

As amended by AM 371

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

| <b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES</b> (See narrative for political subdivision estimates) |                     |                |                     |                |
|---|---------------------|----------------|---------------------|----------------|
|   | <b>FY 2023-24</b>   |                | <b>FY 2024-25</b>   |                |
|   | <b>EXPENDITURES</b> | <b>REVENUE</b> | <b>EXPENDITURES</b> | <b>REVENUE</b> |
| GENERAL FUNDS   |                     |                |                     |                |
| CASH FUNDS  |                     |                |                     |                |
| FEDERAL FUNDS   |                     |                |                     |                |
| OTHER FUNDS   |                     |                |                     |                |
| <b>TOTAL FUNDS</b>  |                     |                |                     |                |

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

LB 68, as amended by AM 371, relates to the Nebraska Hospital-Medical Liability Act (NHMA). The bill proposes increasing the minimum amount of proof of financial responsibility of medical malpractice liability for all healthcare providers, effective January 1, 2025. The bill, as amended, proposes a loss limit increase from \$500,000 to \$8,000,000 under the Excess Liability Fund. Furthermore, the bill would increase aggregate limits for professional liability insurance from \$1,000,000 to \$3,000,000 for physicians and nurse anesthetists. The amount of aggregate liability insurance would remain the same at \$3,000,000.

**DAS:**  
 The Department of Administrative Services (DAS) makes the assumption that the increase in cost incurred by providers would be passed along to healthcare insurance consumers thus increasing the cost of the State of Nebraska’s medical plan premiums. The medical plan premiums are paid by the state at 79% and the remaining 21% are paid by state employees. Due to that the cost to the healthcare providers as proposed by this bill cannot be determined until such time the healthcare contracts are renegotiated, there is an indeterminate fiscal impact.

The allocation by fund type is based on a four-year average of health insurance premium expenditures:

| Fund Type      | Percentage by Fund Type |
|----------------|-------------------------|
| General Fund   | 50%                     |
| Cash Fund      | 25%                     |
| Federal Fund   | 20%                     |
| Revolving Fund | 5%                      |
| <b>Total</b>   | <b>100%</b>             |

**University & College Systems:**  
 It is further assumed that other state agencies, such as the University System, health insurance contracts negotiated separately from State employee contracts would also expect increases in medical plan premiums but the actual costs are indeterminable until healthcare contracts are renegotiated. It is anticipated that there would be a negative fiscal impact on general funds.

**University System (UNMC):**  
 The University of Nebraska Medical Center (UNMC) is currently contributing at the 50% maximum rate as established by the Excess Liability Fund thus the University utilized their current rate to estimate the increased cost. The University notes that UNMC’s insurer does not have an increase-limit-factor filed for this unusual amount of limits so an actuarial team would need to develop the factor and for it to be approved by the Nebraska Department of Insurance prior to being issued. It is anticipated that the University of Nebraska Medical Center’s projected market increase absent any exposure increase, is expected to be 8%.

Department of Insurance:

The Excess Liability Fund pays the difference between the insured's policy up to the Fund limit of statutorily set Fund limits. The Department of Insurance anticipates a decrease in expenditures of (\$2,810,000) based on the average of the amount paid per occurrence by the Excess Liability Fund over the past three years.

The Department of Insurance also anticipates an increase in premiums which would result in an increase of surcharge revenue paid to the Excess Liability Fund; however, this cost is indeterminate. However, if the revenue collected exceeds the amount necessary to maintain the Fund, the surcharge must be reduced.

There is no basis to disagree with these estimates.

| ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE                                |                 |   |
|--|-----------------|---|
| LB: 68   | AM: 371         | AGENCY/POLT. SUB: Department of Administrative Services (DAS) |
| REVIEWED BY: Ryan Walton   | DATE: 2/21/2023 | PHONE: (402) 471-4174   |
| COMMENTS: No basis to disagree with Department of Administrative Services of indeterminate fiscal impact from LB 68. |                 |   |

| ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE                          |                 |   |
|--|-----------------|---|
| LB: 68   | AM: 371         | AGENCY/POLT. SUB: Department of Insurance |
| REVIEWED BY: Ryan Walton   | DATE: 2/21/2023 | PHONE: (402) 471-4174                     |
| COMMENTS: Concur with the Department of Insurance assessment of fiscal impact from LB 68 as amended by AM 371. |                 |   |

| ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE  |                |   |
|--|----------------|---|
| LB: 68   | AM: 371        | AGENCY/POLT. SUB: University of Nebraska System |
| REVIEWED BY: Ryan Walton   | DATE: 3/3/2023 | PHONE: (402) 471-4174                           |
| COMMENTS: No basis to disagree with the University Of Nebraska System assessment of fiscal impact from LB 68 as amended by AM 371. |                |   |

Please complete ALL (5) blanks in the first three lines.

2023

LB<sup>(1)</sup> 68 AM 371

FISCAL NOTE

State Agency OR Political Subdivision Name: <sup>(2)</sup> Department of Administrative Services (DAS)  
- Employee Wellness & Benefits

Prepared by: <sup>(3)</sup> Jennifer Norris Date Prepared: <sup>(4)</sup> 2/16/2023 Phone: <sup>(5)</sup> 402-480-9728

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

|                 | <u>FY 2023-24</u>   |                | <u>FY 2024-25</u>   |                |
|-----------------|---------------------|----------------|---------------------|----------------|
|                 | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u> |
| GENERAL FUNDS   | _____               | _____          | _____               | _____          |
| CASH FUNDS      | _____               | _____          | _____               | _____          |
| FEDERAL FUNDS   | _____               | _____          | _____               | _____          |
| REVOLVING FUNDS | _____               | _____          | _____               | _____          |
| TOTAL FUNDS     | =====               | =====          | =====               | =====          |

**Explanation of Estimate:**

LB 68 AM 371 is a bill for an act relating to the Nebraska Hospital-Medical Liability Act to increase limits on and change provisions relating to medical malpractice liability, to change provisions relating to proof of financial responsibility and to harmonize provisions.

It is unknown what the exact financial impact will be to providers; however, it is anticipated that the cost of insurance to such medical providers will increase, and these cost increases would be passed along and increase the cost of services being provided as a result of these changes. Any increases in service costs would impact the cost of claims paid by State’s Health Plans, requiring increases in premiums.

The medical plans for the State of Nebraska are self-insured. The medical plan premiums are paid by the State of Nebraska (79%) and employees (21%).

The table below summarizes the estimated impact by fund type of any premium increase. The allocation by fund type is based on a four (4) year [2019 -2022] average of health insurance premium expenditures.

| <b>Fund Type</b> | <b>Percentage by Fund Type</b> |
|------------------|--------------------------------|
| General Fund     | 50%                            |
| Cash Fund        | 25%                            |
| Federal Fund     | 20%                            |
| Revolving Fund   | 5%                             |
| <b>Total</b>     | <b>100%</b>                    |

Any impact to a covered provider in a Dental or Vision Plan could result in increased costs and increased premiums. The Vision and Dental plan premiums are wholly paid by State of Nebraska employees.

The State of Nebraska – Employee Wellness & Benefits does not purchase malpractice liability insurance.

There is an unknown fiscal impact for LB 68 AM371 as introduced.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

| <u>POSITION TITLE</u>     | <u>NUMBER OF POSITIONS</u> |              | <u>2023-24</u>      | <u>2024-25</u>      |
|---------------------------|----------------------------|--------------|---------------------|---------------------|
|                           | <u>23-24</u>               | <u>24-25</u> | <u>EXPENDITURES</u> | <u>EXPENDITURES</u> |
| Benefits.....             |                            |              |                     |                     |
| Operating.....            |                            |              |                     |                     |
| Travel.....               |                            |              |                     |                     |
| Capital outlay.....       |                            |              |                     |                     |
| Aid.....                  |                            |              |                     |                     |
| Capital improvements..... |                            |              |                     |                     |
| TOTAL.....                |                            |              |                     |                     |

Please complete ALL (5) blanks in the first three lines.

**2023**

**LB<sup>(1)</sup> 68 AM371**

**FISCAL NOTE**

State Agency OR Political Subdivision Name: <sup>(2)</sup> Department of Insurance

Prepared by: <sup>(3)</sup> Jordan Blades Date Prepared: <sup>(4)</sup> 2/16/2023 Phone: <sup>(5)</sup> 402-471-1432

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

|               | <u>FY 2023-24</u>   |                | <u>FY 2024-25</u>   |                      |
|---------------|---------------------|----------------|---------------------|----------------------|
|               | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u>       |
| GENERAL FUNDS | _____               | _____          | _____               | _____                |
| CASH FUNDS    | _____               | _____          | _____               | _____                |
| FEDERAL FUNDS | _____               | _____          | _____               | _____                |
| OTHER FUNDS   | _____               | _____          | <u>-\$2,810,000</u> | <u>Indeterminate</u> |
| TOTAL FUNDS   | <u>_____</u>        | <u>_____</u>   | <u>-\$2,810,000</u> | <u>Indeterminate</u> |

**Explanation of Estimate:**

As amended by AM 371, LB68 would increase the minimum amount of proof of financial responsibility that health care providers are required to obtain in order to qualify for coverage under the Excess Liability Fund beginning January 1, 2025, from \$500,000 to \$800,000 per occurrence. LB 68 would increase aggregate limits for professional liability insurance from \$1,000,000 to \$3,000,000 for physicians and nurse anesthetists. Hospitals currently have an aggregate liability amount of \$3,000,000 which would remain the same under the bill.

Currently the insured's policy pays up to \$500,000 per occurrence and the Excess Liability Fund pays the amount remaining up to the Fund limit of \$2,250,000 per occurrence.

Under LB68, the insured's Medical Malpractice policy would pay the portion per occurrence between \$500,000 and \$800,000, that is currently being paid by the Excess Liability Fund. The reduced expenditures above show the average amount paid by the Excess Liability Fund in that range from \$500,000 to \$800,000 per occurrence over the last 3 years.

LB68 Would have an indeterminate effect on the Excess Liability Fund's revenue. The surcharge levied on health care providers is currently set at the statutory maximum of 50% of the premium paid by the health care provider for maintenance of financial responsibility. We expect that amount of premium paid to increase, which would result in an increase in surcharge revenue to the fund. However, if the revenue collected exceeds the amount necessary to maintain the Fund, the surcharge must be reduced. This results in an indeterminate effect on revenue.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

**Personal Services:**

| <u>POSITION TITLE</u> | <u>NUMBER OF POSITIONS</u> |              | <u>2023-24</u>      | <u>2024-25</u>      |
|-----------------------|----------------------------|--------------|---------------------|---------------------|
|                       | <u>23-24</u>               | <u>24-25</u> | <u>EXPENDITURES</u> | <u>EXPENDITURES</u> |
| Benefits.....         | _____                      | _____        | _____               | _____               |
| Operating.....        | _____                      | _____        | _____               | _____               |
| Travel.....           | _____                      | _____        | _____               | _____               |
| Capital outlay.....   | _____                      | _____        | _____               | _____               |
| Aid.....              | _____                      | _____        | _____               | _____               |

Capital improvements.....  
TOTAL.....

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

**LB (1) 0068 Increase limits on medical malpractice liability and change provisions of the Nebraska Hospital-Medical Liability Act** **FISCAL NOTE**  
**AM 371**

State Agency OR Political Subdivision Name:<sup>(2)</sup> University of Nebraska System  
 Prepared by:<sup>(3)</sup> Chris Kabourek Date Prepared:<sup>(4)</sup> 02/28/2023 Phone:<sup>(5)</sup> (402) 472-7102

**ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION**

|               | FY 2023 - 24        |                | FY 2024 - 25        |                  |
|---------------|---------------------|----------------|---------------------|------------------|
|               | <u>EXPENDITURES</u> | <u>REVENUE</u> | <u>EXPENDITURES</u> | <u>REVENUE</u>   |
| GENERAL FUNDS | <u>0.00</u>         | <u>0.00</u>    | <u>90,844.00</u>    | <u>90,844.00</u> |
| CASH FUNDS    | <u>0.00</u>         | <u>0.00</u>    | <u>0.00</u>         | <u>0.00</u>      |
| FEDERAL FUNDS | <u>0.00</u>         | <u>0.00</u>    | <u>0.00</u>         | <u>0.00</u>      |
| OTHER FUNDS   | <u>0.00</u>         | <u>0.00</u>    | <u>0.00</u>         | <u>0.00</u>      |
| TOTAL FUNDS   | <u>0.00</u>         | <u>0.00</u>    | <u>90,844.00</u>    | <u>90,844.00</u> |

**Explanation of Estimate:**

In review of the proposed amendment to the legislation, it does not appear to amend the contribution rate outlined in section 44-2829. Since UNMC is already contributing at the 50% maximum rate specified in section 44-2829, we used the same rate to develop the estimated payment to the NEFL. The amendment also does not appear to amend the total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient outlined in section limit 44-2825, therefore, we used the same rate to develop the estimated payment to the NEFL.

Since the proposed limit is rather unusual, UNMC's insurer (MMIC) does not have an increase-limit-factor (ILF) filed for this limit, therefore, it would all need to be completely developed by the actuarial team and submitted to the regulators (i.e. go through regulatory environments) and be approved by the Nebraska Department of Insurance prior to MMIC being able to use the ILF (reflected in the above premium estimates) or before being able to issue a policy with the proposed limit. MMIC would need the final approved legislation to ensure the increase is being accounted for correctly.

The above premium estimate reflects only the change associated with the change in limit proposed by LB68 AM371. The projected market increase, absent any exposure increase, is expected to be approximately 8% for upcoming renewals, which is deemed reasonable given the adverse medical loss experience in the State over the past several years. The estimate noted is for the six month period of January through June 2025.

**BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE**

Personal Services:

| POSITION TITLE            | NUMBER OF POSITIONS |                | 2023 - 24<br><u>EXPENDITURES</u> | 2024 - 25<br><u>EXPENDITURES</u> |
|---------------------------|---------------------|----------------|----------------------------------|----------------------------------|
|                           | <u>23 - 24</u>      | <u>24 - 25</u> |                                  |                                  |
|                           | <u>0</u>            | <u>0</u>       |                                  |                                  |
|                           | <u>0</u>            | <u>0</u>       |                                  |                                  |
| Benefits.....             |                     |                |                                  |                                  |
| Operating.....            |                     |                |                                  | <u>90,844.00</u>                 |
| Travel.....               |                     |                |                                  |                                  |
| Capital outlay.....       |                     |                |                                  |                                  |
| Aid.....                  |                     |                |                                  |                                  |
| Capital improvements..... |                     |                |                                  |                                  |
| TOTAL.....                |                     |                |                                  | <u>90,844.00</u>                 |