COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

# FISCAL NOTE

L.R. No.: 3154-03
Bill No.: SB 727
Subject: Civil Procedure; Courts; Health Care; Health Care Professionals; Insurance - General; Evidence; Physicians; Liability; Attorneys; Insurance Dept.
Type: Original
Date: January 26, 2004

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## FISCAL SUMMARY

| ESTIMATED NET EFFECT ON GENERAL REVENUE FUND | | | |
|---|---|---|---|
| FUND AFFECTED | FY 2005 | FY 2006 | FY 2007 |
| General Revenue | ($15,176,928) | ($15,104,315) | ($15,106,536) |
| | | | |
| **Total Estimated Net Effect on General Revenue Fund** | **($15,176,928)** | **($15,104,315)** | **($15,106,536)** |

| ESTIMATED NET EFFECT ON STATE FUNDS | | | |
|---|---|---|---|
| FUND AFFECTED | FY 2005 | FY 2006 | FY 2007 |
| Insurance Dedicated | ($541,626) | ($348,078) | ($356,868) |
| | | | |
| **Total Estimated Net Effect on All State Funds** | **($541,626)** | **($348,078)** | **($356,868)** |

Numbers within parentheses: ( ) indicate costs or losses.
This fiscal note contains 9 pages.

| ESTIMATED NET EFFECT ON FEDERAL FUNDS | | | |
|---|---|---|---|
| FUND AFFECTED | FY 2005 | FY 2006 | FY 2007 |
| | | | |
| **Total Estimated Net Effect on All Federal Funds** | **$0** | **$0** | **$0** |

| ESTIMATED NET EFFECT ON LOCAL FUNDS | | | |
|---|---|---|---|
| FUND AFFECTED | FY 2005 | FY 2006 | FY 2007 |
| **Local Government** | **$0** | **$0** | **$0** |

## FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of State Courts Administrator, Department of Social Services, Missouri Department of Transportation, Missouri Consolidated Health Care Plan, Missouri Department of Conservation, Office of Attorney General** and **Department of Economic Development - Division of Professional Registration** 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 potential fiscal impact of the proposal on their organization.

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 fiscal year.

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

ASSUMPTION (continued)

Officials from the **Office of the Secretary of State (SOS)** state this proposal enacts various civil liability reforms. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Insurancecould 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 pieces of correspondence generated on this credit, and 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 for FY 05 of $195,388; $125,565 for FY 06; and $128,186 for FY 07.

**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.

ASSUMPTION (continued)

Officials from the **Department of Insurance (INS)** state this proposal provides various measures pertaining to medical malpractice insurance. The following assumptions related to the fiscal impact of this proposal were provided:

**Section 135.165** – The tax credit provision would require additional staffing and database development to administer the credit. For the INS, this would involve processing tax credit certifications for roughly 22,000 physicians and surgeons 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 also 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 383.200 (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 department. 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 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 in 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 is this data. In addition, **one (1) Attorney** would be required to oversee the rate hearings and provide legal counsel to the INS.

The INS estimates total costs, including personal service costs, fringe benefits, equipment and expense, and contracted programming costs to be approximately $541,626 for FY 05; $348,078 for FY 06; and $356,868 for FY 07.

**Oversight** notes this proposal contains an emergency clause and has a sunset provision for December 31, 2007. 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 2013. **Oversight** has, for fiscal note purposes, assumed the maximum $15 million in tax credits will be issued and used each fiscal year.

ASSUMPTION (continued)

**Oversight** also notes, if the sunset provision is not extended after 12-31-07 (FY 08), 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 reduce Total State Revenue.**

| FISCAL IMPACT - State Government | FY 2005 (12 Mo.) | FY 2006 | FY 2007 |
|---|---|---|---|
| **GENERAL REVENUE FUND** | | | |
| Costs - Department of Revenue | | | |
| 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 | ($69,255) | $0 | $0 |
| Total Costs - Department of Revenue | ($176,928) | ($104,315) | ($106,536) |
| Loss - Department of Revenue | | | |
| Reduction in Personal Income Tax Receipts | ($15,000,000) | ($15,000,000) | ($15,000,000) |
| **ESTIMATED NET EFFECT ON GENERAL REVENUE FUND** | **($15,176,928)** | **($15,104,315)** | **($15,106,536)** |
| **INSURANCE DEDICATED FUND** | | | |
| Costs - Department of Insurance | | | |
| Personal Service Costs (5 FTE) | ($227,629) | ($233,596) | ($239,436) |
| Fringe Benefits | ($94,238) | ($96,709) | ($99,127) |
| Expense and Equipment | ($33,759) | ($17,773) | ($18,305) |
| Contract Programming | ($186,000) | $0 | $0 |
| Total Costs - Department of Insurance | ($541,626) | ($348,078) | ($356,868) |
| **ESTIMATED NET EFFECT ON INSURANCE DEDICATED FUND** | **($541,626)** | **($348,078)** | **($356,868)** |

| FISCAL IMPACT - Local Government | FY 2005 (12 Mo.) | FY 2006 | FY 2007 |
|---|---|---|---|
| | **$0** | **$0** | **$0** |

FISCAL IMPACT - Small Business

This proposal could have an unknown effect on small business insurance companies.

DESCRIPTION

The proposal revises provisions relating to civil liability.

TAX CREDITS - A tax credit is allowed, up to $10,000, for 10% of the amounts paid for medical malpractice insurance premiums in the aggregate in one policy period for any physician who practices in a high risk specialty and who sees patients, at least 20% of whom are on Medicaid. The credit expires on December 31, 2007.

INSURANCE REQUIREMENTS FOR HMO'S - The proposal provides that health services corporations, HMO's and health benefit plan entities cannot require, as a condition of participation in the network, that a physician maintain a medical malpractice insurance policy that is deemed excessive by the director of the department of insurance.

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. If the Director finds a rate to be excessive, the director may order a refund of the excessive portion of the rate to the policyholder.

NOTICE OF PREMIUM INCREASES - This proposal also prohibits insurers who issue medical malpractice policies from increasing premiums without providing 90 days written notice.

DESCRIPTION (continued)

VENUE IN MEDICAL MALPRACTICE ACTIONS - In any action commenced against a health care provider for improper healthcare, no suit can be commenced in any county other than the county where the cause of action accrued or an adjoining county.

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 proposal provides that a minor less than 12 years of age has until his or her 14th birthday to bring suit.

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.

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.

AFFIDAVIT OF MERIT - The proposal modifies the requirements of the affidavit. The health care provider offering the opinion must have training and experience in a like area of expertise and must have been actively practicing within 10 years of the date of the affidavit. The affidavit is subject to review by the court, upon motion of a party, to determine compliance with this section. The affidavit must be filed within 90 days of the defendant filing an affidavit indicating that all records pertaining to the patient have been disclosed to the patient. If the plaintiff fails to file such affidavit in time, the action as to that defendant shall be stayed and, upon motion of the defendant, shall be dismissed without prejudice.

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.

DESCRIPTION (continued)

EFFECTIVE DATE OF PROPOSAL - The provisions of this proposal concerning tort reform shall only apply to cases filed after August 28, 2004.

This proposal contains an emergency clause. Section 135.165.5 contains a sunset provision whereby the tax credit, except the carry-forward provision, shall expire on December 31, 2007.

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 Attorney General
Office of Administration -
    Division of Budget and Planning
Office of State Courts Administrator
Department of Economic Development -
    Division of Professional Registration
Department of Revenue
Department of Social Services
Missouri Department of Transportation
Department of Public Safety -
    Missouri State Highway Patrol
Missouri Consolidated Health Care Plan
Department of Insurance
Missouri Department of Conservation
Office of Secretary of State

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January 26, 2004