Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL: **Sub. H.B. 698** DATE: **December 2, 1998**

STATUS: **As Re-Reported by Senate Insurance, Commerce & Labor** SPONSOR: **Rep. Van Vyven**

LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**

CONTENTS: **Make corrections and clarifications to provisions of the Health Insuring Corporation Law and the Sickness and Accident Law enacted by Sub H.B. 374 and Sub S.B. 67 and other recently enacted legislation**

Create the Save Our Sight Fund to support eye health and safety programs for children and requires the Registrar of Motor Vehicles to request voluntary contributions for the fund.

Allows a dentist to authorize a dental hygienist to provide dental hygiene services when the supervising dentist is not physically present, allows qualified dental personnel to polish the clinical crowns of teeth, and designates the month of June as "Prostate Cancer Awareness Month."

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	-0-	Unknown increase
State Special Revenue Fund (Save Our Sight Fund)			
Revenues	- 0 -	Gain of $167,500 to $850,000	Gain of $670,000 to $3.4 million
Expenditures	- 0 -	Increase of up to $120,000*	Increase of up to $155,000
State Highway Safety Fund 4W4			
Revenues	- 0 -	Gain of up to $10,000	Minimal gain
Expenditures	- 0 -	Increase of up to $10,000	Minimal increase
Occupational Licensing and Regulatory Fund (GSF Fund 4K9)			
Revenues	-0-	Potential gain of less than $35,000	Potential gain of approximately $35,000
Expenditures	-0-	Potential increase of up to $21,000	Potential increase of up to $35,000
Reparations Fund (Fund 402)			
Revenues	-0-	Potential negligible gain	Potential negligible gain
Expenditures	-0-	-0-	-0-

**In FY 1999, the Department of Health will need to fund start-up costs of approximately $60,000 using an unknown source of revenue before SOS Funds accumulate. In future fiscal years, these expenses will be funded in the SOS Fund.*

State Fiscal Highlights

- This bill clarifies that a Health Insuring Corporation (HIC) line of business of a "regular" indemnity insurer is to be taxed at 1.0% of premium income (phased in from 1999 to 2003) rather than 1.4%. This difference could result in a loss of tax revenue in FY 2003 and succeeding years of up to $9.4 million to $16 million per year. Actual revenue losses would probably be smaller than that amount because the maximum loss assumes that all health insurance businesses is eventually written through HICs. Annual losses would be also be smaller than the estimated maximum during the phase-in period.

- The bill removes current prohibition on the increase in the capital cost basis of the assets of long-term care facilities if such facilities are transferred or leased between related parties, thus potentially increasing GRF expenditures in future years.

- The bill creates the Save Our Sight (SOS) Fund, which would receive voluntary contributions of $1 from individuals applying for or renewing a motor vehicle registration. The amount received by the fund would depend upon participation.

- The revenue estimates for the SOS Fund were determined using the number of total motor vehicle registrations in 1997 (11,196,310). If everyone donated each year, estimated revenues would total $11 million. Based upon the 30 percent contribution rate for the Second Chance Trust Fund (SCTF), on which the SOS Fund is based, a more realistic revenue estimate would be $3.4 million. The low end of the estimate was determined by taking 1/5 of the $3.4 million, which assumes individuals would donate only once in every five years.

- The Bureau of Motor Vehicles (BMV) will initially incur costs of about $10,000 related to modifying computer programs related to the SOS Fund program. In future years, BMV expenditures should be minimal. Under the bill, DOH must reimburse BMV for its administrative costs incurred in performing its duties in relation to the SOS Fund. The DOH estimates that it will have annual costs of $155,000 to operate the program. These expenses will ultimately be covered by SOS Fund revenue. Initially, however, the department will need to cover the programs activities with existing sources.

- The Department of Health (DOH) will use the SOS funds to provide support to nonprofit organizations offering vision services in all counties of the state. To receive support, these organizations must submit a request to DOH demonstrating that the organization meets the requirements established in the bill. The DOH is unsure of how it will fund the initial start-up costs for the program. LBO estimates that the department will have $60,000 in expenses related to the SOS program prior to receipt of voluntary contributions.

- Potential minimal increase in revenues for the State Dental Board raised by fees accompanying application for certificate of completion of training for coronal polishing. Administrative costs similarly would increase to handle the workload. These would be expected to approximately offset one another after first year expenses.

- Negligible locally collected "court costs" revenue may be generated for the state GRF and Reparations Fund, a.k.a., Victims of Crimes Fund.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.
- Counties and municipalities could receive a small amount of court cost and fine revenue. Expenditures for prosecutions, if any, would be insignificant.

Detailed Fiscal Analysis

The bill makes clarifications and technical changes to recently enacted laws (Sub H.B. 374, effective 6/30/97 and Sub. S.B. 67, effective 6/4/97). In general the bill conforms provisions in the Health Insuring Corporation Law and the Sickness and Accident Insurance Law with the Federal Health Insurance Portability and Accountability Act of 1996; clarifies other provisions in these laws; and specifies how health insuring corporations are to bring their net worth into compliance with the Health Insuring Corporation Law.

The bill also makes changes to HIC/Physician/Consumer/Utilization Review relationships created by recently enacted (12/16/97) Am. Sub. H.B. 361(effective 10/1/98), by removing the requirement of a written confirmation of the outcome of a utilization review to the enrollee and the provider. Another provision of the bill expands the membership of the Continuing Education Committee of insurance agents created by Am. Sub S.B. 154, effective June 30th 1998 (certain sections effective October 1, 1998)

According to a spokesperson for the Department of Insurance, the provisions of the bill are technical in nature and have no fiscal effect on the Department.

HIC Premium Taxes

This bill also clarifies the tax treatment of premium income received by HICs that are operated as lines of business by indemnity insurers. H.B. 215 established a new insurance tax structure where HICs would have to pay premium taxes – in their prior incarnation as HMOs, they were untaxed – but would pay at a lower rate than regular insurance companies. Domestic and foreign insurers take a phased-in path to paying a tax of 1.4% of premium income by tax year 2003 (FY 2003). HICs only pay a tax of 1.0% of premium income by the time the new tax is fully phased in. Furthermore, the tax is phased in as follows:

Tax Year 1999 – 0.21%
Tax Year 2000 – 0.42%
Tax Year 2001 – 0.60%
Tax Year 2002 – 0.80%
Tax Year 2008 – 1.00%

H.B. 215 was not explicit about what to do about HICs that are operated as lines of business by "regular" indemnity insurers. There are at least two insurers in Ohio that already operate a "HIC line of business." This bill states that the HIC line of business is to be treated just as a separate company HIC would be. The HIC line of business will pay a 1.0% tax and follow

the HIC phase-in schedule, while the rest of the indemnity insurer's business will be subjected to the 1.4% tax rate by 2003 and follow a different phase-in schedule.

To summarize, H.B. 215 created an incentive to write health insurance through a HIC, rather than through a traditional indemnity insurer, because the HIC tax rate is only 1.0%. This bill also makes HIC lines of business eligible for the 1.0% rate: one need not form a separate company to take advantage of the lower rate.

LBO is aware of two insurers that have line of business HICs that should benefit right away from being taxed at the lower rate. They are owned by the Anthem Insurance Group and by Medical Mutual. LBO's 1995 data from the Ohio Department of Insurance and the National Association of Insurance Commissioners (NAIC) indicates that these companies had health insurance premiums of about $2.36 billion. When LBO estimated the revenue impact of changing the insurance tax structure under H.B. 215, we assumed that all the companies in both of these groups would be taxed as domestic insurers and would pay the 1.4% tax on all their business, and would follow the domestic insurer phase-in schedule. Based on the premium data cited above, if all of Anthem's and Medical Mutual's business were written through their HICs, taxing their business at 1.0% rather than at 1.4% could reduce state insurance tax collections by as much as $9.4 million in FY 2003 (full phase-in). The loss would be greater if premium volume increases between 1995 and 2003. A spokesperson for Anthem and Medical Mutual stated the indemnity insurance components of their business are still profitable and that they do not foresee shifting much current indemnity business to the HIC form. Unfortunately, LBO has no figures on the share of HIC premiums vs. indemnity premiums, so the best we can do is to indicate the maximum potential loss.

In the longer run, there could be an incentive for more insurers than just the two mentioned above to create HICs to sell health insurance. LBO estimates that the maximum revenue loss, if all health insurance ended up being taxed at 1.0% rather than 1.4%, would be $16.1 million by FY 2003. That is, insurance tax revenues would be $16.1 million less than LBO estimated at the time of the passage of H.B. 215. Once again, it is unlikely that all health insurance would be switched to HIC status because of the additional regulatory burdens that HICs face, whether as separate companies or as lines of business. At this point, LBO is not in a position to attempt estimating how much health insurance might be switched to HIC status to take advantage of the lower tax rate.

Ohio Department of Human Services – Long Term Care Facilities

Current law requires the Ohio Department of Human Services to pay a per day per patient reimbursement for the reasonable capital costs of eligible nursing facilities (NF) and intermediate care facilities for the mentally retarded (ICF-MR). The reimbursement is calculated differently for transfers or releases between related parties and those between unrelated parties. "Relative of owner" is defined as an individual who is related to the owner of a NF or ICF-MR by one of the following relationships: spouse; natural or adopted parent, child, or sibling; step-parent, step-child, step-brother or step-sister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; foster parent, foster child, foster brother, or foster sister.

The amendment provides that reimbursement for a transfer or lease between related parties will be calculated as if it was a transfer or lease between unrelated parties if certain conditions are met. This could result in an increase in per diem rates for facilities that are transferred or leased between related parties. This potentially increases GRF expenditures for long-term care facilities in future years.

Department of Health

This bill requires the director of the Department of Health to submit a report outlining data collected statewide and nationally on the outcomes of cardiac catheterization performed without an on-site open-heart surgery service to the Speaker of the House of Representatives and the President of the Senate by October 1, 1999. Under existing law, the department is collecting the information spelled out in the bill. According to the department, it is having problems meeting the financial costs of collecting this data.

Save Our Sight Fund

This bill creates the Save Our Sight (SOS) Fund for the receipt of voluntary contributions of $1 when an individual applies for or renews a motor vehicle registration. All investment earnings from the fund shall remain with the fund. The Department of Health (DOH) shall use the money in the SOS Fund for the following purposes:

1. To provide support to nonprofit organizations that offer vision services in all 88 counties and have demonstrated experience in the delivery of vision services;
2. To develop and distribute informational materials on the importance of eye care and safety to the registrar of motor vehicles and each deputy registrar. These materials would be distributed to individuals when renewing or apply for a motor vehicle registration; and
3. To pay for costs incurred by DOH in administering the SOS Fund.

The Bureau of Motor Vehicles (BMV) shall be reimbursed by the DOH to cover administrative costs incurred in performing its duties involving the SOS Fund.

Revenue Estimates

According to information provided by the BMV, there were 11,196,310 motor vehicle registrations in 1997. The following table illustrates the number of registrations and total license revenue generated since 1993.

	1993	1994	1995	1996	1997
Total Registrations	10,362,304	10,707,845	10,871,675	11,023,868	11,196,310
Total License Revenue	$260,093,577	$269,270,554	$274,279,387	$278,367,714	$285,241,989

The SOS Fund is structured after the Second Chance Trust Fund (SCTF) which was created by Am. Sub. S.B. 300 of the 121st General Assembly. Since July 1997, the inception date of the SCTF, and September 30, 1998, voluntary contributions to the fund totaled $926,293. This is an average of almost $62,000 per month. During FY 1998, assuming that no one donated more than $1, a total of just over 730,000 individuals contributed to the fund. During a given year, the

total number of drivers licenses issued averages about 2.5 million. This means that in FY 1998, the first year of the SCTF, about 30 percent of individuals made voluntary donations to the fund.

Using the 30 percent contribution rate as the basis to determine potential revenues for the SOS Fund led to a LBO estimation of $3.4 million per year in revenue for the fund. This figure does not include income from investments and ISTV's. It is important to note, however, that due to the newness of the SCTF, it is impossible to know if the 30 percent donation rate will increase or decrease, especially since there are about 5 million Ohioans who have not yet renewed their drivers license since the inception of the SCTF.

If one assumes that there is a fixed 30 percent of the population will donate, it is possible that the SOS Fund and the SCTF will "compete" for donations. Under this scenario, an individual will have five opportunities to contribute: once for their drivers license (with donations going to the SCTF) and four times during the period until their next license renewal (with those donations going to the SOS Fund). If the person decides that they will donate only once during this period, an estimate for the low-end of the revenue is determined by taking 1/5 of the 30 percent revenue figure. This method yields potential revenue of $670,000.

Expenditure Estimates

The Department of Health estimates total operating expenses for the SOS Fund to be approximately $155,000. Annual expenses include just under $70,000 for a new staff person's salary and fringe benefits. Indirect costs charged off against all departmental payroll costs will lead to another $25,000 in expenses. These indirect costs, collected at 34.75 percent of payroll expenses, pay for DOH activities unrelated to a specific program, like the Director's Office and the Fiscal Office.

Additional DOH expenses include $60,000 for printing the informational materials on the importance of eye care and safety that must be distributed to the Registrar of Motor Vehicles and each deputy registrar. Since these materials must be printed and distributed prior to receipt of SOS Funds, the department stated that it is unsure where in its budget it will be able to fund this start-up activity. Other costs for the department include traveling to the various deputy registrars to educate them about the specifics on the program. Ultimately, all costs associated with the SOS Fund will be covered fully with revenue raised by the program.

Based upon estimates for BMV's operating costs for the SCTF, LBO estimates that the bureau will have initial costs of no more than $10,000 related to one-time programming costs and general administrative costs. DOH stated that in FY 1997, the BMV requested about $7,200 from the department to cover its costs. In FY 1998, the BMV made no request to the DOH. For this reason, LBO estimates that aside from the initial programming costs, BMV will have minimal increase in expenditures related to the SOS Fund.

It is important to note that if other programs in addition to the SOS Fund and the SCTF are implemented, BMV will face additional costs related to computer programming issues. The increased number of programs could also lead to a drop in revenue for existing programs.

State Dental Board

This bill will allow a supervising dentist to authorize a dental hygienist to provide dental hygienist services when the dentist is not physically present. According to section 4715.22 of the Revised Code, a hygienist may provide services at the following locations: a dental office, public or private school, hospital, long-term care facility, dispensary, or public institution.

The bill modifies ORC 4715.22 by establishing a list of eleven requirements that must all be met in order to allow a dental hygienist to provide hygiene services when the supervising dentist is not physically present. According to the Dental Board, the changes related to dental hygienists established in the bill will have no fiscal impact for the board.

In addition to establishing rules to delineate what procedures a hygienist may provide in the absence of a dentist, the bill also amends section 4715.39 of the Revised Code to allow the Dental Board to modify its rules to allow qualified personnel to polish the clinical crowns of teeth. The bill defines qualified personnel as having "successfully completed training in the polishing of clinical crowns through a program accredited by the commission on dental accreditation or equivalent training approved by the board." Only hygienists with at least two years and a minimum of three thousand hours of experience may provide such services. The bill further specifies that no more than two such personnel shall polish crowns under the supervision of the same dentist at any given time.

The administrative costs of the Dental Board would increase to handle the workload required to issue such certificates. Although each dentist may employ up to two qualified personnel to polish clinical crowns, according to a spokesperson for the Ohio State Dental Association, it is unlikely that most dentists would choose to do so since they already employ dental hygienists who can perform this work. The dental offices most likely to employ qualified personnel, other than hygienists, to polish crowns would be those of orthodontists and dentists practicing in rural areas. At the present time, there are 385 people practicing in the state as orthodontists. Thus the number of certificates of completion issued to dental assistants for the purpose of qualifying to polish crowns is likely to be only a small percentage of the potential of two persons for each of the state's 7500 dentists. It remains a possibility, however, that the increased workload to the Dental Board may require additional personnel. A spokesperson for the Dental Board has stated that an additional Clerk II or Administrative Assistant I would be required. One-time costs for such an addition to the Board's personnel would be approximately $12,500. Personnel and maintenance costs in the remainder of fiscal year 1999 would be approximately $8400. Total costs in the remainder of FY 1999 would thus be approximately $20,900. In subsequent years, personnel and maintenance costs would be approximately $33,300. These costs would be offset by the collection of a fee for the certificate of completion.

Penalties

Section 4715.99 of the Revised Code lists the various penalties for violations of Chapter 4715. of the Revised Code. Violators of ORC 4715.39 are guilty of a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. A person who commits a first violation of ORC 4715.22 is guilty of a fourth degree misdemeanor. For each subsequent offense, the person is guilty of a misdemeanor of the second degree.

Misdemeanors: Sentencing & Penalties			
Offense Level	*Maximum Sentence*	*Personal Fine*	*Organizational Fine*
Misdemeanor – 1st Degree	*6 months*	*Up to $1,000*	*Up to $5,000*
Misdemeanor – 2nd Degree	*90 days*	*Up to $750*	*Up to $4,000*
Misdemeanor – 3rd Degree	*60 days*	*Up to $500*	*Up to $3,000*
Misdemeanor – 4th Degree	*30 days*	*Up to $250*	*Up to $2,000*
Minor Misdemeanor	*No incarceration*	*Up to $100*	*Up to $1,000*

Felonies: Sentencing & Penalties			
Offense Level	*Basic Prison Term*	*Max. Post-Release Control*	*Maximum Fine*
Felony – 1st Degree	*3 to 10 Years*	*5 Years*	*$20,000*
Felony – 2nd Degree	*2 to 8 Years*	*4 Years*	*$15,000*
Felony – 3rd Degree	*1 to 5 Years*	*1-3 Years*	*$10,000*
Felony – 4th Degree	*6 to 18 Months*	*1 Year*	*$5,000*
Felony – 5th Degree	*6 to 12 Months*	*1 Year*	*$2,500*

State GRF and Reparations Fund

When an individual is convicted of or pleads guilty to a misdemeanor or felony offense, the court generally is required to collect an additional $11 in court costs and then pay it into the state's GRF. Although never referred to expressly in any of its enactments, the General Assembly intended that these moneys were to be used to assist public defender offices. Additionally, if an individual is convicted of or pleads guilty to a misdemeanor offense, the court generally is required to collect an additional $9 in court costs ($30 for a felony) and then pay it into the Reparations Fund, a.k.a., Victims of Crime Fund. Assuming that there will be few additional criminal cases created as a result of the bill, then the amount of additional revenue generated for the GRF and the Reparations Fund will be extremely small.

Local Revenue and Expenditures

Additional court costs and fine revenue may be generated for counties and municipalities, but as there most likely will be few additional criminal cases created by the bill, the amount of revenue to be generated should be extremely small. Court costs collected in most municipal courts generally must be paid into the treasury of the municipal corporation in which the municipal court is located. However, in the case of county-operated municipal courts, court costs generally must be paid into the county's treasury. Court costs collected in a county court must be paid into the county treasury. On the expenditure side, counties will bear the cost of prosecution in these cases.

❑ *LBO staff: Ogbe O. Aideyman, Senior Economist*
Fred Church, Senior Economist
Jeffrey M. Rosa, Budget/Policy Analyst
Steve Mansfield, Budget/Policy Analyst

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