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FISCAL IMPACT REPORT

SPONSOR McMillan **ORIGINAL DATE** 2/28/15
LAST UPDATED 3/5/15 **HB** 542/aHRPAC

SHORT TITLE Healthcare Liability Act **SB** _____

ANALYST Elkins

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

Medical Board (MB)

SUMMARY

Synopsis of House Regulatory and Public Affairs Committee Amendment

House Regulatory and Public Affairs Committee Amendment to House Bill 542 adds persons licensed pursuant to the Athletic Trainers Act to the to the definition of health care providers

Synopsis of Original Bill

House Bill 542 enacts the Health Care Liability Act, which limits aggregate noneconomic damages for claim against health care providers that are not participants in the state-sponsored excess insurance program to \$300 thousand and limits punitive damages to three times the amount of compensatory damages. In the act aggregate amount means the sum of damages arising from a single occurrence regardless of the number of claimants, claims, or the number of parties against whom malpractice claims have been made. Also, noneconomic damages are defined as all recoverable damages except, past and future medical expenses, funeral expenses, past or future necessary nonmedical expenses, loss of earnings and earning capacity, loss of monetary benefits and financial support, loss of services, and punitive damages.

FISCAL IMPLICATIONS

HB542 is not expected to disincentivize parties from pursuing malpractice cases and therefore case filings in the district courts will not likely be affected. There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

SIGNIFICANT ISSUES

HB542 may address the concern that high jury awards are driving medical malpractice insurance companies from the market, and ultimately affecting the cost of health care.

According to AOC, malpractice award caps raise the question of whether the benefit to consumers justifies limiting recoveries for those seriously injured by malpractice. Significant costs are also implicated by many malpractice cases, which further limit financial recovery for victims.

The Attorney General’s Office offers the following commentary:

The cap amount of \$300 thousand for non-economic damages is consistent with the range enacted in other states (though it is on the low end): anywhere from \$250 thousand - \$1 million.

There may be separation of powers challenges to House Bill 542, arguing that the legislature is attempting to usurp the province of the judiciary, as in *Best v. Taylor Machine Works*, 179 Ill.2d 367 (1997) out of the Illinois Supreme Court. In the same appeal, the Illinois Supreme Court found that the legislation imposing a cap on non-economic damages violated equal protection, since individuals with high damage claims were arbitrarily being treated differently than individuals with lower damage claims.

Such an equal protection challenge may also be raised in the context of the existence of two separate acts, the Medical Malpractice Act and House Bill 542, with different limitations for health care providers under the same or similar circumstances.

TECHNICAL ISSUES

The Attorney General’s Office states, rather than defining “non-economic damages,” House Bill 542 defines what is not included in that term. It may be clearer to define what is included in the term, as has been done in other states. “Necessary nonmedical expenses” Section 2(E)(3), may need to be defined.

OTHER SUBSTANTIVE ISSUES

According to AOC, the states listed below have determined considering the guarantee of a jury trial, that a limit on medical malpractice award is prohibited by their state constitution:

- Alabama, unconstitutional by state courts.
- Arizona, unconstitutional by state constitution.
- Arkansas, unconstitutional by state constitution.

- Georgia, unconstitutional by state courts.
- Illinois, unconstitutional by state courts.
- Kentucky, unconstitutional by state constitution.
- New Hampshire, unconstitutional by state courts.
- Missouri, unconstitutional by state courts.
- Ohio, unconstitutional for wrongful death cases by state constitution.
- Pennsylvania, unconstitutional by state constitution. Exception for employees injured during the course of employment.
- Washington, unconstitutional by state courts.
- Wyoming, unconstitutional by state constitution.

<http://www.legalmatch.com/law-library/article/state-limits-on-medical-malpractice-awards.html#sthash.7HjXwdEF.dpuf>

According to AGO, many states have upheld the constitutionality of caps on non-economic damages, including Alaska, Wisconsin, Colorado, Kansas, Idaho, Maryland, Minnesota, California, Virginia, Missouri, West Virginia, and Louisiana. Many states have struck down caps of non-economic damages based on various constitutional challenges, including separation of powers, restrictions on “special litigation,” equal protection, and right to jury trial, including Ohio, Illinois, Oregon, Alabama, New Hampshire, Florida, Washington, and Texas.

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