



# Senate

General Assembly

**File No. 166**

February Session, 2004

Substitute Senate Bill No. 61

*Senate, March 22, 2004*

The Committee on Program Review and Investigations reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

**AN ACT ESTABLISHING A HEALTHY CONNECTICUT FUND, A MEDICAL MALPRACTICE REINSURANCE FUND AND A PERSONAL TAX EXEMPTION FOR MEDICAL MALPRACTICE INSURANCE PREMIUM COSTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2004*) (a) As used in this section:  
2 (1) "Licensed health care provider" or "provider" means a physician or  
3 surgeon; director, officer or trustee of a hospital or nursing home;  
4 nurse; oral surgeon; dentist; pharmacist; chiropractor; optometrist;  
5 podiatrist; hospital or nursing home; (2) "fund" means the Healthy  
6 Connecticut Fund established in subsection (b) of this section; and (3)  
7 "commissioner" means the Insurance Commissioner.

8 (b) There is established a Healthy Connecticut Fund for the purpose  
9 of reimbursing any portion of a medical malpractice claim, settlement  
10 or judgment which represents the deductible applicable to a provider's  
11 coverage. The fund shall be liable only for (1) payment of such

12 deductibles pursuant to claims, settlements or judgments against  
13 licensed health care providers who comply with the provisions of this  
14 section where the claim, settlement or judgment arises from an event  
15 that occurs on or after the effective date of the first plan of operation  
16 established pursuant to subsection (g) of this section, and (2)  
17 reasonable and necessary expenses incurred in payment of such  
18 deductibles and the fund's administrative expenses. The fund may  
19 contain any moneys required by law to be deposited in the fund and  
20 shall be held by the State Treasurer separate and apart from all other  
21 moneys, funds and accounts. The interest derived from the investment  
22 of the fund shall be credited to the fund. Amounts in the fund may be  
23 expended only at the direction of the Insurance Commissioner in  
24 accordance with this section. Any balance remaining in the fund at the  
25 end of any fiscal year shall be carried forward in the fund to the next  
26 fiscal year.

27 (c) Any provider licensed in this state may participate in the fund if  
28 (1) the provider's primary place of practice is in this state, and (2) the  
29 provider meets the standards set forth in the plan of operation adopted  
30 pursuant to subsection (g) of this section.

31 (d) (1) Any deficit in the fund shall be paid by the Tobacco  
32 Settlement Fund in accordance with section 4-28e of the general  
33 statutes, as amended by this act.

34 (2) Except as provided in subdivision (1) of this subsection, the state  
35 shall not be responsible for any costs, expenses, liabilities, judgments  
36 or other obligations of the fund.

37 (e) All books, records and audits of the fund shall be public records,  
38 as defined in section 1-200 of the general statutes.

39 (f) On or before December thirty-first of each year the Auditors of  
40 Public Accounts shall audit the records of the fund and shall furnish an  
41 audited financial report to the commissioner, State Treasurer and the  
42 General Assembly. The report to the General Assembly shall be  
43 submitted in accordance with section 11-4a of the general statutes.

44 (g) The Insurance Commissioner shall adopt regulations, in  
45 accordance with chapter 54 of the general statutes, to establish a plan  
46 of operation for the fund.

47 Sec. 2. (NEW) (*Effective July 1, 2004*) The Insurance Commissioner  
48 may approve professional liability insurance policies for providers  
49 who participate in the Healthy Connecticut Fund established pursuant  
50 to section 1 of this act that contain a deductible that does not exceed (1)  
51 fifty thousand dollars with respect to a medical professional, and (2)  
52 one hundred thousand dollars with respect to a medical entity,  
53 including, but not limited to, a hospital. Such policies shall be subject  
54 to title 38a of the general statutes.

55 Sec. 3. (NEW) (*Effective July 1, 2004*) (a) As used in this section: (1)  
56 "Licensed health care provider" or "provider" means a physician or  
57 surgeon; director, officer or trustee of a hospital or nursing home;  
58 nurse; oral surgeon; dentist; pharmacist; chiropractor; optometrist;  
59 podiatrist; hospital or nursing home; (2) "fund" means the Medical  
60 Malpractice Reinsurance Fund established in subsection (b) of this  
61 section; and (3) "commissioner" means the Insurance Commissioner.

62 (b) (1) There is established a Medical Malpractice Reinsurance Fund  
63 for the purpose of paying fifty per cent of the portion of a medical  
64 malpractice claim, settlement or judgment that exceeds (A) seven  
65 hundred fifty thousand dollars with respect to an individual provider,  
66 not to exceed one million seven hundred fifty thousand dollars for  
67 each claim, settlement or judgment, or (B) one million five hundred  
68 thousand dollars with respect to a hospital, not to exceed two million  
69 five hundred thousand dollars for each claim, settlement or judgment.  
70 Such provider or hospital shall remain liable for any other portion of a  
71 medical malpractice claim, settlement or judgment.

72 (2) The fund shall be liable only for (A) payment of such amounts in  
73 accordance with this section with respect to an event that occurs on or  
74 after the effective date of the first plan of operation established  
75 pursuant to subsection (g) of this section, and (B) reasonable and  
76 necessary expenses incurred in payment of such amounts and the

77 fund's administrative expenses. The fund may contain any moneys  
78 required by law to be deposited in the fund and shall be held by the  
79 State Treasurer separate and apart from all other moneys, funds and  
80 accounts. The interest derived from the investment of the fund shall be  
81 credited to the fund. Amounts in the fund may be expended only at  
82 the direction of the Insurance Commissioner in accordance with this  
83 section. Any balance remaining in the fund at the end of any fiscal year  
84 shall be carried forward in the fund to the next fiscal year.

85 (c) Any provider licensed in this state may participate in the fund if  
86 (1) the provider's primary place of practice is in this state, and (2) the  
87 provider meets the standards set forth in the plan of operation adopted  
88 pursuant to subsection (g) of this section.

89 (d) (1) Any deficit in the fund shall be paid by the Tobacco  
90 Settlement Fund in accordance with section 4-28e of the general  
91 statutes, as amended by this act.

92 (2) Except as provided in subdivision (1) of this subsection, the state  
93 shall not be responsible for any costs, expenses, liabilities, judgments  
94 or other obligations of the fund.

95 (e) All books, records and audits of the fund shall be public records,  
96 as defined in section 1-200 of the general statutes.

97 (f) On or before December thirty-first of each year the Auditors of  
98 Public Accounts shall audit the records of the fund and shall furnish an  
99 audited financial report to the commissioner, State Treasurer and the  
100 General Assembly. The report to the General Assembly shall be  
101 submitted in accordance with section 11-4a of the general statutes.

102 (g) The Insurance Commissioner shall adopt regulations, in  
103 accordance with chapter 54 of the general statutes, to establish a plan  
104 of operation for the fund.

105 Sec. 4. Subdivision (20) of subsection (a) of section 12-701 of the  
106 general statutes, as amended by section 13 of public act 03-225, is  
107 repealed and the following is substituted in lieu thereof (*Effective from*

108 *passage and applicable to taxable years commencing on or after January 1,*  
109 *2004):*

110 (20) "Connecticut adjusted gross income" means adjusted gross  
111 income, with the following modifications:

112 (A) There shall be added thereto (i) to the extent not properly  
113 includable in gross income for federal income tax purposes, any  
114 interest income from obligations issued by or on behalf of any state,  
115 political subdivision thereof, or public instrumentality, state or local  
116 authority, district or similar public entity, exclusive of such income  
117 from obligations issued by or on behalf of the state of Connecticut, any  
118 political subdivision thereof, or public instrumentality, state or local  
119 authority, district or similar public entity created under the laws of the  
120 state of Connecticut and exclusive of any such income with respect to  
121 which taxation by any state is prohibited by federal law, (ii) any  
122 exempt-interest dividends, as defined in Section 852(b)(5) of the  
123 Internal Revenue Code, exclusive of such exempt-interest dividends  
124 derived from obligations issued by or on behalf of the state of  
125 Connecticut, any political subdivision thereof, or public  
126 instrumentality, state or local authority, district or similar public entity  
127 created under the laws of the state of Connecticut and exclusive of  
128 such exempt-interest dividends derived from obligations, the income  
129 with respect to which taxation by any state is prohibited by federal  
130 law, (iii) any interest or dividend income on obligations or securities of  
131 any authority, commission or instrumentality of the United States  
132 which federal law exempts from federal income tax but does not  
133 exempt from state income taxes, (iv) to the extent included in gross  
134 income for federal income tax purposes for the taxable year, the total  
135 taxable amount of a lump sum distribution for the taxable year  
136 deductible from such gross income in calculating federal adjusted  
137 gross income, (v) to the extent properly includable in determining the  
138 net gain or loss from the sale or other disposition of capital assets for  
139 federal income tax purposes, any loss from the sale or exchange of  
140 obligations issued by or on behalf of the state of Connecticut, any  
141 political subdivision thereof, or public instrumentality, state or local

142 authority, district or similar public entity created under the laws of the  
143 state of Connecticut, in the income year such loss was recognized, (vi)  
144 to the extent deductible in determining federal adjusted gross income,  
145 any income taxes imposed by this state, (vii) to the extent deductible in  
146 determining federal adjusted gross income, any interest on  
147 indebtedness incurred or continued to purchase or carry obligations or  
148 securities the interest on which is exempt from tax under this chapter,  
149 (viii) expenses paid or incurred during the taxable year for the  
150 production or collection of income which is exempt from taxation  
151 under this chapter or the management, conservation or maintenance of  
152 property held for the production of such income, and the amortizable  
153 bond premium for the taxable year on any bond the interest on which  
154 is exempt from tax under this chapter to the extent that such expenses  
155 and premiums are deductible in determining federal adjusted gross  
156 income, and (ix) for property placed in service after September 10,  
157 2001, but prior to September 11, 2004, in taxable years ending after  
158 September 10, 2001, any additional allowance for depreciation under  
159 subsection (k) of Section 168 of the Internal Revenue Code, as provided  
160 by Section 101 of the Job Creation and Worker Assistance Act of 2002,  
161 to the extent deductible in determining federal adjusted gross income.

162 (B) There shall be subtracted therefrom (i) to the extent properly  
163 includable in gross income for federal income tax purposes, any  
164 income with respect to which taxation by any state is prohibited by  
165 federal law, (ii) to the extent allowable under section 12-718, exempt  
166 dividends paid by a regulated investment company, (iii) the amount of  
167 any refund or credit for overpayment of income taxes imposed by this  
168 state, or any other state of the United States or a political subdivision  
169 thereof, or the District of Columbia, to the extent properly includable  
170 in gross income for federal income tax purposes, (iv) to the extent  
171 properly includable in gross income for federal income tax purposes  
172 and not otherwise subtracted from federal adjusted gross income  
173 pursuant to clause (x) of this subparagraph in computing Connecticut  
174 adjusted gross income, any tier 1 railroad retirement benefits, (v) to the  
175 extent any additional allowance for depreciation under Section 168(k)  
176 of the Internal Revenue Code, as provided by Section 101 of the Job

177 Creation and Worker Assistance Act of 2002, for property placed in  
178 service after December 31, 2001, but prior to September 10, 2004, was  
179 added to federal adjusted gross income pursuant to subparagraph (A)  
180 (ix) of this subdivision in computing Connecticut adjusted gross  
181 income for a taxable year ending after December 31, 2001, twenty-five  
182 per cent of such additional allowance for depreciation in each of the  
183 four succeeding taxable years, (vi) to the extent properly includable in  
184 gross income for federal income tax purposes, any interest income  
185 from obligations issued by or on behalf of the state of Connecticut, any  
186 political subdivision thereof, or public instrumentality, state or local  
187 authority, district or similar public entity created under the laws of the  
188 state of Connecticut, (vii) to the extent properly includable in  
189 determining the net gain or loss from the sale or other disposition of  
190 capital assets for federal income tax purposes, any gain from the sale  
191 or exchange of obligations issued by or on behalf of the state of  
192 Connecticut, any political subdivision thereof, or public  
193 instrumentality, state or local authority, district or similar public entity  
194 created under the laws of the state of Connecticut, in the income year  
195 such gain was recognized, (viii) any interest on indebtedness incurred  
196 or continued to purchase or carry obligations or securities the interest  
197 on which is subject to tax under this chapter but exempt from federal  
198 income tax, to the extent that such interest on indebtedness is not  
199 deductible in determining federal adjusted gross income and is  
200 attributable to a trade or business carried on by such individual, (ix)  
201 ordinary and necessary expenses paid or incurred during the taxable  
202 year for the production or collection of income which is subject to  
203 taxation under this chapter but exempt from federal income tax, or the  
204 management, conservation or maintenance of property held for the  
205 production of such income, and the amortizable bond premium for the  
206 taxable year on any bond the interest on which is subject to tax under  
207 this chapter but exempt from federal income tax, to the extent that  
208 such expenses and premiums are not deductible in determining federal  
209 adjusted gross income and are attributable to a trade or business  
210 carried on by such individual, (x) (I) for a person who files a return  
211 under the federal income tax as an unmarried individual whose

212 federal adjusted gross income for such taxable year is less than fifty  
213 thousand dollars, or as a married individual filing separately whose  
214 federal adjusted gross income for such taxable year is less than fifty  
215 thousand dollars, or for a husband and wife who file a return under  
216 the federal income tax as married individuals filing jointly whose  
217 federal adjusted gross income for such taxable year is less than sixty  
218 thousand dollars or a person who files a return under the federal  
219 income tax as a head of household whose federal adjusted gross  
220 income for such taxable year is less than sixty thousand dollars, an  
221 amount equal to the Social Security benefits includable for federal  
222 income tax purposes; and (II) for a person who files a return under the  
223 federal income tax as an unmarried individual whose federal adjusted  
224 gross income for such taxable year is fifty thousand dollars or more, or  
225 as a married individual filing separately whose federal adjusted gross  
226 income for such taxable year is fifty thousand dollars or more, or for a  
227 husband and wife who file a return under the federal income tax as  
228 married individuals filing jointly whose federal adjusted gross income  
229 from such taxable year is sixty thousand dollars or more or for a  
230 person who files a return under the federal income tax as a head of  
231 household whose federal adjusted gross income for such taxable year  
232 is sixty thousand dollars or more, an amount equal to the difference  
233 between the amount of Social Security benefits includable for federal  
234 income tax purposes and the lesser of twenty-five per cent of the Social  
235 Security benefits received during the taxable year, or twenty-five per  
236 cent of the excess described in Section 86(b)(1) of the Internal Revenue  
237 Code, (xi) to the extent properly includable in gross income for federal  
238 income tax purposes, any amount rebated to a taxpayer pursuant to  
239 section 12-746, (xii) to the extent properly includable in the gross  
240 income for federal income tax purposes of a designated beneficiary,  
241 any distribution to such beneficiary from any qualified state tuition  
242 program, as defined in Section 529(b) of the Internal Revenue Code,  
243 established and maintained by this state or any official, agency or  
244 instrumentality of the state, (xiii) to the extent properly includable in  
245 gross income for federal income tax purposes, the amount of any  
246 Holocaust victims' settlement payment received in the taxable year by

247 a Holocaust victim, [and] (xiv) to the extent properly includable in  
248 gross income for federal income tax purposes of an account holder, as  
249 defined in section 31-51ww, interest earned on funds deposited in the  
250 individual development account, as defined in section 31-51ww, of  
251 such account holder, and (xv) any amount paid by a health care  
252 provider for premiums on a professional liability insurance policy for  
253 risks related to the provision of health care.

254 (C) With respect to a person who is the beneficiary of a trust or  
255 estate, there shall be added or subtracted, as the case may be, from  
256 adjusted gross income such person's share, as determined under  
257 section 12-714, in the Connecticut fiduciary adjustment.

258 Sec. 5. Section 4-28e of the general statutes is repealed and the  
259 following is substituted in lieu thereof (*Effective July 1, 2004*):

260 (a) There is created a Tobacco Settlement Fund which shall be a  
261 separate nonlapsing fund. Any funds received by the state from the  
262 Master Settlement Agreement executed November 23, 1998, shall be  
263 deposited into the fund.

264 (b) (1) The Treasurer is authorized to invest all or any part of the  
265 Tobacco Settlement Fund, all or any part of the Tobacco and Health  
266 Trust Fund created in section 4-28f, as amended, and all or any part of  
267 the Biomedical Research Trust Fund created in section 19a-32c. The  
268 interest derived from any such investment shall be credited to the  
269 resources of the fund from which the investment was made.

270 (2) Notwithstanding sections 3-13 to 3-13h, inclusive, the Treasurer  
271 shall invest the amounts on deposit in the Tobacco Settlement Fund,  
272 the Tobacco and Health Trust Fund and the Biomedical Research Trust  
273 Fund in a manner reasonable and appropriate to achieve the objectives  
274 of such funds, exercising the discretion and care of a prudent person in  
275 similar circumstances with similar objectives. The Treasurer shall give  
276 due consideration to rate of return, risk, term or maturity,  
277 diversification of the total portfolio within such funds, liquidity, the  
278 projected disbursements and expenditures, and the expected

279 payments, deposits, contributions and gifts to be received. The  
280 Treasurer shall not be required to invest such funds directly in  
281 obligations of the state or any political subdivision of the state or in  
282 any investment or other fund administered by the Treasurer. The  
283 assets of such funds shall be continuously invested and reinvested in a  
284 manner consistent with the objectives of such funds until disbursed in  
285 accordance with this section, section 4-28f, as amended, or section 19a-  
286 32c.

287 (c) (1) For the fiscal year ending June 30, 2001, disbursements from  
288 the Tobacco Settlement Fund shall be made as follows: (A) To the  
289 General Fund in the amount identified as "Transfer from Tobacco  
290 Settlement Fund" in the General Fund revenue schedule adopted by  
291 the General Assembly; (B) to the Department of Mental Health and  
292 Addiction Services for a grant to the regional action councils in the  
293 amount of five hundred thousand dollars; and (C) to the Tobacco and  
294 Health Trust Fund in an amount equal to nineteen million five  
295 hundred thousand dollars.

296 (2) For the fiscal [year] years ending June 30, 2002, [and each fiscal  
297 year thereafter] June 30, 2003, and June 30, 2004, disbursements from  
298 the Tobacco Settlement Fund shall be made as follows: (A) To the  
299 Tobacco and Health Trust Fund in an amount equal to twelve million  
300 dollars; (B) to the Biomedical Research Trust Fund in an amount equal  
301 to four million dollars; (C) to the General Fund in the amount  
302 identified as "Transfer from Tobacco Settlement Fund" in the General  
303 Fund revenue schedule adopted by the General Assembly; and (D) any  
304 remainder to the Tobacco and Health Trust Fund.

305 (3) For the fiscal year ending June 30, 2005, and each fiscal year  
306 thereafter, disbursements from the Tobacco Settlement Fund shall be  
307 made as follows: (A) To the Tobacco and Health Trust Fund in an  
308 amount equal to twelve million dollars; (B) to the Biomedical Research  
309 Trust Fund in an amount equal to four million dollars; (C) to the  
310 General Fund in the amount identified as "Transfer from Tobacco  
311 Settlement Fund" in the General Fund revenue schedule adopted by

312 the General Assembly, which amount shall include, but not be limited  
 313 to, an amount equal to the total exemptions claimed by health care  
 314 providers for premiums on professional liability insurance policies  
 315 pursuant to subdivision (20) of subsection (a) of section 12-701, as  
 316 amended by this act; (D) to the Healthy Connecticut Fund in an  
 317 amount identified as "Transfer from Tobacco Settlement Fund to  
 318 Healthy Connecticut Fund" in the revenue schedule adopted by the  
 319 General Assembly; (E) to the Medical Malpractice Reinsurance Fund in  
 320 an amount identified as "Transfer from Tobacco Settlement Fund to  
 321 Medical Malpractice Reinsurance Fund" in the revenue schedule  
 322 adopted by the General Assembly; and (F) any remainder to the  
 323 Tobacco and Health Trust Fund.

324 (d) For the fiscal year ending June 30, 2000, five million dollars shall  
 325 be disbursed from the Tobacco Settlement Fund to a tobacco grant  
 326 account to be established in the Office of Policy and Management.  
 327 Such funds shall not lapse on June 30, 2000, and shall continue to be  
 328 available for expenditure during the fiscal year ending June 30, 2001.

329 (e) Tobacco grants shall be made from the account established  
 330 pursuant to subsection (d) of this section by the Secretary of the Office  
 331 of Policy and Management in consultation with the speaker of the  
 332 House of Representatives, the president pro tempore of the Senate, the  
 333 majority leader of the House of Representatives, the majority leader of  
 334 the Senate, the minority leader of the House of Representatives, the  
 335 minority leader of the Senate, and the cochairpersons and ranking  
 336 members of the joint standing committees of the General Assembly  
 337 having cognizance of matters relating to public health and  
 338 appropriations and the budgets of state agencies, or their designees.  
 339 Such grants shall be used to reduce tobacco abuse through prevention,  
 340 education, cessation, treatment, enforcement and health needs  
 341 programs.

This act shall take effect as follows:	
Section 1	July 1, 2004
Sec. 2	July 1, 2004

Sec. 3	<i>July 1, 2004</i>
Sec. 4	<i>from passage and applicable to taxable years commencing on or after January 1, 2004</i>
Sec. 5	<i>July 1, 2004</i>

**PRI**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 05 \$</b>	<b>FY 06 \$</b>
Revenue Serv., Dept.	GF - Revenue Loss	7.5 million - 11.25 million	7.5 million - 11.25 million
Auditors	GF - None	None	None
UConn Health Ctr.	Various - Savings	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

#### **Explanation**

The bill results in an estimated revenue loss of \$7.5 million - \$11.25 million annually to the General Fund by allowing health care providers to deduct any amount paid from medical malpractice insurance premium from their adjusted gross income for Connecticut state income tax purposes. Total reported medical malpractice premiums for all health care providers and entities paid in Connecticut in 2002 were \$180 million of which an estimated \$120 million were associated with doctors only (not including other health care professionals). However, additional unreported premiums could add an additional 25% to these totals. Applying the highest marginal personal income tax rate (5%) to these estimates yields a revenue loss of \$7.5 million to \$11.25 million per year.

The bill establishes 2 funds and allows transfers from the Tobacco Settlement Fund (TSF) to them (the estimated transfers are \$30.0 million to the Healthy Connecticut Fund and \$12 million to the Medical Malpractice Reinsurance Fund.) However, the funding would only be provided if the revenue schedule adopted by the General Assembly in Section 131 of the PA 03-1 (June 30 Special Session) was readopted to transfer resources to these funds.

An estimated \$113.0 million will be received by Connecticut from tobacco companies per the Master Settlement Agreement in FY 05. The FY 05 revenue estimates adopted by the Finance Committee reflect a transfer of \$111.0 million from the TSF to the General Fund. The remaining \$2.0 million is to be deposited to the Biomedical Research Trust Fund.

***Healthy Connecticut Fund (Sections 1 and 2)***

The bill establishes the Healthy Connecticut Fund and requires it to reimburse any portion of a medical malpractice claim, settlement, or judgment, which represents the deductible applicable to a provider's coverage. Any provider licensed in the state may participate in the fund only if their primary practice is in the state and the provider meets conditions established by the commissioner. The bill sets the maximum amount of reimbursement at \$50,000 for a medical professional and \$100,000 for a medical entity (such as a hospital).

The cost of these reimbursements is estimated at \$29.3 million annually but would likely be higher<sup>1</sup>. In addition, the bill requires that any expenses associated with operating the fund by the Department of Insurance be borne by the Healthy Connecticut Fund. The expenses for fund management, claims review and disbursement is estimated at \$500,000 including fringe benefits for three staff.

***Medical Malpractice Reinsurance Fund (Section 3)***

The bill also establishes the Medical Malpractice Reinsurance Fund (MMRF) and requires it to pay malpractice claims, settlements or judgments exceeding \$750,000 per provider, but not to exceed \$1.75 million per claim, settlement or judgment; or \$1.5 million per hospital, but not to exceed \$2.5 million per claim, settlement or judgment.

The annual amount needed to fund the MMRF is estimated to be \$12.0 million.

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<sup>1</sup> This figure is based on an analysis of hospital and doctor claims, settlements and awards. These make up the vast majority of all medical malpractice claims, settlements and awards but a portion of certain allied health profession claims, settlements and awards are not included in this estimate.

It is anticipated that the Auditors of Public Accounts will be able to complete an annual audit (by December 31<sup>st</sup>) of the above funds and submit an audited financial report to the Department of Insurance (DOI), the State Treasurer and the General Assembly within its anticipated budgetary resources.

**Savings**

To the extent that the measures in this bill lower medical malpractice and malpractice insurance costs, the John Dempsey Hospital at the University of Connecticut Health Center may realize future savings. The extent of these savings cannot be determined at this time.

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**OLR Bill Analysis**

sSB 61

***AN ACT ESTABLISHING A HEALTHY CONNECTICUT FUND, A MEDICAL MALPRACTICE REINSURANCE FUND AND A PERSONAL TAX EXEMPTION FOR MEDICAL MALPRACTICE INSURANCE PREMIUM COSTS*****SUMMARY:**

The bill establishes a Healthy Connecticut Fund to reimburse any portion of a medical malpractice claim, settlement, or judgment that represents the deductible applicable to a provider's coverage. The fund is liable for payment of such deductibles pursuant to claims, settlements, or judgments against licensed health care providers who comply with the bill only where the claim, settlement, or judgment arises from an event that occurs on or after the effective date of the first plan of operation established by the bill. It is also liable for reasonable and necessary expenses incurred in payment of such deductibles and the fund's administrative expenses.

The bill authorizes the insurance commissioner to approve for providers who participate in the Healthy Connecticut Fund, professional liability insurance policies that contain a deductible that does not exceed (1) \$50,000 for a medical professional and (2) \$100,000 for a medical entity, including, but not limited to, a hospital. These policies are subject to laws governing insurance policies issued in Connecticut.

The bill also establishes the Medical Malpractice Reinsurance Fund for paying 50% of the portion of each medical malpractice claim, settlement, or judgment of between (1) \$750,000 and \$1,750,000 for an individual provider and (2) \$1,500,000 and \$2,500,000 for a hospital. Thus, the fund would be liable for a maximum of \$500,000 for each claim, settlement, or judgment (see COMMENT).

The bill specifies that the provider or hospital remains liable for any other portion of a medical malpractice claim, settlement, or judgment.

The bill requires the insurance commissioner to adopt regulations to establish a plan of operation for the funds.

The bill allows health care providers to deduct from their Connecticut adjusted gross income for state income tax purposes any amount they paid for premiums on a medical malpractice insurance policy. (The bill does not define "health care provider" for this tax provision.)

Finally, the bill requires that money for the funds and to offset the tax losses caused by the deductions come from the Tobacco Settlement Fund.

EFFECTIVE DATE: July 1, 2004, except for the tax provision, which becomes effective from passage and applies to taxable years beginning January 1, 2004.

### **OPERATION OF THE HEALTHY CONNECTICUT INSURANCE FUND AND THE MEDICAL MALPRACTICE REINSURANCE FUND**

The bill establishes the same requirements for both funds. Specifically, the bill allows the funds to contain any money required by law to be deposited in them. The funds must be held by the state treasurer separate and apart from all other money, funds, and accounts. The interest derived from the investment of each fund must be credited to it. Amounts in the funds may be expended only at the insurance commissioner's direction. Any balance remaining in the funds at the end of any fiscal year must be carried forward in them to the next fiscal year.

The bill allows any licensed provider to participate in the funds if (1) its primary place of practice is in Connecticut and (2) it meets the standards outlined in the plan of operation adopted by the Insurance commissioner in regulation.

The bill requires that the Tobacco Settlement Fund pay any deficit in the funds. It specifies the state is not responsible for any costs, expenses, liabilities, judgments, or other obligations of the funds and all books, records, and audits of the funds are public records.

The bill requires that, by December 31 of each year, the auditors of public accounts must audit the records of the funds and furnish an audited financial report to the commissioner, state treasurer, and the general assembly.

### **TOBACCO SETTLEMENT FUND DISBURSEMENTS**

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By law, disbursements from the Tobacco Settlement Fund are: (1) \$12 million to the Tobacco and Health Trust Fund, (2) \$4 million to the Biomedical Research Trust Fund, (3) an amount to the General Fund specified in the General Fund revenue schedule adopted by the General Assembly; and (4) any remainder to the Tobacco and Health Trust Fund.

For FYs 2003-04 and 2004-05, the state budget act transfers from the Tobacco Settlement Fund to the General Fund (1) a \$12 million annual allocation that otherwise would go to the Tobacco and Health Trust Fund and (2) \$2 million of the \$4 million annual allocation that would otherwise go to the Biomedical Research Trust Fund (PA 03-1, June 30 Special Session). For FY 2004-05, this bill appears to eliminate these transfers, and adds, for FY 2004-05 and all subsequent fiscal years, requirements that (1) the disbursement to the General Fund include an amount equal to the total exemptions claimed by health care providers for premiums on medical malpractice insurance under the bill and (2) unspecified annual disbursements to the Healthy Connecticut Fund and the Medical Malpractice Reinsurance Fund. (Because the budget act has a notwithstanding clause, it is not clear whether the transfers are reversed for FY 2004-05.)

## **COMMENT**

### ***Medical Malpractice Reinsurance Fund***

The bill defines a “licensed health care provider” or “provider” for purposes of the Medical Malpractice Reinsurance Fund. The definition includes a nursing home. But the provision dealing with the amount the fund can pay appears to exclude nursing homes.

## **BACKGROUND**

### ***Related Bills***

sSB 60 was voted out of the Program Review and Investigations Committee on March 3. It makes numerous changes to tort law; insurance regulation; and the oversight, regulation, and discipline of doctors. It is very similar to sSB 394, except sSB 394 contains provisions for a fund to pay for malpractice insurance deductibles and sSB 60 does not.

SB 141 was voted out of the Program Review and Investigations Committee on March 3, 2004. The bill is based on the committee's investigation and report.

The bill makes numerous changes to tort law, insurance regulation, and disciplining of health care providers. Tort reform provisions deal with such areas as offer of judgments, mediation, attorney's fees, elimination of the screening panel, and establishing a task force to study alternatives to a tort system. Insurance provisions include prior rate approval, data gathering, and captive insurers.

Other provisions deal with investigatory complaints against doctors, the complaint investigation process and standards, data gathering, mandatory continuing education for doctors, and a task force to examine the feasibility of developing a doctor relicensing exam.

sSB 394 was voted out of the Insurance and Real Estate Committee on March 9. The bill makes numerous changes to tort law; insurance regulation; and the oversight, regulation, and discipline of doctors. It is very similar to sSB 60 except it contains a provision for a fund, whereas sSB 60 does not. The insurance provisions relate to prior rate approval, captive insurers, data collection, and the requirement of certain companies to offer malpractice insurance. It establishes surgery protocols, electronic medical records, and investigation of doctors.

### **COMMITTEE ACTION**

Program Review and Investigations Committee

Joint Favorable Substitute

Yea 11      Nay 0