

SENATE BILL NO. 67

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATOR SEEKINS

Introduced: 1/21/05

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to claims for personal injury or wrongful death against health care**
2 **providers; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 SHORT TITLE. This Act may be known as the Alaska Medical Injury Compensation
7 Reform Act of 2005.

8 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 LEGISLATIVE FINDINGS. The legislature finds that

11 (1) despite the efforts by previous legislatures to codify the law of medical
12 malpractice, the national medical malpractice crisis is again affecting the state;

13 (2) Alaska has recently seen two of its five largest medical malpractice
14 insurance carriers leave the state after having suffered significant losses in 2003;

1 (3) a third carrier is "not eager to write new business in Alaska";

2 (4) the other two remaining medical malpractice carriers are limiting how
3 much coverage some new insureds can purchase;

4 (5) patient access to physicians will be affected dramatically if physicians
5 cannot afford, or obtain at any price, malpractice insurance;

6 (6) historically, the state has had difficulty attracting and maintaining adequate
7 numbers of qualified physicians; currently, the state ranks 46th in the number of physicians
8 per capita, while the state's physicians continue to grow older, reaching an average age of 51
9 years;

10 (7) lowering the existing limits on noneconomic damages has proven to be the
11 single most important tool in controlling the costs of malpractice insurance and ensuring its
12 availability and lowering existing limits on noneconomic damages would be in the best
13 interests of the state; the lower caps would encourage malpractice carriers to do business in
14 the state by reducing their risk, making affordable insurance available to physicians, and
15 thereby helping ensure that all Alaskans can find a qualified physician when they need one;
16 lowering existing limits will also promote prompt settlements;

17 (8) limiting noneconomic damages will help to control health care costs; the
18 current health care liability system has a significant effect on the amount, distribution, and use
19 of state and federal funds because of

20 (A) the large number of individuals who receive health care benefits
21 under programs operated or financed by the state and federal governments;

22 (B) the large number of individuals who benefit because of the
23 exclusion from state and federal taxes of the amounts spent to provide those
24 individuals with health insurance benefits; and

25 (C) the large number of health care providers who provide items or
26 services for which the state and federal governments make payments;

27 (9) the current medical liability laws of the state have resulted in arbitrary and
28 inconsistent awards of noneconomic damages arising from the inherent difficulties in valuing
29 such damages and the great disparity assigned by different juries throughout the country and
30 in the state; across-the-board limits on nonquantifiable damage elements provide more
31 reasonable and uniform awards and a more stable base on which to calculate medical liability

1 insurance rates; the \$250,000 limit on noneconomic damages will promote prompt settlements
2 by eliminating the possibility of multimillion dollar awards for pain and suffering that make
3 the litigation more of a lottery than a fair compensation system.

4 * **Sec. 3.** AS 09.55 is amended by adding a new section to read:

5 **Sec. 09.55.549. Limitation on damages.** (a) Notwithstanding AS 09.17.010,
6 noneconomic damages for personal injury or death based on the provision of services
7 by a health care provider may only be awarded as provided in this section.

8 (b) In an action to recover damages for personal injury or wrongful death
9 based on the provision of services by a health care provider, damages may include
10 both economic and noneconomic damages.

11 (c) Damage claims for noneconomic losses shall be limited to compensation
12 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of
13 enjoyment of life, loss of consortium, and other nonpecuniary damage, but may not
14 include hedonic damages.

15 (d) The damages awarded by a court or a jury under (c) of this section for all
16 claims including a loss of consortium claim or other derivative claim arising out of a
17 single injury or death may not exceed \$250,000 regardless of the number of health
18 care providers against whom the claim is asserted or the number of separate claims or
19 causes of action brought with respect to the injury or death.

20 (e) Multiple injuries sustained by one person as a result of a single course of
21 treatment shall be treated as a single injury for purposes of this section.

22 (f) In this section,

23 (1) "economic damages" means objectively verifiable monetary losses
24 incurred as a result of the provision of, use of, or payment for, or failure to provide,
25 use, or pay for health care services or medical products, and includes past and future
26 medical expenses, loss of past and future earnings, cost of obtaining domestic services,
27 burial expenses, loss of use of property, cost of replacement or repair, loss of
28 employment, and loss of business or employment opportunities;

29 (2) "hedonic damages" means damages that attempt to compensate for
30 the pleasure of being alive.

31 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. This Act applies to suits against health care providers and to
3 malpractice claims that are subject to an agreement to arbitrate initially filed on or after the
4 effective date of this Act.

5 * **Sec. 5.** This Act takes effect July 1, 2005.