

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 am S

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 AS 08.20.030 is repealed and re-enacted to read: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 board may appoint an expert advisory panel, with the
19 powers of the expert advisory panel under sec. 537 of this chapter, to
20 advise the board on the medical facts of the case.

21 (g) The court shall specify the shortest practical deadline for
22 completion of the work of the arbitration panel, taking into account
23 all the circumstance and the nature of the case.

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

29 (i) If the decision of the arbitration board is not accepted by

1 all parties and the parties have not agreed to binding arbitration, any
2 party may appeal the decision of the board to the superior court for a
3 trial de novo. The decision of the arbitration board, including its
4 conclusions as to the merits of the claim and appropriate damages, to-
5 gether with any dissenting opinions, shall be admissible in evidence at
6 trial upon the offer of any party, if the court conducts a review of
7 the arbitration decision and any other relevant information submitted
8 by the parties and concludes that:

9 (1) the findings of fact by the arbitration board were not
10 clearly erroneous;

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

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

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

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

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

1 fairly informs the patient and properly protects his interests.

2 (c) Each admission to a hospital shall be treated as separate and
3 distinct for the purposes of an agreement to arbitrate, but a person
4 receiving outpatient care from a hospital or clinic or a member of a
5 health maintenance organization may execute an agreement with the
6 hospital which provides for continuation of the agreement for a contin-
7 uing program of treatment or during continued membership.

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

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

16 Sec. 09.55.537. ALTERNATIVE TO ARBITRATION. (a) If arbitration
17 under sec. 535 of this chapter is waived by all the parties, and as
18 an alternative to arbitration, the court shall appoint an expert
19 advisory panel to advise the fact finder on the medical facts of the
20 case unless the court decides that an expert advisory opinion is not
21 necessary for a decision in the case. The court shall, by order,
22 determine professions or specialties to be represented on the expert
23 advisory panel and shall advise each party of the professions or
24 specialties to be represented, giving the parties the opportunity to
25 object or make suggestions.

26 (b) The expert advisory panel may compel the attendance of wit-
27 nesses, physically or orally examine the parties, consult with special-
28 ists or learned works they consider appropriate, and compel the produc-
29 tion of, and examine all relevant hospital, medical, or other records

1 relating to health care treatment. The panel may meet in camera, but
2 shall maintain a record of any testimony or oral statements of wit-
3 nesses, and shall maintain copies of any written statements or opinions
4 that it receives.

5 (c) Not less than 30 days after selection of the panel, it shall
6 make a written report to the parties and the court answering any ques-
7 tions put to it by the court on medical questions. The report shall
8 include copies of all written statements, opinions, or records relied
9 on by the panel, and either a transcription or other record of any oral
10 statements or opinions; the report shall specify any medical or scien-
11 tific authority relied upon and shall include the results of any
12 physical or mental examination performed on the plaintiff. Each member
13 shall sign the report and his signature constitutes his adoption of all
14 statements and opinions contained in it; however, a member may, instead
15 of signing the report, submit a concurring or dissenting report which
16 complies with the requirements of this subsection. A member may not
17 attest to any portion of the report as to which he is not qualified to
18 give expert testimony.

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

1 (e) Members of a panel are entitled to travel expenses and per
2 diem in accordance with state law pertaining to members of boards and
3 commissions for all time spent in preparing its report and matters
4 incidental to it, which shall be paid by the court. If a panel member
5 is called upon as a witness at trial or upon deposition, he is entitled
6 to payment of an expert witness fee. In any case in which the court
7 determines that a party has made a patently frivolous claim or a
8 patently frivolous denial of liability, it shall order that all costs
9 of the expert advisory panel be borne by the party making that claim
10 or denial.

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

15 * Sec. 32. AS 09.55.540 is amended to read:

16 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
17 based on the negligence or wilful misconduct of a health care provider
18 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS 08.-
19 36], the plaintiff has [SHALL HAVE] the burden of proving by a prepon-
20 derance of the evidence

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

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

29 (3) that as a proximate result of this lack of knowledge or

1 skill or the failure to exercise this degree of care the plaintiff
2 suffered injuries that would not otherwise have been incurred.

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

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

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

15 Sec. 09.55.547. AD DAMNUM. In a cause of action against a health
16 care provider for malpractice, the complaint or any other pleadings may
17 not contain an ad damnum clause or monetary amount claimed against the
18 defendant health care provider, except as necessary for jurisdictional
19 purposes.

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

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

17 * Sec. 34. AS 09.55.550 is amended to read:

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

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

27 Sec. 09.55.556. INFORMED CONSENT. (a) A health care provider is
28 liable for failure to obtain the informed consent of a patient if the
29 claimant establishes by a preponderance of the evidence that the pro-

1 vider has failed to inform the patient of the common risks and reason-
2 able alternatives to the proposed treatment or procedure, and that but
3 for that failure the claimant would not have consented to the proposed
4 treatment or procedure.

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

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

9 (2) the patient stated to the health care provider that he
10 would undergo the treatment or procedure regardless of the risk involved
11 or that he did not want to be informed of the matters to which he would
12 be entitled to be informed;

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

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

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

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

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

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

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

12 Sec. 18.20.045. INSURANCE REQUIRED. (a) Every hospital, as a
13 condition of licensure, shall maintain and submit to the department
14 evidence of insurance against liability to inpatients and outpatients
15 for malpractice issued by the Health Care Providers Indemnity Corpora-
16 tion, in amounts of not less than \$200,000 per occurrence, and an
17 aggregate liability per year of \$1,000,000 minimum, and an additional
18 \$20,000 for each bed over 50.

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

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

27 CHAPTER 23. HEALTH CARE SERVICES INFORMATION.

28 Sec. 18.23.010. LIMITATION ON LIABILITY FOR PERSONS PROVIDING
29 INFORMATION TO REVIEW ORGANIZATION. (a) No person providing informa-

1 tion to a review organization is subject to action for damages or other
2 relief by reason of having furnished that information, unless the
3 information is false and the person providing the information knew or
4 had reason to know the information was false.

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

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

24 Sec. 18.23.030. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.
25 (a) Except as provided in (b) of this section, all data and information
26 acquired by a review organization, in the exercise of its duties and
27 functions, shall be held in confidence and may not be disclosed to
28 anyone except to the extent necessary to carry out the purposes of the
29 review organization, and is not subject to subpoena or discovery.

1 Except as provided in (b) of this section, no person described in sec.
2 20 of this chapter may disclose what transpired at a meeting of a
3 review organization except to the extent necessary to carry out the
4 purposes of a review organization, and the proceedings and records of a
5 review organization are not subject to discovery or introduction into
6 evidence in a civil action against a health care provider arising out
7 of the matter which is the subject of consideration by the review
8 organization. Information, documents, or records otherwise available
9 from original sources are not immune from discovery or use in a civil
10 action merely because they were presented during proceedings of a
11 review organization, nor may a person who testified before a review
12 organization or who is a member of it be prevented from testifying as
13 to matters within his knowledge, but a witness may not be asked about
14 his testimony before a review organization or opinions formed by him as
15 a result of its hearings, except as provided in (b) of this section.

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

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

29 Sec. 18.23.040. PENALTY FOR VIOLATION. Other than as authorized

1 by sec. 30 of this chapter, a disclosure of data and information ac-
2 quired by a review committee or of what transpired at a review meeting
3 is a misdemeanor and punishable under AS 11.05.010.

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

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

12 Sec. 18.23.070. DEFINITIONS. In this chapter, unless the context
13 otherwise requires,

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

16 (2) "health care" means professional services rendered by
17 a health care provider or an employee of a health care provider, and
18 services furnished by a sanatorium, rest home, nursing home, boarding
19 home or other institution for the hospitalization or care of human
20 beings;

21 (3) "health care provider" means a chiropractor licensed
22 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
23 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
24 optician licensed under AS 08.71; an optometrist licensed under AS 08.-
25 72; a pharmacist licensed under AS 08.80; a physical therapist licensed
26 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
27 psychologist and a psychological associate licensed under AS 08.86; and
28 a hospital as defined in AS 18.20.130, including a governmentally owned
29 or operated hospital;

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

3 (5) "review organization" means a hospital governing body or
4 a committee whose membership is limited to health care providers and
5 administrative staff, except where otherwise provided for by state or
6 federal law, and which is established by a hospital, by a clinic, by
7 one or more state or local associations of health care providers, by an
8 organization of health care providers from a particular area or medical
9 institution, or by a professional standards review organization estab-
10 lished under 42 U.S.C., sec. 1320c-1 et seq., to gather and review
11 information relating to the care and treatment of patients for the
12 purposes of

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

15 (B) reducing morbidity or mortality;

16 (C) obtaining and disseminating statistics and infor-
17 mation relative to the treatment and prevention of diseases,
18 illness and injuries;

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

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

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

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

27 (H) reviewing, ruling on, or advising on controversies,
28 disputes or questions between

29 (i) a health insurance carrier or health mainte-

1 nance organization and one or more of its insured or enrol-
2 lees;

3 (ii) a professional licensing board, acting under
4 its powers of discipline or license revocation or suspension,
5 and a health care provider licensed by it when the matter is
6 referred to a review organization by the professional licen-
7 sing board;

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

10 (iv) a health care provider and a health insurance
11 carrier or health maintenance organization concerning a charge
12 or fee for health care services provided to an insured or
13 enrollee; or

14 (v) a health care provider or his patients and the
15 federal or a state or local government, or an agency of the
16 federal or a state or local government;

17 (I) acting on the recommendation of a credential review
18 committee or a grievance committee.

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

20 CHAPTER 88. HEALTH CARE PROVIDERS INSURANCE.

21 ARTICLE 1. PURPOSE.

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

29 ARTICLE 2. INDEMNITY CORPORATION.

1 Sec. 21.88.020. CORPORATION CREATED. There is created the Alaska
2 Health Care Providers Indemnity Corporation which is a public corpora-
3 tion having a legal existence independent of and separate from the
4 state. Obligations issued by the corporation do not constitute a debt,
5 liability or obligation of the state or a pledge of full faith and
6 credit of the state.

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

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

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

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

18 (3) two professionals in the insurance field;

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

22 (c) The term of office of each governor is three years, except
23 that the governor of the state shall designate two initially appointed
24 governors to serve for one year and two initially appointed governors
25 to serve for two years.

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

29 (e) Upon a governor's early resignation, death or inability to

1 serve, the governor of the state shall appoint a successor from the
2 same class defined in (b) of this section as the terminating governor,
3 who shall serve for the unexpired term.

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

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

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

26 (b) The plan of operation shall

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

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

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

5 (4) establish procedures for records to be kept of all
6 financial transactions of the corporation, its agents, and the board
7 of governors;

8 (5) establish the amount and method of reimbursing and
9 compensating members of the board of governors;

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

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

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

18 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
19 corporation shall

20 (1) in the form approved by the director, issue to all
21 health care providers who pay the premiums for it a contract or con-
22 tracts indemnifying the health care provider and his employees who are
23 health care providers against loss by reason of liability for profes-
24 sional services on an occurrence basis and agreeing to tender on behalf
25 of the health care provider and his employees who are health care
26 providers a defense in a proceeding brought under AS 09.55.530 - 09.55.-
27 560; the limit of liability shall be no less than the minimum liability
28 coverage requirements to be maintained under AS 08.64.215 and AS 18.-
29 20.045; the contract shall cover the defense against but need not

1 indemnify a claim for punitive damages; at the option of the health
2 care provider and for an additional premium the contract may cover
3 claims against the health care provider that arise out of professional
4 services performed by the health care provider after December 31, 1974
5 except that coverage will not be provided for a claim already filed or
6 of which the health care provider had or reasonably should have had
7 notice at the time the retroactive insurance was purchased;

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

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

23 (4) comply with or be subject to AS 21.06.090; 21.06.120;
24 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.190; 21.09.200;
25 21.09.250; 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18,
26 21, 24, and 36 of this title;

27 (5) carry out the obligations of the contracts issued under
28 (1) of this subsection by defending all covered claims made against
29 insured health care providers and by paying all liabilities which are

1 finally adjudicated against the insured health care provider or which
2 may in the opinion of the corporation reasonably be expected to be
3 finally adjudicated against the health care provider to the extent of
4 the contract obligation;

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

14 (b) The corporation may

15 (1) in the form approved by the director, issue contracts of
16 professional liability insurance to chiropractors licensed under AS 08.-
17 20, dental hygienists licensed under AS 08.32, dentists licensed under
18 AS 08.36, nurses licensed under AS 08.68, dispensing opticians licensed
19 under AS 08.71, optometrists licensed under AS 08.72, pharmacists li-
20 censed under AS 08.80, physical therapists licensed under AS 08.84, and
21 pyschologists and psychological associates licensed under AS 08.86;

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

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

29 (4) borrow or advance funds necessary to effectuate the

1 purposes of the corporation;

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

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

5 (7) perform all other acts necessary and proper to effectuate
6 the corporation.

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

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

1 providers or claimants. All statistics shall be made available to the
2 appropriate licensing board or agency.

3 Sec. 21.88.080. RATES. (a) The rates and rating plans used by
4 the corporation for the policies issued shall be determined by license
5 category of health care providers in accordance with all of the fol-
6 lowing:

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

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

28 (3) rates may not be unfairly discriminatory;

29 (4) rates shall be adjusted annually;

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

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

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

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

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

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

21 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

22 Sec. 21.88.110. ASSOCIATION CREATED. (a) The Health Care Pro-
23 viders Joint Underwriting Association is created consisting of all
24 licensed

25 (1) health care service corporations as defined in AS 21.-
26 87.330;

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

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

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

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

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

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

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

28 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. (a) Within 30
29 days after the association's creation the board of directors shall

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

12 (b) The plan of operation shall

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

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

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

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

22 (5) establish the amount and method of reimbursing members of
23 the board of directors;

24 (6) establish the procedures for awarding contracts to indem-
25 nify or defend or to provide other services and to compensate the indem-
26 nitors or vendors;

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

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

3 Sec. 21.88.150. POWERS AND DUTIES OF THE ASSOCIATION. (a) The
4 association shall

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

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

20 (3) comply with or be subject to AS 21.06.090; 21.06.120;
21 21.06.140; 21.06.160; 21.06.250; AS 21.09.180; 21.09.200; 21.09.250;
22 21.09.280; AS 21.12.020(b), (c), (d), and (e); and chs. 18, 21, 24, and
23 36 of this title;

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

1 the contract obligation.

2 (b) The association may

3 (1) employ or retain persons, individual or corporate, to
4 discharge its obligations and pay reasonable compensation for those
5 services;

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

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

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

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

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

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

29 (8) cede or assume reinsurance;

1 (9) perform all other acts necessary and proper to effectuate
2 the association.

3 Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating
4 plans shall be determined as provided in sec. 80 of this chapter,
5 except that allowance may not be made for profit to an indemnifying
6 carrier or for income from investment of member-contributed funds; and
7 provided that reserves for claims incurred during the policy period and
8 reasonably expected to be reported after three years after the incident
9 may be included on a different basis due to the additional financial
10 flexibility provided by the association.

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

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

1 assessed.

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

5 (c) If, after establishing required reserves, there is an excess
6 amount in reserve, the excess premium shall be refunded to the insured
7 health care providers.

8 Sec. 21.88.190. REPORTS. At least annually the association shall
9 report to the director concerning its affairs. The report shall be in
10 the form prescribed by the director.

11 ARTICLE 4. LOAN FUND.

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

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

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

25 (d) The director may sell at par value to the Department of
26 Revenue the notes, security instruments and pledge agreements held by
27 the Department of Commerce and Economic Development as security for
28 loans made under this section. The Department of Revenue shall pur-
29 chase all the notes offered until the current principal amount of the

1 notes purchased and held by the Department of Revenue equals \$5,000,000.

2 ARTICLE 5. GENERAL PROVISIONS.

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

4 (1) "association" means the Health Care Providers Joint
5 Underwriting Association;

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

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

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

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

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

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

26 * Sec. 42. AS 09.55.535, and AS 09.55.537, enacted in sec. 31 of this
27 Act, have the effect of changing the Alaska Supreme Court's Rules of Civil
28 Procedure by requiring the submission of medical malpractice claims against
29 hospitals and physicians to either nonbinding arbitration or to expert ad-

1 visory panels, unless all parties to the action agree otherwise.

2 * Sec. 43. AS 08.64.365 and AS 08.68.040 are repealed.

3 * Sec. 44. This Act takes effect 30 days after enactment.
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