

Original sponsor: Rules Committee by
request of the Governor

Offered: 2/24/76

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

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CS FOR HOUSE BILL NO. 574

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

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NINTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to liability for the provision of

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health care services; changing the Alaska Supreme

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Court's Rules of Civil Procedure; and providing for an

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effective date."

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

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* Section 1. AS 08.01.050 is amended by adding a new paragraph to read:

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(19) provide investigative services to the boards established

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under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for

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the purpose of assisting those boards in matters of professional dis-

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cipline.

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* Sec. 2. AS 08.20 is amended by adding new sections to read:

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Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an

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active license under this chapter, a person must maintain insurance

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against liability to patients for chiropractic malpractice in limits of

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not less than \$200,000 per occurrence and \$600,000 aggregate liability

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per year. This requirement is satisfied if a person's employer main-

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tains insurance for him in the required amounts.

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(b) The director of insurance may require all persons licensed

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under this chapter to obtain the insurance required under (a) of this

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section from the Health Care Providers Indemnity Corporation if, after

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public hearing, he finds that unavailability of malpractice insurance on

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the voluntary market for chiropractors is impairing the delivery of

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chiropractic services to the public.

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Sec. 08.20.175. LIMITS OR CONDITIONS ON LICENSE; REPRIMAND. (a)

1 In addition to action under sec. 170 of this chapter, upon a finding
2 that by reason of demonstrated lack of competence, experience, or educa-
3 tion the authority to practice chiropractic should be limited or condi-
4 tioned or the practitioner disciplined, the board may reprimand, censure,
5 place on probation, restrict practice by specialty, procedure, or
6 facility, or require continuing education or retraining.

7 (b) The Administrative Procedure Act (AS 44.62) applies to any
8 action taken by the board under this section.

9 * Sec. 3. AS 08.32 is amended by adding new sections to read:

10 Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an
11 active license under this chapter, a person must maintain insurance
12 against liability to patients for malpractice in limits of not less than
13 \$100,000 per occurrence and \$300,000 aggregate liability per year. This
14 requirement is satisfied if the person's employer maintains insurance
15 for him in the required amounts.

16 (b) The director of insurance may require all persons licensed
17 under this chapter to obtain the insurance required under (a) of this
18 section from the Health Care Providers Indemnity Corporation if, after
19 public hearing, he finds that unavailability of malpractice insurance on
20 the voluntary market for dental hygienists is impairing the delivery of
21 dental hygienists' services to the public.

22 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
23 to action under sec. 160 of this chapter, upon a finding that by reason
24 of demonstrated lack of competence, experience, or education the author-
25 ity to practice dental hygiene should be limited or conditioned or the
26 practitioner disciplined, the board may reprimand, censure, place on
27 probation, restrict practice by specialty, procedure, or facility, or
28 require continuing education or retraining.

29 (b) The Administrative Procedure Act (AS 44.62) applies to any

1 action taken by the board under this section.

2 * Sec. 4. AS 08.36 is amended by adding new sections to read:

3 Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an
4 active license under this chapter, a person must maintain insurance
5 against liability to patients for dental malpractice in limits of not
6 less than \$200,000 per occurrence and \$600,000 aggregate liability per
7 year. This requirement is satisfied if a person's employer maintains
8 insurance for him in the required amounts.

9 (b) The director of insurance may require all persons licensed
10 under this chapter to obtain the insurance required under (a) of this
11 section from the Health Care Providers Indemnity Corporation if, after
12 public hearing, he finds that unavailability of malpractice insurance on
13 the voluntary market for dentists is impairing the delivery of dentist
14 services to the public.

15 Sec. 08.36.325. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
16 to action under sec. 320 of this chapter, upon a finding that by reason
17 of demonstrated lack of competence, experience, or education the author-
18 ity to practice dentistry should be limited or conditioned or the
19 practitioner disciplined, the board may censure, place on probation,
20 restrict practice by specialty, procedure, or facility, or require
21 continuing education or retraining.

22 (b) The Administrative Procedure Act (AS 44.62) applies to any
23 action taken by the board under this section.

24 * Sec. 5. AS 08.64 is amended by adding new sections to read:

25 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
26 active license under this chapter, a person must maintain insurance
27 issued by the Health Care Providers Indemnity Corporation against
28 liability to patients for medical malpractice in limits of not less than
29 \$200,000 per occurrence and \$600,000 aggregate liability per year. This

1 requirement is satisfied if a person's employer maintains insurance for
2 him from the Health Care Providers Indemnity Corporation in the required
3 amounts.

4 (b) The director of insurance or his designee may waive the
5 requirement in (a) of this section for a person if that person furnishes
6 satisfactory evidence of his having other insurance providing coverage
7 in amounts not less than those specified in (a) of this section. No
8 waiver granted under this subsection may extend beyond the normal expira-
9 tion date of the person's insurance policy or January 1, 1977, whichever
10 occurs first.

11 Sec. 08.64.312. CONTINUING EDUCATION REQUIREMENTS. (a) The board
12 shall promote a high degree of competence in the practice of medicine by
13 requiring every physician licensed in the state to fulfill continuing
14 education requirements.

15 (b) Before a license may be renewed the licensee shall submit
16 evidence to the board that continuing education requirements prescribed
17 by regulations adopted by the board have been met.

18 (c) The board may exempt a physician from the requirements of (b)
19 of this section upon an application by him giving evidence satisfactory
20 to the board that he is unable to comply with the requirements because
21 of extenuating circumstances. However, no person may be exempted from
22 more than 15 hours of continuing education in a five-year period.

23 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
24 In addition to action under sec. 330 of this chapter, upon a finding
25 that by reason of demonstrated lack of competence, experience, or
26 education the authority to practice under this chapter should be limited
27 or conditioned or the practitioner disciplined, the board may reprimand,
28 censure, place on probation, restrict practice by specialty, procedure,
29 or facility, or require continuing education or retraining.

1 (b) The Administrative Procedure Act (AS 44.62) applies to any
2 action taken by the board under this section.

3 * Sec. 6. AS 08.68 is amended by adding new sections to read:

4 Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an
5 active license as a nurse under this chapter, a person must maintain
6 insurance against liability to patients for malpractice in limits of not
7 less than \$100,000 per occurrence and \$300,000 aggregate liability per
8 year. This requirement is satisfied if a person's employer maintains
9 insurance for him in the required amounts.

10 (b) The director of insurance may require all persons licensed
11 under this chapter to obtain the insurance required under (a) of this
12 section from the Health Care Providers Indemnity Corporation if, after
13 public hearing, he finds that unavailability of malpractice insurance on
14 the voluntary market for nurses is impairing the delivery of nurse
15 services to the public.

16 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
17 to action under sec. 270 of this chapter, upon a finding that by reason
18 of demonstrated lack of competence, experience, or education the author-
19 ity to practice nursing should be limited or conditioned or the practi-
20 tioner disciplined, the board may reprimand, censure, place on probation,
21 restrict practice by specialty, procedure, or facility, or require
22 continuing education or retraining.

23 (b) The Administrative Procedure Act (AS 44.62) applies to any
24 action taken by the board under this section.

25 * Sec. 7. AS 08.71 is amended by adding new sections to read:

26 Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an
27 active license under this chapter, a person must maintain insurance
28 against liability to patients for malpractice in limits of not less than
29 \$100,000 per occurrence and \$300,000 aggregate liability per year. This

1 requirement is satisfied if a person's employer maintains insurance for
2 him in the required amounts.

3 (b) The director of insurance may require that all persons li-
4 censed under this chapter obtain the insurance required under (a) of
5 this section if, after public hearing, he finds that unavailability of
6 malpractice insurance on the voluntary market for dispensing opticians
7 is impairing delivery of the services of dispensing opticians to the
8 public.

9 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
10 In addition to action under sec. 170 of this chapter, upon a finding
11 that by reason of demonstrated lack of competence, experience, or
12 education the authority to practice as a dispensing optician under this
13 chapter should be limited or conditioned or the practitioner disciplined,
14 the board may reprimand, censure, place on probation, restrict practice
15 by procedure or facility, or require continuing education or retraining.

16 (b) The Administrative Procedure Act (AS 44.62) applies to any
17 action taken by the board under this section.

18 * Sec. 8. AS 08.72 is amended by adding new sections to read:

19 Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an
20 active license under this chapter, a person must maintain insurance
21 against liability to patients for malpractice in limits of not less than
22 \$100,000 per occurrence and \$300,000 aggregate liability per year. This
23 requirement is satisfied if a person's employer maintains insurance for
24 him in the required amounts.

25 (b) The director of insurance may require all persons licensed
26 under this chapter to obtain insurance required under (a) of this
27 section from the Health Care Providers Indemnity Corporation if, after
28 public hearing, he finds that unavailability of malpractice insurance on
29 the voluntary market for optometrists is impairing delivery of optome-

1 trist services to the public.

2 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
3 In addition to action under secs. 240 and 250 of this chapter, upon a
4 finding that by reason of demonstrated lack of competence, experience,
5 or education the authority to practice optometry under this chapter
6 should be limited or conditioned or the practitioner disciplined, the
7 board may reprimand, censure, place on probation, restrict practice by
8 specialty, procedure, or facility, or require continuing education or
9 retraining.

10 (b) The Administrative Procedure Act (AS 44.62) applies to any
11 action taken by the board under this section.

12 * Sec. 9. AS 80.80 is amended by adding new sections to read:

13 Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for
14 active registration as a pharmacist, a person must maintain insurance
15 against liability to patients for malpractice in limits of not less than
16 \$100,000 per occurrence and \$300,000 aggregate liability per year. This
17 requirement is satisfied if a person's employer maintains insurance for
18 him in the required amounts.

19 (b) The director of insurance may require that all persons li-
20 censed under this chapter obtain the insurance required under (a) of
21 this section from the Health Care Providers Indemnity Corporation if,
22 after public hearing, he finds that unavailability of malpractice
23 insurance on the voluntary market for pharmacists is impairing delivery
24 of pharmacist services to the public.

25 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
26 In addition to action under sec. 260 of this chapter, upon a finding
27 that by reason of demonstrated lack of competence, experience, or
28 education the authority to practice pharmacy under this chapter should
29 be limited or conditioned or the practitioner disciplined, the board may

1 reprimand, censure, place on probation, restrict practice by specialty,
2 procedure, or facility, or require continuing education or retraining.

3 (b) The Administrative Procedure Act (AS 44.62) applies to any
4 action taken by the board under this section.

5 * Sec. 10. AS 08.84 is amended by adding new sections to read:

6 Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for
7 active registration as a physical therapist under this chapter, a
8 person must maintain insurance against liability to patients for mal-
9 practice in limits of not less than \$100,000 per occurrence and \$300,000
10 aggregate liability per year. This requirement is satisfied if a per-
11 son's employer maintains insurance for him in the required amounts.

12 (b) The director of insurance may require that all persons li-
13 censed under this chapter obtain the insurance required in (a) of this
14 section from the Health Care Providers Indemnity Corporation if, after
15 public hearing, he finds that unavailability of malpractice insurance on
16 the voluntary market for physical therapists is impairing delivery of
17 physical therapist services to the public.

18 Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition
19 to action under sec. 180 of this chapter, upon a finding that by reason
20 of demonstrated lack of competence, experience, or education the author-
21 ity to practice physical therapy should be limited or conditioned or the
22 practitioner disciplined, the board may reprimand, censure, place on
23 probation, restrict practice by specialty, procedure, or facility, or
24 require continuing education or retraining.

25 (b) The Administrative Procedure Act (AS 44.62) applies to any
26 action taken by the board under this section.

27 * Sec. 11. AS 08.86.120 is amended to read:

28 Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes the
29 examination given by the board and possesses the insurance required by

1 sec. 125 of this chapter is entitled to be licensed as a psychologist.

2 * Sec. 12. AS 08.86.160 is amended to read:

3 Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person
4 who passes the examination given by the board and who possesses insur-
5 ance in accordance with sec. 125 of this chapter is entitled to be
6 licensed as a psychological associate.

7 * Sec. 13. AS 08.86 is amended by adding new sections to read:

8 Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for
9 active licensure as a psychologist under this chapter, a person must
10 maintain insurance against liability to patients for malpractice in
11 limits of not less than \$100,000 per occurrence and \$300,000 aggregate
12 liability per year. This requirement is satisfied if a person's em-
13 ployer maintains insurance for him in the required amounts.

14 (b) The director of insurance may require all persons licensed
15 under this chapter to obtain insurance required under (a) of this
16 section from the Health Care Providers Indemnity Corporation if, after
17 public hearing, he finds that unavailability of malpractice insurance on
18 the voluntary market for psychologists is impairing the delivery of
19 psychologist services to the public.

20 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)
21 Upon a finding that by reason of demonstrated lack of competence,
22 experience, or education the authority to practice psychology or as a
23 psychological associate under this chapter should be limited or condi-
24 tioned or the practitioner disciplined, the board may reprimand, censure,
25 place on probation, restrict practice by time, specialty, procedure, or
26 facility, or require continuing education or retraining.

27 (b) The Administrative Procedure Act (AS 44.62) applies to any
28 action taken by the board under this section.

29 * Sec. 14. AS 09.55.530 is repealed and re-enacted to read:

1 ARTICLE 6. MALPRACTICE ACTIONS.

2 Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds
3 that the health of the people is threatened by curtailment of health
4 care services due to the difficulty in obtaining adequate malpractice
5 insurance at a reasonable cost. It is the purpose of secs. 530 - 560 of
6 this chapter to protect the health and safety of the people of this
7 state by establishing procedural aids for handling malpractice claims
8 which will help ensure the ready availability of adequate insurance at a
9 reasonable cost and which will be fair to all parties concerned.

10 * Sec. 15. AS 09.55 is amended by adding a new section to read:

11 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for
12 damages due to personal injury or death based upon the provision of
13 professional services by a health care provider, the court shall estab-
14 lish a three-person expert advisory panel in accordance with this
15 section. When the action is filed the court shall, by order, determine
16 the professions or specialties to be represented on the expert advisory
17 panel and shall advise each party of the professions or specialties to
18 be represented, giving the parties the opportunity to object or make
19 suggestions. The court may in its discretion conduct other preliminary
20 proceedings relative to the composition of the panel as it considers
21 appropriate.

22 (b) The expert advisory panel may compel the attendance of wit-
23 nesses, interview the parties and physically examine the injured person
24 if alive, consult with the specialists or learned works they consider
25 appropriate, and compel the production of and examine all relevant
26 hospital, medical, or other records or materials relating to the health
27 care treatment. The panel may meet in camera, but shall maintain a
28 record of any testimony or oral statements of witnesses, and shall keep
29 copies of all written statements and opinions it receives. Not less

1 than 30 days after selection of the panel, it shall make a written
2 report to the parties and to the court, substantially answering the
3 following questions in addition to any other question which the court
4 puts to the panel:

5 (1) Was the claimant adversely affected by any act or omis-
6 sion in the rendering of the medical services?

7 (2) What was the adverse effect?

8 (3) How did the medical services alter the natural course of
9 the preexisting disorder for which the services were originally ren-
10 dered?

11 (4) How did the medical condition existing after performance
12 of the medical services differ from the medical condition which might
13 otherwise have been expected?

14 (c) In any case in which the answer to one or more of the ques-
15 tions under (b) of this section depends upon the resolution of factual
16 questions which are not the proper subject of expert opinion, the report
17 shall so state and may answer questions based upon hypothetical facts
18 that are fully and completely set out in the opinion. The report shall
19 include copies of all written statements, opinions, or records relied
20 upon by the panel and either a transcription or other record of any oral
21 statements or opinions; shall specify any medical or scientific author-
22 ity relied upon by the panel; and shall include the results of any
23 physical or mental examination performed on the plaintiff. Each member
24 shall sign the report and his signature constitutes his adoption of all
25 statements and opinions contained in it; however, a member may, instead
26 of signing the report, submit a concurring or dissenting report which
27 complies with the requirements of this subsection, and a member may not
28 attest to any portion of the report as to which he is not qualified to
29 give expert testimony.

1 (d) No discovery may be undertaken in a case until the report of
2 the expert advisory panel is received. However, the court may relax
3 this prohibition upon a showing of good cause by any party. If the
4 panel has not completed its report within the 30-day period prescribed
5 in (b) of this section, the court may, upon application, grant it an
6 additional 30 days.

7 (e) The report of the panel and any dissenting or concurring
8 opinion are admissible in evidence to the same extent as though its
9 contents were orally testified to by the person or persons preparing it.
10 The court shall delete any portion that would not be admissible because
11 of lack of foundation for opinion testimony, or otherwise. Either party
12 may submit expert testimony to support or refute the report. The jury
13 shall be instructed in general terms that the report shall be considered
14 and evaluated in the same manner as any other expert testimony. Any
15 member of the panel may be called by any party and may be cross-examined
16 as to the contents of the report or of his dissenting or concurring
17 opinion.

18 (f) Members of a panel are entitled to travel expenses and per
19 diem in accordance with state law pertaining to members of boards and
20 commissions for all time spent in preparing its report and matters
21 incidental to it. If a panel member is called upon as a witness at
22 trial or upon deposition, he is entitled to payment of an expert witness
23 fee. All expenses incurred by the panel shall be paid by the state.
24 However, in any case in which the court determines that a party has made
25 a patently frivolous claim or a patently frivolous denial of liability,
26 it shall order that all costs of the expert advisory panel be borne by
27 the party making that claim or denial.

28 (g) Parties to the case and their counsel may not initiate com-
29 munication out of court with members of the panel on the subject matter

1 of its inquiry and report or cause or solicit others to do so, except
2 through ordinary discovery proceedings.

3 * Sec. 16. AS 09.55.540 is amended to read:

4 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
5 based on the negligence or wilful misconduct of a health care provider
6 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-
7 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-
8 derance of the evidence

9 (1) the degree of knowledge or skill possessed or the degree
10 of care ordinarily exercised under the circumstances, at the time of the
11 act complained of, by health care providers in the field or specialty in
12 which the defendant is practicing [BY PHYSICIANS OR DENTISTS PRACTICING
13 THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH THE DEFENDANT
14 PRACTICES];

15 (2) that the defendant either lacked this degree of knowledge
16 or skill or failed to exercise this degree of care; and

17 (3) that as a proximate result of this lack of knowledge or
18 skill or the failure to exercise this degree of care the plaintiff
19 suffered injuries that would not otherwise have been incurred.

20 (b) In malpractice actions there is [SHALL BE] no presumption of
21 negligence on the part of the defendant.

22 * Sec. 17. AS 09.55 is amended by adding a new section to read:

23 Sec. 09.55.546. AWARDS, COLLATERAL SOURCES. (a) In a malpractice
24 action damages shall be awarded according to the principles of the com-
25 mon law. The fact finder in rendering its award for damages shall
26 specify the amount awarded for each category of loss, computing loss of
27 future earnings on a monthly basis. The court may enter a judgment that
28 future damages be paid in whole or in part by periodic payments rather
29 than by a lump sum payment; however, any part of the award which is paid

1 on periodic basis shall be increased annually in the same proportion as
2 annual increases in the consumer price index for the community in which
3 the claimant resides.

4 (c) Except when the collateral source is a federal program which
5 by law must seek subrogation, an award to which a claimant is entitled
6 may only cover damages which exceed any amounts received by the claimant
7 as compensation for his injuries from collateral sources, whether pri-
8 vate, group, or governmental, and whether contributory or noncontribu-
9 tory, except the death benefit paid under life insurance. Evidence of
10 damages compensation by a collateral source, other than a federal pro-
11 gram which must seek subrogation and the death benefit paid under life
12 insurance, shall be credited against the award after the fact finder has
13 rendered its award. Notwithstanding other provisions of state law and
14 except as provided in this subsection, a collateral source does not have
15 a right of subrogation.

16 * Sec. 18. AS 09.55.550 is amended to read:

17 Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]
18 malpractice actions the jury shall be instructed that the plaintiff has
19 the burden of proving, by a preponderance of the evidence, the health
20 care provider's negligence or wilful misconduct in accordance with
21 sec. 540 of this chapter [OF THE PHYSICIAN OR DENTIST]. The jury shall
22 be further instructed that injury alone does not raise a presumption of
23 the health care provider's [PHYSICIAN'S OR DENTIST'S] negligence or
24 misconduct.

25 * Sec. 19. AS 09.55 is amended by adding new sections to read:

26 Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a
27 health care provider arises for breach of an oral contract to provide a
28 cure or achieve a specific medical result.

29 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is

1 liable for failure to obtain the informed consent of a patient if the
2 claimant establishes by a preponderance of the evidence that the pro-
3 vider has failed to inform the patient of common risks and reasonable
4 alternatives to the proposed treatment or procedure, and that, but for
5 that failure, the claimant would not have consented to the proposed
6 treatment or procedure.

7 (b) It is a defense to any action for health care malpractice
8 based upon an alleged failure to obtain such an informed consent that

9 (1) the risk not disclosed is too commonly known or is too
10 remote to require disclosure;

11 (2) the patient stated to the health care provider that he
12 would undergo the treatment or procedure regardless of the risk in-
13 volved, or that he did not want to be informed of the matters to which
14 he would be entitled to be informed;

15 (3) under the circumstances consent by or on behalf of the
16 patient was not possible; or

17 (4) the health care provider, after considering all of the
18 attendant facts and circumstances, used reasonable discretion as to the
19 manner and extent to which the alternatives or risks were disclosed to
20 the patient because he reasonably believed that the manner and extent of
21 such a disclosure would reasonably be expected to adversely and sub-
22 stantially affect the patient's condition.

23 Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

24 (1) "health care provider" means a chiropractor licensed
25 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
26 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
27 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
28 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
29 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a

1 psychologist and a psychological associate licensed under AS 08.86; and
2 a hospital as defined in AS 18.20.130, including a governmentally owned
3 or operated hospital;

4 (2) "panel" means an expert advisory panel established under
5 sec. 536 of this chapter.

6 * Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

7 Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person,
8 at a hospital or at any other location, who renders emergency care or
9 emergency counseling to an injured, ill, or emotionally distraught
10 person who reasonably appears to the person rendering the aid to be in
11 immediate need of emergency aid in order to avoid serious harm or death
12 is not liable for civil damages as a result of an act or omission in
13 rendering emergency aid.

14 (b) This section does not preclude liability for civil damages as
15 a result of gross negligence or reckless or intentional misconduct.

16 * Sec. 21. AS 18.20 is amended by adding new sections to read:

17 Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a con-
18 dition of licensure, shall submit to the department and maintain evi-
19 dence of insurance against liability to inpatients and outpatients for
20 malpractice issued by the Health Care Providers Indemnity Corporation,
21 in amounts of not less than \$200,000 per occurrence, and an aggregate
22 liability per year of \$1,000,000 minimum, and an additional \$20,000 for
23 each bed over 50 for which the hospital is licensed.

24 Sec. 18.20.075. RISK MANAGEMENT. (a) To be eligible for a li-
25 cense each hospital shall have in operation an internal risk management
26 program which shall

27 (1) investigate the frequency and causes of adverse incidents
28 in hospitals which cause injury to patients;

29 (2) develop and implement measures to minimize the risk of

1 injury to patients from adverse incidents; in developing these measures
2 each hospital shall take into account recommendations of the Health
3 Care Providers Indemnity Corporation, its medical staff, private under-
4 writers, industry standards, experience of other hospitals, and recom-
5 mendations of licensing boards of other health care providers; and

6 (3) analyze patient grievances which relate to patient care.

7 (b) The department shall adopt by regulation and submit to the
8 legislative administrative regulation review committee prior to imple-
9 mentation standards for risk management programs in hospitals in the
10 state which may vary according to the size of the hospital, the type of
11 care offered by the hospital, and other factors found relevant by the
12 department.

13 * Sec. 22. AS 18 is amended by adding a new chapter to read:

14 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

15 Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING
16 INFORMATION TO REVIEW ORGANIZATION. (a) No person providing informa-
17 tion to a review organization is subject to action for damages or other
18 relief by reason of having furnished that information, unless the
19 information is false and the person providing the information knew or
20 had reason to know the information was false.

21 (b) No privilege of confidentiality arising from a physician-
22 patient relationship may be invoked to withhold pertinent information
23 from review by a review organization.

24 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW
25 ORGANIZATIONS. No person who is a member or employee of, or who acts in
26 an advisory capacity to, or who furnishes counsel or services to, a
27 review organization is liable for damages or other relief in an action
28 brought by a person whose activities have been or are being scrutinized
29 or reviewed by a review organization, by reason of his performance of a

1 duty, function or activity of the review organization, unless the per-
2 formance of the duty, function or activity was motivated by malice
3 toward the affected person. No person is liable for damages or other
4 relief in an action by reason of his performance of a duty, function, or
5 activity as a member of a review organization or by reason of a recom-
6 mendation or action of the review organization when the person acts in
7 the reasonable belief that his action or recommendation is warranted by
8 facts known to him or to the review organization after reasonable
9 efforts to ascertain the facts upon which the review organization's
10 action or recommendation is made.

11 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.

12 (a) Except as provided in (b) of this section, all data and information
13 acquired by a review organization, in the exercise of its duties and
14 functions, shall be held in confidence, may not be disclosed to anyone
15 except to the extent necessary to carry out one or more of the purposes
16 of the review organization, and is not subject to subpoena or discovery.
17 Except as provided in (b) of this section, no person described in sec.
18 20 of this chapter may disclose what transpired at a meeting of a review
19 organization except to the extent necessary to carry out one or more of
20 the purposes of a review organization, and the proceedings and records
21 of a review organization are not subject to discovery or introduction
22 into evidence in a civil action against a health care provider arising
23 out of the matter which is the subject of consideration by the review
24 organization. Information, documents, or records otherwise available
25 from original sources are not immune from discovery or use in a civil
26 action merely because they were presented during proceedings of a review
27 organization, nor may a person who testified before a review organiza-
28 tion or who is a member of it be prevented from testifying as to matters
29 within his knowledge, but a witness may not be asked about his testimony

1 before a review organization or opinions formed by him as a result of
2 its hearings, except as provided in (b) of this section.

3 (b) Testimony, documents, proceedings, records, and other evidence
4 adduced before a review organization that are otherwise inaccessible
5 under this section may be obtained by a health care provider who claims
6 that denial is unreasonable or may be obtained under subpoena or dis-
7 covery proceedings brought by a plaintiff who claims that information
8 provided to a review organization was false and claims that the person
9 providing the information knew or had reason to know the information was
10 false.

11 (c) Nothing in this chapter prevents a person whose conduct or
12 competence has been reviewed under this chapter from obtaining, for the
13 purpose of appellate review of the action of the review organization,
14 any testimony, documents, proceedings, records and other evidence
15 adduced before the review organization.

16 Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized
17 by sec. 30 of this chapter, a disclosure of data and information ac-
18 quired by a review committee or of what transpired at a review meeting
19 is a misdemeanor and punishable under AS 11.05.010.

20 Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter
21 relieves a person of liability which he has incurred or may incur to a
22 person as a result of furnishing health care to the patient.

23 Sec. 18.23.060. PARTIES BOUND BY REVIEW. When a review organi-
24 zation reviews matters under sec. 70(5)(H) of this chapter no party is
25 bound by a ruling of the organization in a controversy, dispute or
26 question unless he agrees in advance, either specifically or generally,
27 to be bound by the ruling.

28 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context
29 otherwise requires,

1 (1) "administrative staff" means the staff of a hospital or
2 clinic;

3 (2) "health care" means professional services rendered by a
4 health care provider or an employee of a health care provider, and
5 services furnished by a sanatorium, rest home, nursing home, boarding
6 home or other institution for the hospitalization or care of human
7 beings;

8 (3) "health care provider" means a chiropractor licensed
9 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
10 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
11 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
12 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
13 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
14 psychologist and a psychological associate licensed under AS 08.86; and
15 a hospital as defined in AS 18.20.130, including a governmentally owned
16 or operated hospital;

17 (4) "professional service" means service rendered by a
18 health care provider of the type he is licensed to render;

19 (5) "review organization" means a hospital governing body or
20 a committee whose membership is limited to health care providers and
21 administrative staff, except where otherwise provided for by state or
22 federal law, and which is established by a hospital, by a clinic, by one
23 or more state or local associations of health care providers, by an
24 organization of health care providers from a particular area or medical
25 institution, or by a professional standards review organization estab-
26 lished under 42 U.S.C., sec. 1320(c)(1) et seq., to gather and review
27 information relating to the care and treatment of patients for the
28 purposes of

29 (A) evaluating and improving the quality of health care

1 rendered in the area or medical institution;

2 (B) reducing morbidity or mortality;

3 (C) obtaining and disseminating statistics and infor-
4 mation relative to the treatment and prevention of diseases,
5 illness and injuries;

6 (D) developing and publishing guidelines showing the
7 norms of health care in the area or medical institution;

8 (E) developing and publishing guidelines designed to
9 keep the cost of health care within reasonable bounds;

10 (F) reviewing the quality or cost of health care ser-
11 vices provided to enrollees of health maintenance organizations;

12 (G) acting as a professional standards review organi-
13 zation under 42 U.S.C., sec. 1320(c)(1) et seq.;

14 (H) reviewing, ruling on, or advising on controversies,
15 disputes or questions between

16 (i) a health insurance carrier or health mainte-
17 nance organization and one or more of its insured or enrol-
18 lees;

19 (ii) a professional licensing board, acting under
20 its powers of discipline or license revocation or suspension,
21 and a health care provider licensed by it when the matter is
22 referred to a review organization by the professional li-
23 censing board;

24 (iii) a health care provider and his patients con-
25 cerning diagnosis, treatment or care, or a charge or fee;

26 (iv) a health care provider and a health insurance
27 carrier or health maintenance organization concerning a charge
28 or fee for health care services provided to an insured or
29 enrollee; or

1 (v) a health care provider or his patients and the
2 federal or a state or local government, or an agency of the
3 federal or a state or local government;

4 (I) acting on the recommendation of a credential review
5 committee or a grievance committee.

6 * Sec. 23. AS 21 is amended by adding a new chapter to read:

7 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

8 ARTICLE 1. PURPOSE.

9 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this
10 chapter to provide a means of assuring all health care providers
11 continuous, affordable and adequate insurance against liability for
12 medical negligence by concentrating all such insurance in one entity
13 and to distribute equitably the cost of the insurance among the health
14 care providers insured.

15 ARTICLE 2. INDEMNITY CORPORATION.

16 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska
17 Health Care Providers Indemnity Corporation which is a public corpora-
18 tion having a legal existence independent of and separate from the
19 state. Obligations issued by the corporation do not constitute a debt
20 liability or obligation of the state or a pledge of full faith and
21 credit of the state.

22 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
23 poration shall exercise its powers through a board of governors which
24 shall be appointed by the director as provided in (b) of this section.

25 (b) The appointments to the board of governors shall be Alaska
26 residents as follows:

27 (1) two members of the Alaska State Medical Association
28 appointed from a list of no less than five persons recommended by the
29 governing board of that association; one of the members appointed shall

1 be engaged in group practice in a clinic of six or more physicians
2 licensed in the state;

3 (2) one member of the Alaska State Hospital Association
4 appointed from a list of no less than three persons recommended by the
5 governing board of that association;

6 (3) two professionals in the insurance field;

7 (4) two persons who are neither health care providers nor
8 affiliated with the insurance industry.

9 (c) The term of office of each governor is three years, except
10 that the director shall designate three initially appointed governors to
11 serve for one year and two initially appointed governors to serve for
12 two years.

13 (d) Upon the expiration of the term of a governor, the director
14 shall appoint a successor who shall be from the same class described in
15 (b) of this section as the governor whose term has expired.

16 (e) Upon a governor's early resignation, death or inability to
17 serve, the director shall appoint a successor from the same class
18 defined in (b) of this section as the terminating governor, who shall
19 serve for the unexpired term.

20 (f) The director or his designee is not a voting member of the
21 board of governors but shall be notified by the board of and have the
22 right to attend and participate in all meetings and proceedings of the
23 board.

24 (g) Members of the board of governors receive compensation from
25 the corporation of \$100 per day when the board meets and necessary travel
26 expenses.

27 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30
28 days after the effective date of this chapter, the board of governors
29 shall prepare and submit to the director for approval a plan of opera-

1 tion which provides for the fair, reasonable and equitable administra-
2 tion of the affairs of the corporation and the discharge of the purposes
3 for which it is created. The plan and any amendments of it become
4 effective upon the director's approval. If the board of governors has
5 failed to submit a plan of operation, or if at any subsequent time the
6 board of governors fails to submit suitable amendments to the plan, the
7 director shall, after notice and hearing, adopt and promulgate a plan of
8 operation or amendments which are necessary or advisable to effectuate
9 the provisions of this chapter. Adoption of the plan is not subject to
10 the Administrative Procedure Act (AS 44.62).

11 (b) The plan of operation shall

12 (1) establish the procedures by which all the powers and
13 duties of the corporation specified in sec. 50 of this chapter shall be
14 performed;

15 (2) establish procedures for handling assets and discharging
16 liabilities of the corporation;

17 (3) establish regular places and times for meetings of the
18 board of governors;

19 (4) establish procedures for records to be kept of all
20 financial transactions of the corporation, its agents, and the board of
21 governors;

22 (5) establish procedures for awarding contracts to carry out
23 the provisions of this chapter;

24 (6) establish the procedures for issuing contracts of insur-
25 ance as provided in sec. 50 of this chapter and for the determination of
26 rates;

27 (7) contain additional provisions necessary or proper for the
28 execution of the powers and duties of the corporation.

29 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The

1 corporation shall

2 (1) issue to all health care providers who pay the premiums
3 for it a contract on an occurrence basis indemnifying the health care
4 provider and his employees who are health care providers against loss by
5 reason of liability and agreeing to tender on behalf of the health care
6 provider and his employees who are health care providers a defense of
7 the health care provider in a proceeding brought under AS 09.55.530 -
8 09.55.560; the limit of liability shall be no less than the minimum
9 liability coverage required to be maintained as stated in AS 08.64.215
10 and AS 18.20.045; the contract shall cover the defense against but need
11 not indemnify a claim for punitive damages; the contract shall cover
12 claims against health care providers

13 (A) that arise out of professional services performed
14 by the health care provider during the period for which the pre-
15 mium is paid; and

16 (B) at the option of the health care provider and for an
17 additional premium, that arise out of services performed by the
18 health care provider after December 31, 1974 for any period in
19 which the health care provider had no malpractice insurance, except
20 that coverage will not be provided for a claim already filed or of
21 which the health care provider has or reasonably should have had
22 notice at the time retroactive insurance was purchased;

23 (2) charge a premium for the protection provided by the
24 contracts issued under (1) of this subsection which shall be determined
25 by the board of governors in accordance with sec. 70 of this chapter and
26 subject to the approval of the director;

27 (3) comply with or be subject to AS 21.06.090, 21.06.120,
28 21.06.140, 21.06.160, 21.06.250; AS 21.09.180, 21.09.190, 21.09.200,
29 21.09.250, 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,

1 21, 24, and 36 of this title;

2 (4) carry out the obligations of the contracts issued under
3 (1) of this subsection by defending all covered claims made against
4 insured health care providers and by paying all liabilities which are
5 finally adjudicated against the insured health care provider or which
6 may in the opinion of the corporation reasonably be expected to be
7 finally adjudicated against the health care provider to the extent of
8 the contract obligation;

9 (5) provide coverage to health care providers for liability
10 under AS 09.55.530 - 09.55.560 in excess of the minimum limits required
11 for licensure as a health care provider, but limited to \$1,000,000 for
12 individual health care providers and \$5,000,000 for hospitals, if there
13 is a finding by the director that this coverage is unavailable at a
14 reasonable cost and that this coverage can be made available at a rea-
15 sonable cost through the corporation; if this paragraph is implemented,
16 each health care provider obtaining excess coverage up to these amounts
17 shall obtain it from the corporation, and the corporation may procure
18 reinsurance for all the risks incurred by contracts issued under this
19 paragraph from the private market.

20 (b) The corporation may

21 (1) employ or retain persons, individual or corporate, to
22 discharge its obligations and shall pay, by way of salary, wage, fee, or
23 commission, reasonable compensation for those services; employees of the
24 corporation are not considered state employees;

25 (2) provide coverage to health care providers for other
26 hazards including malpractice liability insurance for other licensed
27 health care providers employed by the physician or hospital;

28 (3) borrow funds from the revolving loan fund established
29 under sec. 110 of this chapter when necessary for the corporation to

1 maintain adequate reserves; loans from the fund shall be repaid from
2 prospective premium increases within four years after the loan is made
3 at an annual interest rate of seven per cent;

4 (4) negotiate and become a party to those contracts as are
5 necessary to carry out the purposes of the corporation;

6 (5) sue or be sued in the name of the corporation;

7 (6) negotiate and become a party to contracts for management
8 services for the corporation;

9 (7) provide risk management advice and services to hospitals;

10 (8) perform all other acts necessary and proper to effectuate
11 the corporation.

12 Sec. 21.88.060. STATISTICS. The corporation shall collect,
13 maintain and report information concerning claims against health care
14 providers. All such information shall be on forms prescribed by the
15 director and shall be sufficient to enable a proper determination of
16 losses for rate making and to identify causes and sources of loss for
17 loss control. No less often than annually the corporation shall report
18 to the director, which report shall be kept available to the public, the
19 number and amount of claims filed, reserved, paid, settled and adjudi-
20 cated during the year, the premiums paid to, and the expenses incurred
21 by the corporation during the year. The director may require that
22 supplemental reports include the names of insured health care providers
23 and the claimants; however, no reports which become publicly available
24 may include the names of health care providers or claimants or informa-
25 tion that will permit by inference the identity of specific health care
26 providers or claimants. All information shall be made available to the
27 appropriate licensing boards or agencies.

28 Sec. 21.88.070. RATES. Rates and rating plans used by the corpora-
29 tion for the policies issued shall be determined for each category of

1 health care provider in accordance with all of the following:

2 (1) rates for physicians shall be set as a function of the
3 physician's medical revenue;

4 (2) rates for hospitals shall be set as a function of the
5 number of permanent beds in the hospital;

6 (3) a minimum rate may be set for each category of health
7 care provider or discipline or classification within the license cate-
8 gory;

9 (4) rates may not be excessive; rates are excessive if, after
10 a period of time and with respect to an amount of gross premium which
11 are actuarially credible, the premiums exceed losses incurred by the
12 corporation, including losses paid, reserves for claims reported and
13 unpaid, reserves for claims incurred during the policy period and not
14 reported but reasonably expected to be reported within three years after
15 the date of the incident, and reasonable expenses for the operation of
16 the corporation;

17 (5) rates may not be inadequate; rates are inadequate if,
18 based on available actuarial data, the premiums to be paid by the health
19 care providers are or may reasonably be expected to be insufficient to
20 pay for losses incurred by the corporation, including claims paid,
21 reserves for claims reported and unpaid, reserves for claims incurred
22 during the policy year and not reported but reasonably expected to be
23 reported within three years after the date of the incident, and reason-
24 able expenses for the operation of the corporation;

25 (6) rates shall be adjusted at least as often as annually;

26 (7) rates for any policy year shall be calculated to include
27 the adjustment for actual experience of the corporation as developed for
28 the preceding four policy years;

29 (8) in considering losses to be incurred, changes in the law

1 and national, regional and local trends in medical negligence awards may
2 be considered;

3 (9) income from investment of reserves shall be considered;

4 (10) disciplines and classifications within the license cate-
5 gories of health care providers shall be considered;

6 (11) individual risk underwriting factors shall be considered;

7 (12) amounts sufficient to repay loan obligations shall be
8 considered.

9 Sec. 21.88.080. REQUIRED INSURANCE; CANCELLATION. The corporation
10 shall provide insurance to all health care providers otherwise eligible
11 for licensure under AS 08.64 and AS 18.20. The corporation may provide
12 for installment payment of premiums in which event each installment is
13 due by the date specified. The corporation may cancel any of its
14 policies in the event of nonpayment of any premium or installment on a
15 premium or other charge by mailing or delivering to the insured at the
16 address shown on the policy and to the agency of the state issuing the
17 insured's license written notice stating when, not less than 10 days
18 after notice is received by the insured, the cancellation is effective.

19 ARTICLE 3. LOAN FUND.

20 Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department
21 of Commerce and Economic Development a medical malpractice liability
22 revolving loan fund to be administered by the director of insurance.

23 (b) Loans shall be made from the fund to the corporation upon
24 certification by the director that a loan is necessary for the corpora-
25 tion to maintain adequate reserves or for initial costs of operation.
26 If a loan is made to the corporation from the fund, the corporation
27 shall issue a note to the fund pledging the premiums collected in the
28 future as security for the loan.

29 (c) Loans from the fund shall be repaid by the corporation within

1 four years at an annual interest rate of seven per cent.

2 (d) The director may sell at par value to the Department of Revenue
3 the notes, security instruments and pledge agreements held by the
4 Department of Commerce and Economic Development as security for loans
5 made under this section. The Department of Revenue shall purchase all
6 the notes offered until the current principal amount of the notes
7 purchased and held by the Department of Revenue equals \$5,000,000.

8 ARTICLE 4. GENERAL PROVISIONS.

9 Sec. 21.88.300. DEFINITIONS. As used in this chapter,

10 (1) "corporation" means the Health Care Providers Indemnity
11 Corporation;

12 (2) "director" means the director of the division of insur-
13 ance for the State of Alaska;

14 (3) "fund" means the medical malpractice liability revolving
15 loan fund;

16 (4) "health care provider" means a physician licensed under
17 AS 08.64 and a hospital as defined in AS 18.20.130, including a hospital
18 or health care facility owned or operated by the state or one or more of
19 its political subdivisions; if at any time the director of insurance
20 mandates chiropractors under AS 08.20.115(b), dental hygienists under
21 AS 08.32.015(b), dentists under AS 08.36.115(b), nurses under AS 08.68.-
22 165(b), dispensing opticians under AS 08.71.085(b), optometrists under
23 AS 08.72.115(b), pharmacists under AS 08.80.115(b), physical therapists
24 under AS 08.84.035(b), or psychologists and psychological associates
25 under AS 08.86.125(b) into participation in the corporation, they shall
26 then be considered health care providers for the purposes of this
27 chapter;

28 (5) "occurrence basis insurance" is insurance against claims
29 arising during the period of the policy coverage.

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* Sec. 24. AS 21.18.090 is amended by adding a new paragraph to read:

(5) reserves for the Health Care Providers Indemnity Corporation are to include only reserves for claims reported and unpaid and reserves for claims incurred but not reported but which may reasonably be expected to be reported within three years after the date of occurrence.

* Sec. 25. AS 09.55.536 enacted in sec. 15 of this Act, has the effect of changing the Alaska Supreme Court's Rules of Civil Procedure, by requiring the submission of each health care malpractice action to a panel of experts.

* Sec. 26. AS 08.64.365 is repealed.

* Sec. 27. This Act takes effect 30 days after enactment.

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