COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0497-01
Bill No.: SB 31
Subject: Health Care Professionals; Insurance - General; Physicians
Type: Original
Date: March 5, 2019

Bill Summary: This proposal modifies provisions relating to malpractice insurance.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on General Revenue	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Insurance Dedicated Fund (0566)	($57,750)	($57,750)	($57,750)
Total Estimated Net Effect on Other State Funds	**($57,750)**	**($57,750)**	**($57,750)**

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

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on All Federal Funds	**$0**	**$0**	**$0**

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Total Estimated Net Effect on FTE	**0**	**0**	**0**

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed $100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2020	FY 2021	FY 2022
Local Government	**$0**	**$0**	**$0**

FISCAL ANALYSIS

ASSUMPTION

Section 383.006 - 383.035

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume this proposal adds new solvency standards for Chapter 383 malpractice associations. It specifically sets the minimum surplus requirement and maximum writing ratio requirements needed to be maintained by these associations. Violations of these new standards could be grounds for the revocation of an association's license to conduct business.

Currently there are 5 companies formed under Chapter 383 licensed by the department. Under the proposed standards, If each of those companies were to submit rate filings based on the average submitted annually by malpractice companies formed under Chapter 379, while also considering that companies formed under 383 only write coverage for physicians and surgeons, the department estimates receiving 3 filings per company annually, resulting in an overall additional 15 rate filings annually. That would generate $2,250 in filing fees. In addition, due to the rate standards specified within this bill and the sensitivity of the market for this line of insurance, it would be necessary to have an annual actuarial review conducted. The current actuarial contract for Property & Casualty rate filings is $40,000 for 10 filings, or $4,000 each.

5 companies X 3 rate filings each = 15 total filings
15 filings x $150 filing fee = $2,250
15 filings x $4,000 per actuarial review = ($60,000)

In summary, DIFP assumes a cost of $57,750 ($2,250 (filing fee) - $60,000 (actuarial review)) in FY 2020, FY 2021 and FY 2022 to provide for the implementation of the changes in this proposal.

Oversight notes that the DIFP has stated the proposal would have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect the estimates provided by DIFP.

Officials from the **Department of Social Services** and the **Department of Health and Senior Services** each assume the proposal will have no fiscal impact on their respective organizations.

Oversight notes that the above mentioned agencies have stated the proposal would not have a direct fiscal impact on their organization. Oversight does not have any information to the contrary. Therefore, Oversight will reflect a zero impact on the fiscal note for these agencies.

FISCAL IMPACT - State Government	FY 2020 (10 Mo.)	FY 2021	FY 2022
INSURANCE DEDICATED FUND			
Revenue - DIFP $150 Filing Fee	$2,250	$2,250	$2,250
Cost - DIFP Actuarial Review	($60,000)	($60,000)	($60,000)
ESTIMATED NET EFFECT TO THE INSURANCE DEDICATED FUND	**($57,750)**	**($57,750)**	**($57,750)**

FISCAL IMPACT - Local Government	FY 2020 (10 Mo.)	FY 2021	FY 2022
	$0	**$0**	**$0**

FISCAL IMPACT - Small Business

Small businesses that sell or purchase malpractice insurance could be impacted by this proposal.

FISCAL DESCRIPTION

This act defines four types of assessments for chapter 383 assessable malpractice associations: initial assessments, regular assessments, operating assessments, and special assessments. This act also specifies how each of the assessment types shall apply to former and current members of the assessable associations under the articles of association and bylaws of the associations and that a copy of those articles of association and bylaws shall be attached to the policy when issued. Under this act, special assessments made by an association after the fifth anniversary of the termination date of a former member's coverage under the association's policy shall not apply to the former member.

This act subjects the assessable associations to various auditing and financial reporting insurance laws and requires the associations to maintain a policyholder's surplus of at least six hundred thousand dollars. An assessable association licensed as of December 1, 2018, may renew its license, if all other conditions have been met, by maintaining a policyholder's surplus of lower amounts specified in the act over a three year period that increase each year until the six hundred thousand dollar minimum is reached.

FISCAL DESCRIPTION (continued)

The act also requires assessable associations to maintain a ratio of premiums written to surplus held not to exceed 3 to 1 without approval of the director. Assessable associations licensed as of December 1, 2018, may renew their licenses with higher ratios over a three year period until the 3 to 1 ratio is reached. Failure to comply with the surplus or premiums written/surplus ratio requirements constitutes grounds for revocation of an association's license. However, any assessable association that cedes reinsurance in compliance with section 375.246, for the term of all policies written by the association and with an annual cap of not less than 250% of the association's annual net written premium, shall be exempt from the surplus and premiums written/surplus ratio provisions, if such reinsurance covers the association's per claim risk on such policies in at least the percentages set forth in the act.

This act also repeals a provision of law which currently provides that assessable malpractice association rates shall not be excessive or inadequate, nor shall they be unfairly discriminatory.

Under current law, medical malpractice insurers are prohibited from issuing medical malpractice policies in which the rates are excessive, inadequate, or unfairly discriminatory. A determination of whether a base rate is excessive, inadequate, or unfairly discriminatory is determined by the director. This act requires the director to hold a hearing before making such a finding and that the director must base the decision on competent and substantial evidence on the whole record rather than competent and compelling evidence.

Assessable associations operating under the chapter 383 malpractice association laws prior to August 28, 2019, shall have 180 days following such date to come into compliance with the requirements of the modified provisions and to file their articles of association and bylaws conforming to the modified provisions or the director may suspend the assessable association's certificate of authority or issue a cease and desist order prohibiting the assessable association from writing new business.

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 Insurance, Financial Institutions and Professional Registration
Department of Social Services
Department of Health and Senior Services

Kyle Rieman
Director
March 5, 2019

Ross Strope
Assistant Director
March 5, 2019