)</u></b>	<b><u>(\$397,359)</u></b>	<b><u>(\$407,399)</u></b>



DESCRIPTION (continued)

**MEDICAL MALPRACTICE INSURANCE RATES** - Insurance companies are prohibited from increasing or modifying existing premiums or canceling policies until such time as new rate filings are approved by the department of insurance.

The proposal requires the director of the department of insurance to approve or disapprove rates for medical malpractice insurance. The proposal sets out factors for the director to consider including the Missouri loss experience, rather than the loss experience in other states unless the failure to do so would jeopardize the insurer's financial stability. The Director must also ensure that the rates reflect the impact of any state and federal legislation regarding tort reform or medical malpractice insurance. The Director must approve or disapprove rate filings within 60 days unless additional time is needed based on applicant's failure to provide information.

**PATIENT COMPENSATION FUND** - The Missouri Patients' Compensation Fund is created in order to pay that portion of a medical malpractice claim which is in excess of the minimum liability limits established by the newly created Patients' Compensation Board or the maximum liability limits of the health care provider's insurance policy. The Fund is not liable for intentional crimes or punitive damages. The Board shall also establish by rule the maximum amount recoverable from the Fund. The Board shall be comprised of physician, attorney, insurance industry, hospital and general public representatives and the Director of the Department of Insurance. The Governor, with the advice and consent of the Senate, shall appoint all members. All licensed Missouri health care providers must participate in the fund. The amount of membership fees and surcharges shall be determined by the Board. The Board shall set minimum liability limits for each medical malpractice insurance policy by rule.

**STATUTE OF LIMITATIONS** - The proposal modifies the exception to the two-year statute of limitations in cases involving minors. Currently, a minor under 18 years of age has until his or her 20th birthday to bring suit. The act provides that a minor less than 12 years of age has until his or her 14th birthday to bring suit.

**NON-ECONOMIC DAMAGE CAPS** - This provision removes the words "per occurrence" to ensure that there is a single cap, and not multiple caps per incidents of medical malpractice as held by the court in *Scott v. SSM Healthcare*. Provides for a cap on noneconomic damages of \$350,000 and that periodic inflationary increases from the cap shall begin on August 28, 2004. A plaintiff may recover up to \$700,000 in noneconomic damages where the damages suffered by the plaintiff were for: (1) wrongful death, (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system, or (3) permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life sustaining activities.

DESCRIPTION (continued)

**JOINT AND SEVERAL LIABILITY** - Only in medical malpractice actions, the proposal requires the court to enter judgment against each liable party based on their percentage of fault and on the principle of joint and several liability up to certain dollar amounts depending on the fault of the plaintiff and the percentage fault of the defendant.

**AFFIDAVIT OF MERIT** - This provision would require (current law is discretionary) a court to dismiss any medical malpractice claim for which the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a health care provider which states that the defendant failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure caused the plaintiff's damages. The proposal limits extensions of time to file such affidavit to 90 days. The provision also requires the expert to be licensed and actively practicing in substantially the same specialty as the defendant. Any defendant may request the court to review the opinion for a determination of whether the expert meets the qualifications of this section.

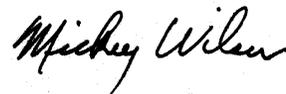
**BENEVOLENT GESTURES** - This provision would make statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident inadmissible as evidence in a civil action. Statements of fault, however, shall not be inadmissible.

**THIRD PARTY ACTIONS** - The proposal prohibits suits against health care providers by or on behalf of a third party nonpatient for rendering health care services to a patient whose subsequent act is a proximate cause of injury or death to the third party unless the care provided was in willful and wanton or reckless disregard of a foreseeable risk of harm to third persons.

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

SOURCES OF INFORMATION

Office of Attorney General  
Office of Administration -  
    Division of Budget and Planning  
Office of State Courts Administrator  
Office of the Governor  
Department of Economic Development -  
    Division of Professional Registration  
Department of Revenue  
Missouri Department of Transportation  
Department of Public Safety -  
    Missouri State Highway Patrol  
Missouri Consolidated Health Care Plan  
Department of Insurance  
Missouri Department of Conservation  
State Auditor's Office  
Missouri Senate  
Office of Secretary of State  
Office of State Treasurer



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