

Original Sponsor: Rules Committee by  
request of the Governor

Offered: 3/2/76  
Referred: Rules

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 574

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to health care changing the Alaska  
7 Supreme Court's Rules of Civil Procedure; and providing  
8 for an effective date."

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

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

11 (19) provide investigative services to the boards established  
12 under chs. 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86 of this title, for  
13 the purpose of assisting those boards in matters of professional disci-  
14 pline.

15 \* Sec. 2. AS 08.20.010 is amended to read:

16 Sec. 08.20.010. CREATION AND MEMBERSHIP OF BOARD OF CHIROPRACTIC  
17 EXAMINERS. There is created the Board of Chiropractic Examiners con-  
18 sisting of five [THREE] members appointed by the governor.

19 \* Sec. 3. AS 08.20.020 is amended to read:

20 Sec. 08.20.020. MEMBERS OF BOARD. Three members [EACH MEMBER] of  
21 the board shall be [A] licensed chiropractic physicians who [PHYSICIAN  
22 AND SHALL] have practiced chiropractic in this state not less than two  
23 years. Two members of the board shall be persons with no direct finan-  
24 cial interest in the health care industry. Each member serves without  
25 pay but is entitled to per diem and travel expenses allowed by law.

26 \* Sec. 4. AS 08.20.030 is repealed and re-enacted to read:

27 Sec. 08.20.030. MEMBERS TERMS, VACANCIES. Members serve for  
28 staggered terms of three years. The terms of the public members of the  
29 board may not expire at the same time. Vacancies on the board shall be

1 filled for the unexpired term.

2 \* Sec. 5. AS 08.20 is amended by adding a new section to read:

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

4 In addition to action under sec. 170 of this chapter, upon a finding  
5 that by reason of demonstrated problems of competence, experience, edu-  
6 cation or health the authority to practice chiropractic should be  
7 limited or conditioned or the practitioner disciplined, the board may  
8 reprimand, censure, place on probation, restrict practice by specialty,  
9 procedure or facility, or require continuing education or retraining.

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

12 \* Sec. 6. AS 08.32 is amended by adding a new section to read:

13 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
14 to action under sec. 160 of this chapter, upon a finding that by reason  
15 of demonstrated problems of competence, experience, education or health  
16 the authority to practice dental hygiene should be limited or condi-  
17 tioned or the practitioner disciplined, the board may reprimand,  
18 censure, place on probation, restrict practice by specialty, procedure,  
19 or facility, or require continuing education or retraining.

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

22 \* Sec. 7. AS 08.36.010 is amended to read:

23 Sec. 08.36.010. CREATION AND MEMBERSHIP OF BOARD. There is  
24 created the Board of Dental Examiners, referred to in this chapter as  
25 the board, consisting of seven [FIVE] members. Five members [EACH  
26 MEMBER] shall be [A CITIZEN OF THE UNITED STATES AND A] qualified  
27 resident dentists who have [HAS] been engaged in the practice of den-  
28 tistry in the state for five years immediately preceding [HIS] appoint-  
29 ment, and two members shall be persons with no direct financial interest

1 in the health care industry.

2 \* Sec. 8. AS 08.36.020 is amended to read:

3 Sec. 08.36.020. APPOINTMENT AND TERM OF SERVICE OF MEMBERS.

4 Members of the board are appointed by the governor, subject to con-  
5 firmation by the legislature in joint session [ASSEMBLED]. Each board  
6 member serves for a term of five years, and until his successor is  
7 appointed and qualified except that the terms of the public members on  
8 the board shall be staggered so that they do not expire at the same  
9 time. The term begins on February 1. An appointment to a vacancy is  
10 for the unexpired term. [APPOINTMENTS SHALL BE MADE FROM A LIST OF  
11 NAMES RECOMMENDED BY THE ALASKA DENTAL SOCIETY. THE LIST SHALL BE  
12 SUPPLIED AT LEAST 30 DAYS BEFORE THE BEGINNING OF A TERM AND NOT MORE  
13 THAN 60 DAYS AFTER THE OCCURRENCE OF A VACANCY. THE LIST SHALL CONTAIN  
14 AT LEAST TWO RECOMMENDED NAMES FOR EACH APPOINTMENT. THE GOVERNOR  
15 SHALL MAKE THE APPOINTMENT WITHIN 30 DAYS AFTER RECEIVING THE LIST.]

16 \* Sec. 9. AS 08.36 is amended by adding a new section to read:

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

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

26 \* Sec. 10. AS 08.64.010 is amended to read:

27 Sec. 08.64.010. CREATION AND MEMBERSHIP OF STATE MEDICAL BOARD.

28 The governor shall appoint a board of medical examiners, to be known as  
29 the State Medical Board, consisting of five licensed physicians, re-

1 siding in as many separate Alaska judicial districts as possible, and  
2 two persons with no direct financial interest in the health care in-  
3 dustry. [EACH MEMBER SHALL BE CHOSEN FROM A PANEL OF THREE, FOR EACH  
4 VACANCY, SUBMITTED TO THE GOVERNOR BY THE ALASKA STATE MEDICAL ASSOCIA-  
5 TION.]

6 \* Sec. 11. AS 08.64.020 is amended to read:

7 Sec. 08.64.020. STATE MEDICAL BOARD TERM OF OFFICE. Members  
8 shall be appointed for a term of four years, subject to confirmation by  
9 a majority of the members of the legislature in joint session, and  
10 shall hold office until their successors are appointed and qualified.  
11 The terms of the public members of the board shall be staggered so that  
12 they do not expire at the same time.

13 \* Sec. 12. AS 08.64.090 is amended to read:

14 Sec. 08.64.090. QUORUM. Four [THREE] members of the board  
15 constitute a quorum for the transaction of all business properly before  
16 the board.

17 \* Sec. 13. AS 08.64 is amended by adding new sections to read:

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

23 (b) The director of insurance or his designee shall waive the  
24 requirement in (a) of this section for a person if that person fur-  
25 nishes satisfactory evidence of his having other insurance providing  
26 coverage in amounts not less than those specified in (a) of this sec-  
27 tion. No waiver granted under this subsection may extend beyond the  
28 normal expiration date of the person's insurance policy or January 1,  
29 1977, whichever occurs first.

1           Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE: (a)  
2 In addition to action under sec. 330 of this chapter, upon a finding  
3 that by reason of demonstrated problems of competence, experience, edu-  
4 cation, or health the authority to practice under this chapter should  
5 be limited or conditioned or the practitioner disciplined, the board  
6 may reprimand, censure, place on probation, restrict practice by  
7 specialty, procedure, or facility, or require continuing education or  
8 retraining.

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

11 \* Sec. 14. AS 08.68.010 is amended to read:

12           Sec. 08.68.010. CREATION AND MEMBERSHIP OF BOARD OF NURSING.  
13 There is created a Board of Nursing, consisting of seven [FIVE] members  
14 appointed by the governor. One member shall be currently involved in  
15 institutional nursing service, one member in community or public health  
16 nursing and two members in basic or continuing nursing education, [AND]  
17 one nurse at large, and two persons who have no direct financial in-  
18 terest in the health care industry.

19 \* Sec. 15. AS 08.68.020 is repealed and re-enacted to read:

20           Sec. 08.68.020. TERM OF OFFICE. Members serve staggered terms of five  
21 years and until their successors are appointed. The terms of the  
22 public members on the board shall be set so that they do not expire at  
23 the same time. Vacancies on the board shall be filled for the unexpired  
24 term.

25 \* Sec. 16. AS 08.68.060 is amended to read:

26           Sec. 08.68.060. QUALIFICATIONS OF BOARD MEMBERS. The five members  
27 [EACH MEMBER] of the board who are nurses shall be [A CITIZEN OF THE  
28 UNITED STATES, A RESIDENT OF THE STATE, AND A] licensed professional  
29 nurses [NURSE] in the state, and [MEMBERS] shall have been actively

1 engaged in nursing for not less than four years before appointment, two  
2 years of which were within the five years preceding appointment.

3 \* Sec. 17. AS 08.68 is amended by adding a new section to read:

4 Sec. 08.68.275. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
5 to action under sec. 270 of this chapter, upon a finding that by reason  
6 of demonstrated problems of competence, experience, education, or health  
7 the authority to practice nursing should be limited or conditioned or  
8 the practitioner disciplined, the board may reprimand, censure, place  
9 on probation, restrict practice by specialty, procedure, or facility,  
10 or require continuing education or retraining.

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

13 \* Sec. 18. AS 08.71.020 is amended to read:

14 Sec. 08.71.020. MEMBERSHIP OF BOARD; SOURCE OF APPOINTMENTS; TERM  
15 OF OFFICE. The board consists of seven [FIVE] persons appointed by the  
16 governor. Members serve staggered terms of three years. The terms of  
17 the public members of the board shall be set so that they do not expire  
18 at the same time. [THE GOVERNOR SHALL APPOINT BOARD MEMBERS FROM A  
19 LIST OF QUALIFIED OPTICIANS PREPARED BY THE ASSOCIATION OF OPTICIANS IN  
20 THE STATE AND SUBMITTED AT LEAST 30 DAYS BEFORE JULY 1, 1973, AT LEAST  
21 30 DAYS BEFORE THE EXPIRATION OF A TERM AND NOT MORE THAN 60 DAYS AFTER  
22 A VACANCY OCCURS IN AN UNEXPIRED TERM. THE LIST SHALL CONTAIN NOT LESS  
23 THAN TWO RECOMMENDED CANDIDATES FOR EACH APPOINTMENT. THE GOVERNOR  
24 SHALL MAKE APPOINTMENTS WITHIN 30 DAYS AFTER RECEIVING THE LIST. THE  
25 TERM OF OFFICE OF EACH MEMBER IS THREE YEARS. HOWEVER, OF THE FIRST  
26 MEMBERS OF THE BOARD, ONE SHALL BE APPOINTED FOR A ONE-YEAR TERM, TWO  
27 FOR TWO-YEAR TERMS, AND TWO FOR THREE-YEAR TERMS.] Vacancies on the  
28 board shall be filled for the unexpired term [IN THE SAME MANNER AS  
29 ORIGINAL APPOINTMENT].

1 \* Sec. 19. AS 08.71.030 is amended to read:

2       Sec. 08.71.030. QUALIFICATIONS OF BOARD MEMBERS. Five [A] board  
3 members [MEMBER] shall be [A] licensed, practicing dispensing opticians  
4 [OPTICIAN] residing in the state. Two shall be persons with no direct  
5 financial interest in the health care industry.

6 \* Sec. 20. AS 08.71 is amended by adding a new section to read:

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

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

17 \* Sec. 21. AS 08.72.020 is amended to read:

18       Sec. 08.72.020. MEMBERSHIP OF BOARD AND TERMS OF OFFICE. The  
19 board consists of five [THREE] persons, appointed by the governor.  
20 Members serve staggered terms of three years. The terms of the public  
21 members of the board shall be set so that they do not expire at the  
22 same time. [THE TERM OF EACH MEMBER IS THREE YEARS. ONE MEMBER ONLY  
23 IS APPOINTED EACH YEAR, EXCEPT WHEN VACANCIES FOR UNEXPIRED TERMS ARE  
24 FILLED.]

25 \* Sec. 22. AS 08.72.040 is repealed and re-enacted to read:

26       Sec. 08.72.040. QUALIFICATIONS. Three board members shall be  
27 licensed, practicing optometrists who have been residents for at least  
28 three years. Two shall be persons who have no direct financial interest  
29 in the health care industry.

1 \* Sec. 23. AS 08.72 is amended by adding a new section to read:

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 problems of competence, experi-  
5 ence, education, or health the authority to practice optometry under  
6 this chapter should be limited or conditioned or the practitioner  
7 disciplined, the board may reprimand, censure, place on probation,  
8 restrict practice by specialty, procedure, or facility, or require  
9 continuing education or retraining.

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

12 \* Sec. 24. AS 08.80.010 is amended to read:

13 Sec. 08.80.010. CREATION AND MEMBERSHIP OF BOARD OF PHARMACY.

14 There is created the Board of Pharmacy, composed of seven [FIVE] members,  
15 five [EACH] of whom shall be pharmacists [A PHARMACIST] licensed in the  
16 state who has been actively engaged in the practice of pharmacy in the  
17 state for a period of three years immediately preceding his appointment.  
18 Two shall be persons with no direct financial interest in the health  
19 care industry. Whenever possible, the board shall include at least one  
20 member from each judicial district.

21 \* Sec. 25. AS 08.80.020 is amended to read:

22 Sec. 08.80.020. TERM OF OFFICE. Members of the board are appointed  
23 by the governor, and confirmed by the legislature in joint session, for  
24 overlapping terms of five years, or until their successors are appointed  
25 and qualified. The terms of the public members shall be staggered so  
26 that they do not expire at the same time. An appointment to fill a  
27 vacancy is for the unexpired term. The term of office begins on April 1  
28 of each year.

29 \* Sec. 26. AS 80.80 is amended by adding a new section to read:

1           Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
2 In addition to action under sec. 260 of this chapter, upon a finding  
3 that by reason of demonstrated problems of competence, experience,  
4 education, or health the authority to practice pharmacy under this  
5 chapter should be limited or conditioned or the practitioner disci-  
6 plined, the board may reprimand, censure, place on probation, restrict  
7 practice by specialty, procedure, or facility, or require continuing  
8 education or retraining.

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

11 \* Sec. 27. AS 08.84 is amended by adding a new section to read:

12           Sec. 08.84.185. LIMITS OR CONDITIONS ON LICENSE. (a) In addition  
13 to action under sec. 180 of this chapter, upon a finding that by reason  
14 of demonstrated problems of competence, experience, education or health  
15 the authority to practice physical therapy should be limited or condi-  
16 tioned or the practitioner disciplined, the board may reprimand,  
17 censure, place on probation, restrict practice by specialty, procedure,  
18 or facility, or require continuing education or retraining.

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

21 \* Sec. 28. AS 08.86.010 is amended to read:

22           Sec. 08.86.010. CREATION AND MEMBERSHIP OF BOARD. There is  
23 created a Board of Psychologist and Psychological Associate Examiners.  
24 It consists of three licensed psychologists, and two persons who have  
25 no direct financial interest in the health care industry.

26 \* Sec. 29. AS 08.86.020 is amended to read:

27           Sec. 08.86.020. APPOINTMENT AND TERM OF OFFICE. Members of the  
28 board are appointed by the governor and confirmed by the legislature  
29 for staggered terms of three years. The terms of the public members

1 shall be set so that they do not expire at the same time. A member  
2 serves at the pleasure of the governor.

3 \* Sec. 30. AS 08.86 is amended by adding a new section to read:

4 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE. (a)  
5 Upon a finding that by reason of demonstrated problems of competence,  
6 experience, education, or health the authority to practice psychology  
7 or as a psychological associate under this chapter should be limited  
8 or conditioned or the practitioner disciplined, the board may reprimand,  
9 censure, place on probation, restrict practice by time, specialty, pro-  
10 cedure, or facility, or require continuing education or retraining.

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

13 \* Sec. 31. AS 09.55 is amended by adding new sections to read:

14 Sec. 09.55.535. MANDATORY ARBITRATION. (a) It is the purpose of  
15 these arbitration provisions to establish a system that will provide  
16 incentives to settle malpractice disputes without prolonged litigation  
17 and that will provide a method by which parties to a medical malpractice  
18 claim can obtain a prompt determination of its merits, and the amount  
19 of damages, if any, that should be allowed.

20 (b) Upon the filing of any malpractice claim against a physician  
21 or hospital, the claim shall be submitted to an arbitration board; how-  
22 ever, submission to an arbitration board may not be required if all  
23 parties object to arbitration or if the parties have agreed to follow  
24 the procedures prescribed in sec. 536 or sec. 537 of this chapter.

25 (c) The arbitration board shall consist of three arbitrators:  
26 one arbitrator designated by the plaintiff or plaintiffs, one arbitrator  
27 designated by the defendant or defendants, and a third arbitrator  
28 designated by mutual agreement who shall serve as chairman of the  
29 board. If the parties cannot agree on the third person, the court will

1 provide a list of three or more persons who might serve as chairman of  
2 the arbitration board, which shall be furnished by the attorney general.  
3 Plaintiff or plaintiffs together and defendant and defendants together  
4 may each strike one or more names from the list, so after each side has  
5 done so, at least one name remains on the list, providing a basis for  
6 the final selection by the court.

7 (d) The attorney general shall prepare a list of panelists con-  
8 sisting of lawyers or other persons qualified to serve as chairmen of  
9 arbitration boards. They shall be selected on basis of their technical  
10 expertise, judicial temperament, and capability of impartially acting  
11 on malpractice claims. The attorney general shall submit a list of at  
12 least three names of panelists whenever requested to do so by the court  
13 along with detailed biographical information on each panelist.

14 (e) Each member of the board shall receive reasonable compensation  
15 to be paid by the court based on the extent and duration of services  
16 rendered. The court shall also pay the costs of experts required by  
17 the board.

18 (f) The court shall specify the shortest practical deadline for  
19 completion of the work of the arbitration panel, taking into account  
20 all the circumstance and the nature of the case.

21 (g) The provisions of the Uniform Arbitration Act, AS 09.43.010 -  
22 09.43.180, apply to arbitrations under this section insofar as they  
23 are applicable and do not conflict with the provisions of this section;  
24 arbitrations under this section shall be conducted in accordance with  
25 any rules of court which may be adopted.

26 (h) If the decision of the arbitration board is not accepted by  
27 all parties and the parties have not agreed to binding arbitration, any  
28 party may appeal the decision of the board to the superior court for a  
29 trial de novo. The decision of the arbitration board, including its

1 conclusions as to the merits of the claim and appropriate damages, to-  
2 gether with any dissenting opinions, shall be admissible in evidence at  
3 trial upon the offer of any party, if the court conducts a review of  
4 the arbitration decision and any other relevant information submitted  
5 by the parties and concludes that:

6 (1) the findings of fact by the arbitration board were not  
7 clearly erroneous;

8 (2) the decision is in accordance with applicable law;

9 (3) the procedures required for conducting the hearing and  
10 rendering the decision were followed fairly and properly without pre-  
11 judice to any party;

12 (4) any party who has not offered the arbitration decision  
13 in evidence may subpoena any member of the arbitration board for pur-  
14 poses of cross-examination.

15 Sec. 09.55.536. VOLUNTARY ARBITRATION. (a) A patient and any  
16 health care provider may execute an agreement to submit to arbitration  
17 any dispute, controversy, or issue arising out of care of treatment by  
18 the health care provider during the period that the agreement is in  
19 force or that has already arisen between the parties.

20 (b) An agreement to arbitrate executed before care or treatment  
21 is provided between a patient and health care provider shall clearly  
22 provide in bold print on the face of the agreement that execution of  
23 the agreement by the patient is not a prerequisite to receiving care or  
24 treatment. If this subsection is not complied with by the health care  
25 provider, the agreement to arbitrate is void. The form to be used  
26 shall be approved in advance by the director of insurance to assure it  
27 fairly informs the patient and properly protects his interests.

28 (c) Each admission to a hospital shall be treated as separate and  
29 distinct for the purposes of an agreement to arbitrate, but a person

1 receiving outpatient care from a hospital or clinic or a member of a  
2 health maintenance organization may execute an agreement with the  
3 hospital which provides for continuation of the agreement for a contin-  
4 uing program of treatment or during continued membership.

5 (d) Arbitration shall take place under the same procedures pre-  
6 scribed for mandatory arbitration under sec. 536 of this chapter unless  
7 the parties agree otherwise in accordance with general guidelines pro-  
8 mulgated as regulations by the director of insurance to assure fairness  
9 to the parties.

10 (e) Reasonable compensation based on the extent and duration of  
11 services rendered shall be paid to members of the arbitration board by  
12 the court as well as the costs of experts required by the board.

13 Sec. 09.55.537. ALTERNATIVE TO ARBITRATION. (a) As an alterna-  
14 tive to arbitration under sec. 535 of this chapter, and by agreement of  
15 all parties, the case may be submitted instead to an expert advisory  
16 panel to be appointed by the court. The court shall, by order, deter-  
17 mine professions or specialties to be represented on the expert advisory  
18 panel and shall advise each party of the professions or specialties to  
19 be represented, giving the parties the opportunity to object or make  
20 suggestions.

21 (b) The expert advisory panel may compel the attendance of wit-  
22 nesses, physically or orally examine the parties, consult with special-  
23 ists or learned works they consider appropriate, and compel the produc-  
24 tion of, and examine all relevant hospital, medical, or other records  
25 relating to health care treatment. The panel may meet in camera, but  
26 shall maintain a record of any testimony or oral statements of wit-  
27 nesses, and shall maintain copies of any written statements or opinions  
28 that it receives.

29 (c) Not less than 30 days after selection of the panel, it shall

1 make a written report to the parties and the court answering any ques-  
2 tions put to it by the court on medical questions. The report shall  
3 include copies of all written statements, opinions, or records relied  
4 on by the panel, and either a transcription or other record of any oral  
5 statements or opinions; the report shall specify any medical or scien-  
6 tific authority relied upon and shall include the results of any  
7 physical or mental examination performed on the plaintiff. Each member  
8 shall sign the report and his signature constitutes his adoption of all  
9 statements and opinions contained in it; however, a member may, instead  
10 of signing the report, submit a concurring or dissenting report which  
11 complies with the requirements of this subsection. A member may not  
12 attest to any portion of the report as to which he is not qualified to  
13 give expert testimony.

14 (d) The report of the panel and any dissenting or concurring  
15 opinion are admissible in evidence to the same extent, and have the  
16 same force and effect, as though its contents were orally testified to  
17 by the person or persons preparing it. The court shall delete any  
18 portion that would not be admissible because of lack of foundation for  
19 opinion testimony, or otherwise. Either party may submit expert testi-  
20 mony to support or refute the report. The jury shall be instructed in  
21 general terms that the report shall be considered and evaluated in the  
22 same manner as any other expert testimony. Any member of the panel may  
23 be called by any party and may be cross-examined as to the contents of  
24 the report or of his dissenting or concurring opinion.

25 (e) Members of a panel are entitled to travel expenses and per  
26 diem in accordance with state law pertaining to members of boards and  
27 commissions for all time spent in preparing its report and matters  
28 incidental to it, which shall be paid by the court. If a panel member  
29 is called upon as a witness at trial or upon deposition, he is entitled

1 to payment of an expert witness fee. In any case in which the court  
2 determines that a party has made a patently frivolous claim or a  
3 patently frivolous denial of liability, it shall order that all costs  
4 of the expert advisory panel be borne by the party making that claim  
5 or denial.

6 (f) Parties to the case, and counsel, may not communicate out of  
7 court with members of the panel on the subject matter of its inquiry  
8 and report, or cause or solicit others to do so, except through ordinary  
9 discovery proceedings.

10 \* Sec. 32. AS 09.55.540 is amended to read:

11 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action  
12 based on the negligence or wilful misconduct of a health care provider  
13 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-  
14 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-  
15 derance of the evidence

16 (1) the degree of knowledge or skill possessed or the degree  
17 of care ordinarily exercised under the circumstances, at the time of  
18 the act complained of, by health care providers in the field or spe-  
19 cialty in which the defendant is practicing [BY PHYSICIANS OR DENTISTS  
20 PRACTICING THE SAME SPECIALTY IN SIMILAR COMMUNITIES TO THAT IN WHICH  
21 THE DEFENDANT PRACTICES];

22 (2) that the defendant either lacked this degree of know-  
23 ledge or skill or failed to exercise this degree of care; and

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

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

29 \* Sec. 33. AS 09.55 is amended by adding new sections to read:

1           Sec. 09.55.546. ADVANCE PAYMENTS. In an action to recover dam-  
2 ages under secs. 530 - 560 of this chapter, no advance payment made by  
3 the defendant health care provider or his professional liability insurer  
4 to or on behalf of the plaintiff may be admissible as evidence or may  
5 be construed as an admission of liability for injuries or damages  
6 suffered by the plaintiff; however, a final award in favor of the  
7 plaintiff shall be reduced to the extent of any advance payment. The  
8 advance payment shall inure to the exclusive benefit of the defendant  
9 or the insurer making the payment.

10           Sec. 09.55.547. AD DAMNUM. In a cause of action against a health  
11 care provider for malpractice, the complaint or any other pleadings may  
12 not contain an ad damnum clause or monetary amount claimed against the  
13 defendant health care provider, except as necessary for jurisdictional  
14 purposes.

15           Sec. 09.55.548. AWARDS, COLLATERAL SOURCE. (a) Damages shall be  
16 awarded in accordance with principles of the common law. The fact  
17 finder in a malpractice action shall render an award as to damages by  
18 category of loss. The court may enter a judgment that future damages  
19 be paid in whole or in part by periodic payments rather than by a lump-  
20 sum payment; the judgment shall include, if necessary, other provisions  
21 to assure that funds will be available as periodic payments become due.  
22 In this subsection, future damages includes damages for future medical  
23 treatment, care or custody, loss of future earnings, or loss of bodily  
24 function of the claimant.

25           (b) Except when the collateral source is a federal program which  
26 by law must seek subrogation and except death benefits paid under life  
27 insurance, a claimant may only recover damages from the defendant which  
28 exceed amounts received by the claimant as compensation for his injur-  
29 ies from collateral sources, whether private, group or governmental,

1 and whether contributory or noncontributory. Evidence of collateral  
2 sources, other than a federal program which must by law seek subrogation  
3 and the death benefit paid under life insurance, is admissible after  
4 the fact finder has rendered an award, but the court shall also take  
5 into account the value of claimant's rights to coverage exhausted or  
6 depleted by payment of these collateral benefits. It may do so by add-  
7 ing back a reasonable estimate of their probable value, or by earmark-  
8 ing and holding for possible periodic payment under (a) of this section  
9 that amount of the award that would otherwise have been deducted, to  
10 see if the impairment of claimant's rights actually takes place in the  
11 future.

12 \* Sec. 34. AS 09.55.550 is amended to read:

13       Sec. 09.55.550. JURY INSTRUCTIONS. In health care [MEDICAL]  
14 malpractice actions the jury shall be instructed that the plaintiff has  
15 the burden of proving [, BY A PREPONDERANCE OF THE EVIDENCE,] the  
16 health care provider's negligence or wilful misconduct in accordance  
17 with the standard of proof specified in sec. 540 of this chapter [OF  
18 THE PHYSICIAN OR DENTIST]. The jury shall be further instructed that  
19 injury alone does not raise a presumption of the health care provider's  
20 [PHYSICIAN'S OR DENTIST'S] negligence or misconduct.

21 \* Sec. 35. AS 09.55 is amended by adding new sections to read:

22       Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is  
23 liable for failure to obtain the informed consent of a patient if the  
24 claimant establishes by a preponderance of the evidence that the pro-  
25 vider has failed to inform the patient of the common risks and reason-  
26 able alternatives to the proposed treatment or procedure, and that but  
27 for that failure the claimant would not have consented to the proposed  
28 treatment or procedure.

29       (b) It is a defense to any action for health care malpractice

1 based upon an alleged failure to obtain informed consent that

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

4 (2) the patient stated to the health care provider that he  
5 would undergo the treatment or procedure regardless of the risk involved  
6 or that he did not want to be informed of the matters to which he would  
7 be entitled to be informed;

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

10 (4) the health care provider after considering all of the  
11 attendant facts and circumstances used reasonable discretion as to the  
12 manner and extent that the alternatives or risks were disclosed to the  
13 patient because he reasonably believed that a full disclosure would  
14 have a substantially adverse effect on the patient's condition.

15 Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter  
16 "health care provider" means a chiropractor licensed under AS 08.20; a  
17 dental hygienist licensed under AS 08.32; a dentist licensed under  
18 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician li-  
19 censed under AS 08.71; an optometrist licensed under AS 08.72; a pharma-  
20 cist licensed under AS 08.80; a physical therapist licensed under  
21 AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psycho-  
22 logist and a psychological associate licensed under AS 08.86; and a  
23 hospital as defined in AS 18.20.130, including a governmentally owned or  
24 operated hospital.

25 \* Sec. 36. AS 09.65.090 is repealed and re-enacted to read:

26 Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A person  
27 at a hospital or at any other location, who renders emergency care or  
28 emergency counseling to an injured, ill, or emotionally distraught  
29 person who reasonably appears to the person rendering the aid to be in

1 immediate need of emergency aid in order to avoid serious harm or  
2 death is not liable for civil damages as a result of an act or omis-  
3 sion in rendering emergency aid.

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

6 \* Sec. 37. AS 18.20 is amended by adding a new section to read:

7 Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a  
8 condition of licensure, shall maintain and submit to the department  
9 evidence of insurance against liability to inpatients and outpatients  
10 for malpractice issued by the Health Care Providers Indemnity Corpora-  
11 tion, in amounts of not less than \$200,000 per occurrence, and an  
12 aggregate liability per year of \$1,000,000 minimum, and an additional  
13 \$20,000 for each bed over 50.

14 (b) The director of insurance or his designee shall waive the  
15 requirement in (a) of this section for a hospital if the hospital fur-  
16 nishes satisfactory evidence of having other insurance providing  
17 coverage in amounts not less than those specified in (a) of this sec-  
18 tion. No waiver granted under this subsection may extend beyond the  
19 normal expiration date of the hospital's insurance policy or January 1,  
20 1977, whichever occurs first.

21 \* Sec. 38. AS 18 is amended by adding a new chapter to read:

22 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

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

29 (b) No privilege of confidentiality arising from a physician-

1 patient relationship may be invoked to withhold pertinent information  
2 from review by a review organization.

3 Sec. 18.23.020. LIMITATION ON LIABILITY FOR MEMBERS OF REVIEW  
4 ORGANIZATIONS. No person who is a member or employee of, or who acts in  
5 an advisory capacity to, or who furnishes counsel or services to a  
6 review organization is liable for damages or other relief in an action  
7 brought by another whose activities have been or are being scrutinized  
8 or reviewed by a review organization, by reason of the performance of a  
9 duty, function or activity of the review organization, unless the  
10 performance of the duty, function or activity was motivated by malice  
11 toward the affected person. No person is liable for damages or other  
12 relief in an action by reason of his performance of a duty, function, or  
13 activity as a member of a review organization or by reason of a recom-  
14 mendation or action of the review organization when the person acts in  
15 the reasonable belief that the action or recommendation is warranted by  
16 facts known to the person or to the review organization after reasonable  
17 efforts to ascertain the facts upon which the review organization's  
18 action or recommendation is made.

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

20 (a) Except as provided in (b) of this section, all data and information  
21 acquired by a review organization, in the exercise of its duties and  
22 functions, shall be held in confidence and may not be disclosed to  
23 anyone except to the extent necessary to carry out the purposes of the  
24 review organization, and is not subject to subpoena or discovery.

25 Except as provided in (b) of this section, no person described in sec.  
26 20 of this chapter may disclose what transpired at a meeting of a  
27 review organization except to the extent necessary to carry out the  
28 purposes of a review organization, and the proceedings and records of a  
29 review organization are not subject to discovery or introduction into

1 evidence in a civil action against a health care provider arising out  
2 of the matter which is the subject of consideration by the review  
3 organization. Information, documents, or records otherwise available  
4 from original sources are not immune from discovery or use in a civil  
5 action merely because they were presented during proceedings of a  
6 review organization, nor may a person who testified before a review  
7 organization or who is a member of it be prevented from testifying as  
8 to matters within his knowledge, but a witness may not be asked about  
9 his testimony before a review organization or opinions formed by him as  
10 a result of its hearings, except as provided in (b) of this section.

11 (b) Testimony, documents, proceedings, records, and other evidence  
12 adduced before a review organization that are otherwise inaccessible  
13 under this section may be obtained by a health care provider who claims  
14 that denial is unreasonable, or may be obtained under subpoena or  
15 discovery proceedings brought by a plaintiff who claims that information  
16 provided to a review organization was false and claims that the person  
17 providing the information knew or had reason to know the information was  
18 false.

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

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

28 Sec. 18.23.050. PROTECTION OF PATIENT. Nothing in this chapter  
29 relieves a person of liability which he has incurred or may incur to a

1 person as a result of furnishing health care to the patient.

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

7 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context  
8 otherwise requires,

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

11 (2) "health care" means professional services rendered by  
12 a health care provider or an employee of a health care provider, and  
13 services furnished by a sanatorium, rest home, nursing home, boarding  
14 home or other institution for the hospitalization or care of human  
15 beings;

16 (3) "health care provider" means a chiropractor licensed  
17 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist  
18 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing  
19 optician licensed under AS 08.71; an optometrist licensed under AS 08.-  
20 72; a pharmacist licensed under AS 08.80; a physical therapist licensed  
21 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a  
22 psychologist and a psychological associate licensed under AS 08.86; and  
23 a hospital as defined in AS 18.20.130, including a governmentally owned  
24 or operated hospital;

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

27 (5) "review organization" means a hospital governing body or  
28 a committee whose membership is limited to health care providers and  
29 administrative staff, except where otherwise provided for by state or

1 federal law, and which is established by a hospital, by a clinic, by  
2 one or more state or local associations of health care providers, by an  
3 organization of health care providers from a particular area or medical  
4 institution, or by a professional standards review organization estab-  
5 lished under 42 U.S.C., sec. 1320c-1 et seq., to gather and review  
6 information relating to the care and treatment of patients for the  
7 purposes of

8 (A) evaluating and improving the quality of health care  
9 rendered in the area or medical institution;

10 (B) reducing morbidity or mortality;

11 (C) obtaining and disseminating statistics and infor-  
12 mation relative to the treatment and prevention of diseases,  
13 illness and injuries;

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

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

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

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

22 (H) reviewing, ruling on, or advising on controversies,  
23 disputes or questions between

24 (i) a health insurance carrier or health mainte-  
25 nance organization and one or more of its insured or enrol-  
26 lees;

27 (ii) a professional licensing board, acting under  
28 its powers of discipline or license revocation or suspension,  
29 and a health care provider licensed by it when the matter is

1 referred to a review organization by the professional licen-  
2 sing board;

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

5 (iv) a health care provider and a health insurance  
6 carrier or health maintenance organization concerning a charge  
7 or fee for health care services provided to an insured or  
8 enrollee; or

9 (v) a health care provider or his patients and the  
10 federal or a state or local government, or an agency of the  
11 federal or a state or local government;

12 (I) acting on the recommendation of a credential review  
13 committee or a grievance committee.

14 \* Sec. 39. AS 21 is amended by adding a new chapter to read:

15 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

16 ARTICLE 1. PURPOSE.

17 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this  
18 chapter to provide a means of furnishing health care providers with  
19 adequate insurance against liability for medical negligence by concen-  
20 trating all such insurance in one entity which can negotiate more  
21 successfully for insurance from casualty insurers and to distribute  
22 equitably the true cost of the insurance among the health care providers  
23 insured.

24 ARTICLE 2. INDEMNITY CORPORATION.

25 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska  
26 Health Care Providers Indemnity Corporation which is a public corpora-  
27 tion having a legal existence independent of and separate from the  
28 state. Obligations issued by the corporation do not constitute a debt,  
29 liability or obligation of the state or a pledge of full faith and

1 credit of the state.

2 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-  
3 poration shall exercise its powers through a board of governors which  
4 shall be appointed by the governor of the state and confirmed by the  
5 legislature as provided in (b) of this section.

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

8 (1) two physicians licensed in the state; one of the physi-  
9 cians shall be engaged in group practice in a clinic of six or more  
10 physicians;

11 (2) one person employed by a hospital or on the board of  
12 directors of a hospital;

13 (3) two professionals in the insurance field;

14 (4) two persons who are not health care providers or finan-  
15 cially interested in the field of health care, attorneys, or represen-  
16 tatives of the insurance industry.

17 (c) The term of office of each governor is three years, except  
18 that the governor of the state shall designate two initially appointed  
19 governors to serve for one year and two initially appointed governors  
20 to serve for two years.

21 (d) Upon the expiration of the term of a governor, the governor  
22 of the state shall appoint a successor who shall be from the same class  
23 described in (b) of this section as the governor whose term has expired.

24 (e) Upon a governor's early resignation, death or inability to  
25 serve, the governor of the state shall appoint a successor from the  
26 same class defined in (b) of this section as the terminating governor,  
27 who shall serve for the unexpired term.

28 (f) The director or his designee is not a voting member of the  
29 board of governors but shall be notified by the board of and have the

1 right to attend and participate in all meetings and proceedings of the  
2 board.

3 (g) Each member of the board of governors shall be allowed com-  
4 pensation for services and reimbursement for reasonable expenses in-  
5 curred in attending meetings of the board and transacting corporation  
6 business, as set out in the plan of operation.

7 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within  
8 30 days after the effective date of this chapter, the board of  
9 governors shall prepare and submit to the director for approval a  
10 plan of operation which provides for the fair, reasonable and equit-  
11 able administration of the affairs of the corporation and the dis-  
12 charge of the purposes for which it is created. The plan and any  
13 amendments of it become effective upon the director's approval. If  
14 the board of governors fails to submit a plan of operation, or if  
15 at a subsequent time the board of governors fails to submit suitable  
16 amendments to the plan, the director shall, after notice and hearing,  
17 adopt and promulgate a plan of operation or amendments which are  
18 necessary or advisable to effectuate the provisions of this chapter.  
19 Adoption of the plan is not subject to the Administrative Procedure  
20 Act (AS 44.62).

21 (b) The plan of operation shall

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

25 (2) establish procedures for handling assets and discharg-  
26 ing liabilities of the corporation;

27 (3) establish regular places and times for meetings of the  
28 board of governors;

29 (4) establish procedures for records to be kept of all

1 financial transactions of the corporation, its agents, and the board  
2 of governors;

3 (5) establish the amount and method of reimbursing and  
4 compensating members of the board of governors;

5 (6) establish the procedures for awarding contracts to in-  
6 demnify or defend or to provide other services and to compensate the  
7 indemnitors or vendors;

8 (7) establish the procedures for issuing contracts of insur-  
9 ance as provided in sec. 50 of this chapter and for the determination  
10 of rates;

11 (8) contain additional provisions necessary or proper for  
12 the execution of the powers and duties of the corporation.

13 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
14 corporation shall

15 (1) in the form approved by the director, issue to all  
16 health care providers who pay the premiums for it a contract or con-  
17 tracts indemnifying the health care provider and his employees who are  
18 health care providers against loss by reason of liability for profes-  
19 sional services on an occurrence basis and agreeing to tender on behalf  
20 of the health care provider and his employees who are health care  
21 providers a defense in a proceeding brought under AS 09.55.530 - 09.55.-  
22 560; the limit of liability shall be no less than the minimum liability  
23 coverage requirements to be maintained under AS 08.64.215 and AS 18.-  
24 20.045; the contract shall cover the defense against but need not  
25 indemnify a claim for punitive damages; at the option of the health  
26 care provider and for an additional premium the contract may cover  
27 claims against the health care provider that arise out of professional  
28 services performed by the health care provider after December 31, 1974  
29 except that coverage will not be provided for a claim already filed or

1 of which the health care provider had or reasonably should have had  
2 notice at the time the retroactive insurance was purchased;

3 (2) charge a premium for the protection provided by the  
4 contracts issued under (1) of this subsection which shall be determined  
5 by the board of governors in accordance with sec. 80 of this chapter  
6 and subject to the approval of the director;

7 (3) negotiate for and procure reinsurance from a casualty  
8 insurers or reinsurers for all of its liability incurred by contracts  
9 issued under (1) of this subsection; the corporation may not incur or  
10 retain under those contracts liability which is not reinsured as pro-  
11 vided in this paragraph; if, after the exercise of due diligence, no  
12 reinsurance for all or a portion of the risk can be procured at rea-  
13 sonable rates from casualty insurers or reinsurers, the corporation  
14 through the board of governors, shall so certify to the director; re-  
15 insurance shall then be provided by the Health Care Joint Underwriting  
16 Association as provided in sec. 110 et seq. of this chapter for that  
17 portion not reinsured by a private carrier;

18 (4) comply with or be subject to AS 21.06.090; 21.06.120;  
19 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200;  
20 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,  
21 21, 24, and 36 of this title;

22 (5) carry out the obligations of the contracts issued under  
23 (1) of this subsection by defending all covered claims made against  
24 insured health care providers and by paying all liabilities which are  
25 finally adjudicated against the insured health care provider or which  
26 may in the opinion of the corporation reasonably be expected to be  
27 finally adjudicated against the health care provider to the extent of  
28 the contract obligation;

29 (6) provide coverage to health care providers for liability

1 in excess of the minimum limits required for licensure as a health care  
2 provider, but limited to \$1,000,000 for individual health care providers  
3 and \$5,000,000 for hospitals, if there is a finding by the director that  
4 this coverage is unavailable at a reasonable cost and that this coverage  
5 can be made available at a reasonable cost through the corporation; if  
6 this paragraph is implemented, then each health care provider obtaining  
7 excess coverage up to these amounts shall obtain it from the corpora-  
8 tion.

9 (b) The corporation may

10 (1) in the form approved by the director, issue contracts of  
11 professional liability insurance to chiropractors licensed under AS 08.-  
12 20, dental hygienists licensed under AS 08.32, dentists licensed under  
13 AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed  
14 under AS 08.71, optometrists licensed under AS 08.72, pharmacists li-  
15 censed under AS 08.80, physical therapists licensed under AS 08.84, and  
16 psychologists and psychological associates licensed under AS 08.86;

17 (2) employ or retain persons, individual or corporate, to  
18 discharge its obligations and pay reasonable compensation for those  
19 services; employees of the corporation are not considered state em-  
20 ployees;

21 (3) provide coverage to health care providers for other  
22 hazards where there is a finding by the director that this coverage is  
23 otherwise unavailable by reason of the operation of the corporation;

24 (4) borrow or advance funds necessary to effectuate the  
25 purposes of the corporation;

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

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

29 (7) perform all other acts necessary and proper to effectu-

1 ate the corporation.

2 Sec. 21.88.060. PREMIUM TAX. The corporation shall pay a premium  
3 tax in the amount of one and one-half per cent of the total direct  
4 premium income received by the corporation during the year ending on the  
5 preceding December 31, after deducting the applicable cancellations,  
6 returned premium, the unabsorbed portion of any deposit premiums, all  
7 policy dividends, unabsorbed premiums refunded to policyholders,  
8 refunds, savings, savings coupons and other similar returns paid or  
9 credited to policyholders with respect to their policies. The tax shall  
10 be paid to the director annually before April 1 of each year.

11 Sec. 21.88.070. STATISTICS. The corporation shall collect,  
12 maintain and report information concerning claims against health care  
13 providers. The information shall be on forms prescribed by the direc-  
14 tor, and shall be sufficient to enable a proper determination of losses  
15 for rate making and to identify causes and sources of loss for loss  
16 control. At least annually the corporation shall report to the director  
17 the number and amount of claims filed, reserved, paid, settled and  
18 adjudicated during the year, the premiums paid to and the expenses  
19 incurred by the corporation during the year. This report shall be  
20 available to the public. The director may require that supplemental  
21 reports include the names of insured health care providers and the  
22 claimants; however, no reports which become publicly available may  
23 include the names of health care providers or claimants or information  
24 that will permit by inference the identity of specific health care  
25 providers or claimants. All statistics shall be made available to the  
26 appropriate licensing board or agency.

27 Sec. 21.88.080. RATES. (a) The rates and rating plans used by  
28 the corporation for the policies issued shall be determined by license  
29 category of health care providers in accordance with all of the fol-

1           lowing:

2                   (1) rates may not be excessive; rates are excessive if, after  
3 a period of time and with respect to an amount of gross premium which  
4 are actuarially credible, the premiums exceed losses incurred by the  
5 corporation, including losses paid, reserves for claims reported and  
6 unpaid, reserves for claims incurred during the policy period and not  
7 reported, provided that reserves for claims incurred during the policy  
8 period and reasonably expected to be reported after three years after  
9 the incident may be included on a different basis due to the additional  
10 financial flexibility provided by the corporation, and reasonable ex-  
11 penses for the operation of the corporation;

12                   (2) rates shall not be inadequate; rates are inadequate if,  
13 based on available actuarial data, the premiums to be paid by the  
14 health care providers are or may reasonably be expected to be insuf-  
15 ficient to pay for losses incurred by the corporation, including claims  
16 paid, reserves for claims reported and unpaid, reserves for claims  
17 incurred during the policy period and not reported provided that re-  
18 serves for claims incurred during the policy period and reasonably  
19 expected to be reported after three years after the incident may be  
20 included on a different basis due to the additional financial flexibil-  
21 ity provided by the corporation, and reasonable expenses for the opera-  
22 tion of the corporation;

23                   (3) rates may not be unfairly discriminatory;

24                   (4) rates shall be adjusted annually;

25                   (5) rates for any policy year shall be calculated to include  
26 the adjustment for actual experience of the corporation;

27                   (6) in considering losses to be incurred, changes in the  
28 law, national, regional or local trends in medical negligence awards,  
29 and other relevant factors may be considered;

1 (7) income from the investment of reserves shall be con-  
2 sidered;

3 (8) individual risk underwriting factors shall be considered.

4 (b) The standards in (a) of this section shall be applied to the  
5 policy terms the corporation decides to write.

6 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corporation  
7 shall provide insurance to all health care providers otherwise eligible  
8 for licensure under AS 08.64 and AS 18.20. The corporation may provide  
9 for installment payment of premiums in which event each installment is  
10 due by the date specified. The corporation may cancel any of its  
11 policies in the event of nonpayment of any premium or installment on a  
12 premium, or other charge, by mailing or delivering to the insured at  
13 the address shown on the policy and to the agency of the state issuing  
14 the insured's license written notice stating when, not less than 10 days  
15 after notice is received by the insured, the cancellation is effective.

16 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

17 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-  
18 viders Joint Underwriting Association is created consisting of all  
19 licensed

20 (1) health care service corporations as defined in AS 21.-  
21 87.330;

22 (2) disability insurers as defined in AS 21.12.050;

23 (3) property insurers as defined in AS 21.12.060; and

24 (4) casualty insurers as defined in AS 21.12.070.

25 (b) Every insurer described in (a) of this section shall be a  
26 member of the association and shall remain a member as a condition of  
27 its authority to continue to transact that kind of business in this  
28 state; except that any disability insurer may elect to pay any tax or  
29 assessments due without otherwise participating as a member.

1 (c) The association shall commence operation upon a finding by  
2 the director, after public hearing, that after the exercise of due  
3 diligence no reinsurance could be procured at reasonable rates by the  
4 corporation from a casualty insurer or reinsurer. After the association  
5 has commenced operation, if the director determines, after public  
6 hearing, that health care malpractice insurance is available through  
7 insurers licensed in this state with respect to which he has previously  
8 made the former finding, the association shall cease its underwriting  
9 operations. At any time, after notice and hearing, the director may,  
10 upon a finding that it is no longer needed, terminate the operation of  
11 the association.

12 Sec. 21.88.120. PURPOSE. The purpose of the association is to  
13 provide a market for medical malpractice insurance to the corporation  
14 on a self-supporting basis without subsidy from association members.

15 Sec. 21.88.130. ASSOCIATION BOARD OF DIRECTORS; TERM. The asso-  
16 ciation shall be governed by a board of directors appointed by the  
17 governor of the state and consisting of two representatives of domestic  
18 casualty and property insurers, one representative of admitted dis-  
19 ability insurers, one representative of health care service corpora-  
20 tions, one representative of foreign casualty and property insurers, and  
21 two persons from the public. Members of the board of directors serve  
22 three-year terms.

23 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30  
24 days after the association's creation the board of directors shall  
25 prepare and submit to the director for his approval a plan of operation  
26 which provides for the fair, reasonable and equitable administration of  
27 the affairs of the association and the discharge of the purposes for  
28 which it is created. The plan and any amendments of it become effective  
29 upon the director's approval. If the board of directors has failed to

1 submit a plan of operation, or if at any subsequent time the board of  
2 directors fails to submit suitable amendments to the plan, the director  
3 shall, after notice and hearing, adopt and promulgate a plan of opera-  
4 tion or amendments which are necessary or advisable to effectuate the  
5 provisions of this chapter. Adoption of the plan is not subject to the  
6 Administrative Procedure Act (AS 44.62).

7 (b) The plan of operation shall

8 (1) establish the procedures for carrying out the powers and  
9 duties of the association specified in sec. 150 of this chapter;

10 (2) establish procedures for handling assets and discharging  
11 liabilities of the association;

12 (3) establish regular places and times for meetings of the  
13 board of directors;

14 (4) establish procedures for records to be kept of all  
15 financial transactions of the association, its agents, and the board  
16 of directors;

17 (5) establish the amount and method of reimbursing members of  
18 the board of directors;

19 (6) establish the procedures for awarding contracts to indem-  
20 nify or defend or to provide other services and to compensate the indem-  
21 nitors or vendors;

22 (7) establish the procedures for issuing contracts of insur-  
23 ance as provided in sec. 150 of this chapter and for the determination  
24 of rates;

25 (8) contain additional provisions necessary or proper for the  
26 execution of the powers and duties of the association.

27 Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The  
28 association shall

29 (1) provide reinsurance to the corporation covering contracts

1 issued by the corporation indemnifying health care providers and their  
2 employees who are health care providers against loss by reason of  
3 liability for professional services and agreeing to tender on behalf  
4 of the health care providers and their employees who are health care  
5 providers a defense in an action brought under AS 09.55.530 - 09.55.560;  
6 the limit of liability shall be no less than the minimum liability  
7 required to be indemnified as provided in AS 08.64.215 and AS 18.20.045,  
8 and the coverage shall be the same as that which the Health Care Pro-  
9 viders Indemnity Corporation is required to provide under sec. 50 of  
10 this chapter;

11 (2) charge a premium for the protection provided by the  
12 contracts issued under sec. 50 of this chapter which shall be deter-  
13 mined by the board of directors in accordance with sec. 80 of this  
14 chapter and subject to the approval of the director;

15 (3) comply with or be subject to AS 21.06.090; 21.06.120;  
16 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;  
17 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and  
18 36 of this title;

19 (4) carry out the obligations of the contracts issued under  
20 sec. 50 of this chapter by defending all covered claims made against  
21 insured health care providers and paying all liabilities which are  
22 finally adjudicated against the insured health care provider or which  
23 may in the opinion of the association reasonably be expected to be  
24 finally adjudicated against the health care provider to the extent of  
25 the contract obligation.

26 (b) The association may

27 (1) employ or retain persons, individual or corporate, to  
28 discharge its obligations and pay reasonable compensation for those  
29 services;

1 (2) provide reinsurance to the corporation for coverage to  
2 health care providers for other hazards where there is a finding by the  
3 director that this coverage is otherwise unavailable by reason of the  
4 operation of the corporation;

5 (3) provide reinsurance to the corporation for coverage to  
6 health care providers for liability under AS 09.55.530 - 09.55.560 in  
7 excess of the minimum limits required for licensure as a health care  
8 provider where there is a finding by the director that this coverage is  
9 unavailable at a reasonable cost and that this coverage can be made  
10 available at a reasonable cost through the corporation;

11 (4) provide reinsurance to the corporation for coverage for  
12 liability under AS 09.55.530 - 09.55.560 to chiropractors licensed  
13 under AS 08.20, dental hygienists licensed under AS 08.32, dentists  
14 licensed under AS 08.36, nurses licensed under AS 08.68, dispensing  
15 opticians licensed under AS 08.71, optometrists licensed under AS 08.72,  
16 pharmacists licensed under AS 08.80, physical therapists licensed under  
17 AS 08.84, and psychologists and psychological associates licensed under  
18 AS 08.86;

19 (5) borrow or advance funds necessary to effectuate the  
20 purposes of this association;

21 (6) negotiate and become a party to those contracts which  
22 are necessary to carry out the purposes of the association;

23 (7) sue or be sued in the name of the association;

24 (8) cede or assume reinsurance;

25 (9) perform all other acts necessary and proper to effectuate  
26 the association.

27 Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating  
28 plans shall be determined as provided in sec. 80 of this chapter,  
29 except that allowance may not be made for profit to an indemnifying

1 carrier or for income from investment of member-contributed funds; and  
2 provided that reserves for claims incurred during the policy period and  
3 reasonably expected to be reported after three years after the incident  
4 may be included on a different basis due to the additional financial  
5 flexibility provided by the association.

6 Sec. 21.88.170. ASSESSMENT. If sufficient funds are not avail-  
7 able for the sound financial operation of the association, all members  
8 shall contribute to the financial requirements of the association by  
9 paying to the association an assessment to be determined by the board  
10 of governors of the association, these assessments to be prorated among  
11 all members in proportion to their direct written premiums or revenues  
12 in this state in the insurance lines the writing of which require  
13 membership in the association, in the two years ending on the preceding  
14 December 31, after deducting the applicable cancellations, returned  
15 premium, the unabsorbed portion of any deposit premium, all policy  
16 dividends, unabsorbed premiums refunded to policyholders, refunds,  
17 savings, savings coupons and other similar returns paid or credited to  
18 policyholders with respect to their policies. Any assessment under  
19 this section is a tax obligation in addition to taxes required under  
20 AS 21.09.210 and notwithstanding the provisions of AS 21.09.210(e).

21 Sec. 21.88.180. RATE ADJUSTMENT. (a) If in any year an assess-  
22 ment is made under sec. 170 of this chapter, rates for the next period  
23 shall be increased from the rate determined under sec. 160 of this  
24 chapter by an amount sufficient to reimburse all members the amounts  
25 assessed.

26 (b) No assessment may be reimbursed to members without prior  
27 approval of the director and no interest accrues in favor of members on  
28 amounts assessed.

29 (c) If, after establishing required reserves, there is an excess

1 amount in reserve, the excess premium shall be refunded to the insured  
2 health care providers.

3 Sec. 21.88.190. REPORTS. At least annually the association shall  
4 report to the director concerning its affairs. The report shall be in  
5 the form prescribed by the director.

6 ARTICLE 4. LOAN FUND.

7 Sec. 21.88.210. FUND ESTABLISHED. (a) There is in the Depart-  
8 ment of Commerce and Economic Development a medical malpractice liabil-  
9 ity revolving loan fund to be administered by the director of insurance.

10 (b) Loans shall be made from the fund to the Joint Underwriting  
11 Association upon certification by the director that a loan is necessary  
12 for the corporation to spread costs out over time because of fluctua-  
13 tions in loss experience. If a loan is made to the corporation from  
14 the fund, the Joint Underwriting Association shall issue a note to the  
15 fund pledging the premiums collected in the future as security for  
16 the loan.

17 (c) Loans from the fund shall be repaid by the Joint Underwriting  
18 Association within five years at an annual interest rate of six per  
19 cent.

20 (d) The director may sell at par value to the Department of  
21 Revenue the notes, security instruments and pledge agreements held by  
22 the Department of Commerce and Economic Development as security for  
23 loans made under this section. The Department of Revenue shall pur-  
24 chase all the notes offered until the current principal amount of the  
25 notes purchased and held by the Department of Revenue equals \$5,000,000.

26 ARTICLE 5. GENERAL PROVISIONS.

27 Sec. 21.88.900. DEFINITIONS. As used in this chapter,

28 (1) "association" means the Health Care Providers Joint  
29 Underwriting Association;

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

3 (3) "health care provider" means a physician licensed under  
4 AS 08.64 and a hospital licensed under AS 18.20.

5 \* Sec. 40. AS 21.18.090 is amended by adding a new paragraph to read:

6 (5) reserves for the Joint Underwriting Association are to  
7 include claims reported and unpaid; reserves for claims incurred but  
8 not reported, but those which may reasonably be expected to be re-  
9 ported beyond three years after the date of occurrence may be included  
10 on a different basis due to the additional financial flexibility of  
11 the association.

12 \* Sec. 41. AS 08.02 is amended by adding a new section to read:

13 Sec. 08.02.020. LIMITATION OF LIABILITY FOR MEMBERS OF LICENSING  
14 BOARDS. No person is liable for damages or other relief in an action  
15 by reason of his performance of a duty, function, or activity as a  
16 member of a licensing board or by reason of a recommendation or action  
17 of the board when the person acts in the reasonable belief that his  
18 action or recommendation is warranted by facts known to him or to the  
19 board after reasonable efforts to ascertain the facts upon which the  
20 action or recommendation is made.

21 \* Sec. 42. AS 09.55.535, and AS 09.55.537, enacted in sec. 31 of this  
22 Act, have the effect of changing the Alaska Supreme Court's Rules of Civil  
23 Procedure by requiring the submission of medical malpractice claims against  
24 hospitals and physicians to either nonbinding arbitration or to expert ad-  
25 visory panels, unless all parties to the action agree otherwise.

26 \* Sec. 43. AS 08.64.365 and AS 08.68.040 are repealed.

27 \* Sec. 44. This Act takes effect 30 days after enactment.  
28  
29