

Introduced: 1/23/76  
Referred: Judiciary

1 IN THE HOUSE

BY M. BEIRNE

2 HOUSE BILL NO. 636

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 and providing for an  
7 effective date."

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

9 \* Section 1. AS 21 is amended by adding a new chapter to read:

10 CHAPTER 88. HEALTH CARE PROVIDERS.

11 Sec. 21.88.010. DECLARATION OF PURPOSE. The legislature finds  
12 that a health care emergency exists because health care providers are  
13 unable to obtain adequate professional liability insurance at reasonable  
14 cost. The emergency poses a serious threat to the health care of the  
15 people of this state because health care providers must either practice  
16 without professional liability insurance or withdraw from the state.

17 Sec. 21.88.020. PATIENT COMPENSATION FUND. (a) A patient compen-  
18 sation fund is established to be administered by the commissioner of  
19 commerce. The fund consists of annual payments from each health care  
20 provider licensed to practice in the state and a state contribution  
21 which is in the nature of an interest-free loan.

22 (b) Each health care provider may contribute annually to the fund  
23 an amount equal to 0.5 per cent of the first \$50,000 of the gross re-  
24 cepts as reported in the application for a license or renewal of a  
25 license under the Alaska Business License Act (AS 43.70); 1.0 per cent  
26 of the gross receipts over \$50,000 but under \$100,000; and 2.0 per cent  
27 of the gross receipts of \$100,000 and over. This contribution shall be  
28 made within 60 days after the effective date of this Act and before  
29 April 1 of each following year.

1 (c) The commissioner shall pay from the fund that portion of all  
2 claims awarded under this chapter which exceed \$25,000.

3 (d) The state contribution under (a) of this section shall be  
4 repaid to the general fund in annual payments of \$500,000, or the amount  
5 by which the fund exceeds \$1,000,000 on February 2 of each year, which-  
6 ever is smaller.

7 (e) If, after the loan from the general fund is fully repaid  
8 according to the provisions of (d) of this section, the unobligated  
9 remainder of the fund contains \$2,000,000 or more on February 2 of any  
10 year, the next contribution due under (b) of this section shall be made  
11 at a rate of 50 per cent of the contribution required under that sub-  
12 section. If the unobligated portion of the fund is less than \$1,000,000  
13 on February 2 of any year, the next contribution due under (b) of this  
14 section shall be made at a rate of 200 per cent of the contribution  
15 required under that subsection.

16 Sec. 21.88.030. MEDICAL INJURIES COMPENSATION BOARD. (a) There  
17 is established in the Department of Commerce the Medical Injuries Com-  
18 pensation Board. The board consists of seven members as follows: one  
19 person licensed under AS 08.64 chosen from a list of three submitted by  
20 the Alaska State Medical Association; one practicing attorney licensed  
21 under AS 08.08 chosen from a list of three submitted by the Alaska Bar  
22 Association; one hospital administrator or assistant administrator  
23 chosen from a list of three submitted by the Alaska Hospital Associa-  
24 tion; one dentist licensed under AS 08.36; and three persons who are not  
25 medical care providers or attorneys. Appointments are made by the  
26 governor subject to confirmation by the legislature.

27 Sec. 21.88.040. TERM AND COMPENSATION. Board members serve four-  
28 year terms. Board members receive travel expenses and per diem as  
allowed by law and compensation at the rate of \$100 a day while the

1 board is in session.

2 Sec. 21.88.050. POWERS AND DUTIES OF THE BOARD. The board shall  
3 make a determination of liability with respect to all claims of medical  
4 injury against a health care provider. In cases where the board deter-  
5 mines the health care provider liable, the board shall award compensa-  
6 tory damages consistent with the provisions of this chapter. The board  
7 may employ staff necessary to carry out the provisions of this chapter  
8 including a full-time executive director, issue subpoenas, require the  
9 production of documents and graphic material of any sort, require the  
10 appearance of witnesses and administer oaths.

11 Sec. 21.88.060. BASIS OF LIABILITY. The board may find liability  
12 against a health care provider only upon clear and convincing evidence  
13 that an injury or death was proximately caused by the provider's act or  
14 omission arising out of or in the course of the rendering of professional  
15 service by the provider, and that the health care provider (1) was  
16 negligent in failing to conform to the standard of treatment prevailing  
17 at the time of the asserted act or omission, (2) breached a written  
18 warranty of performance or result, or (3) failed to secure informed  
19 consent as defined in sec. 200 of this chapter.

20 Sec. 21.88.070. ADVISORY EXPERT PANELS. The board shall appoint,  
21 for the purpose of determining medical facts relevant to the liability of  
22 a health care provider against whom a claim has been made, a three-  
23 member expert advisory panel. One of the panelists appointed to the  
24 panel shall be nominated by the claimant. One of the panelists appointed  
25 to the panel shall be nominated by the health care provider against  
26 whom a claim has been made. The third member shall be a person licensed  
27 under AS 08.64, who is practicing in the state, and selected by the other  
28 two panelists. If the board determines that the panelists are unable  
29 to agree upon a third member, the board shall appoint a qualified person

1 as the third member. The panel may conduct a physical examination of  
2 the person on whose behalf the claim was made. If the board makes or  
3 denies an award in a manner inconsistent with the report of the advisory  
4 panel, the board shall include in its decision a written statement  
5 setting out the specific reasons why the advice of the panel was not  
6 followed.

7 Sec. 21.88.080. FILING OF A CLAIM. (a) A person asserting a  
8 claim against a health care provider may present his claim before the  
9 board by submitting to the board a written statement of the claim  
10 including

11 (1) the name, address, and date of birth of the person whose  
12 injury or death gave rise to the claim;

13 (2) the general nature of the injury suffered or the cause of  
14 death;

15 (3) the name of the medical care provider against whom lia-  
16 bility is asserted for the injury or death;

17 (4) a statement of expenses incurred for medical care, re-  
18 habilitation, and custodial care arising from the injury or death, an  
19 estimate of loss of income arising from the injury or death and a state-  
20 ment of any other damage claimed to be compensable under this chapter;

21 (5) a complete list of sources of income or benefits, other  
22 than life insurance policies, which have been paid or will be paid to  
23 claimant by reason of the injury or death.

24 (b) Every claim filed under this section shall be verified.

25 (c) The board within 10 days of the filing of a claim shall notify  
26 the health care provider against whom a claim has been made and shall  
27 include in the notification a copy of the claimant's statement of claim.

28 (d) The health care provider against whom a claim has been made  
29 shall file, within 60 days from the date of personal notification of the

1 claim, a verified answer to the claim.

2 Sec. 21.88.090. PERIOD OF LIMITATION. A claim of liability  
3 arising under this chapter against a health care provider may not be  
4 brought after two years from the date of the act or omission alleged to  
5 have caused the injury or death, or, in the case of a child six years of  
6 age or less, after his eighth birthday.

7 Sec. 21.88.100. SUMMARY DISMISSAL OF CLAIM. If, upon examination  
8 of a statement of claim, the board finds that the claim on its face is  
9 patently unmeritorious, it may summarily dismiss the claim with a  
10 written explanation of the grounds for the dismissal. In the event of  
11 summary dismissal, a claimant may proceed in superior court as provided  
12 in sec. 170 of this chapter.

13 Sec. 21.88.110. PROCEDURE. Hearings before the board shall be  
14 conducted in accordance with the provisions of AS 44.62 for adjudicative  
15 procedures of administrative agencies. On completion of a hearing, the  
16 board shall enter its decision in writing as to whether or not the medi-  
17 cal care provider is liable for the injury or death, and the amount of  
18 damages recoverable under this chapter. If the board finds liability it  
19 shall enter an award for the damage recoverable.

20 Sec. 21.88.120. CALCULATION OF AWARD. (a) An award based on  
21 liability of a health care provider may include the following elements  
22 of damage

- 23 (1) death or disability, not to exceed \$75,000;  
24 (2) medical and hospital expenses reasonably incurred;  
25 (3) actual or prospective loss of earnings, not to exceed  
26 \$1,200 a month for a period not exceeding 120 months; and  
27 (4) reasonable funeral and burial expenses.

28 (b) If an award is made for prospective loss of earnings, the  
29 board may direct that payments shall be made at designated intervals, be

1 subject to modification based upon a material change in the physical  
2 condition of the person damaged, and as a condition of the right to  
3 receive periodic payments, the person damaged submit himself to an  
4 examination by an independent physician as the board may require. A  
5 report of an examination under this subsection shall be filed with the  
6 board.

7 (c) In determining the amount of an award for disability or pro-  
8 spective loss of earnings, the board shall take into consideration the  
9 life expectancy of the claimant and the earning capacity of a person of  
10 similar age and occupation of the claimant.

11 (d) In computing damages, the board shall employ the disability  
12 tables of the American Medical Association or other similar tables. In  
13 the case of disability, the award shall be diminished by the proportion,  
14 if any, of the disability which the board finds would have existed if  
15 the act or omission upon which liability is based had not occurred.

16 (e) The award will specify by category the method of compensating  
17 damages and the amount awarded for each category of compensation. The  
18 board may not award damages for pain and suffering, nonorganic psychic  
19 injury, or loss of consortium, and may not award punitive damages.

20 Sec. 21.88.130. COLLATERAL SOURCES. The total award made by the  
21 board shall be decreased by the amount received by the claimant, or  
22 which the claimant is entitled to receive, from any source described in  
23 sec. 80(5) of this chapter. Any decrease of an award shall be set out  
24 in the decision of the board identifying each collateral source and the  
25 deduction attributable to each source.

26 Sec. 21.88.140. PAYMENT OF AWARDS. Awards made by the board up  
27 to \$25,000 are payable by the health care provider or providers against  
28 whom the award is made. If an award is payable by two or more providers,  
29 the board shall determine for each the proportion of the liability for

1 which he is responsible. Awards in excess of \$25,000 against a health  
2 care provider are payable from the patient compensation fund established  
3 under sec. 120 of this chapter if the health care provider contributes  
4 to the fund. Payments from the fund shall be made by the commissioner  
5 upon presentation by the claimant of a certified copy of the board's  
6 order indicating an award in excess of \$25,000 against a health care  
7 provider. Payments shall be made not later than January 31 of each year  
8 on awards made during the preceding calendar year. If awards payable  
9 from the patient compensation fund in any year exceed the balance in the  
10 the fund for that year, the awards shall be prorated. The unsatisfied  
11 portion of an award shall become a claim against the fund for the year  
12 next following the year that the award is first payable. Awards for peri-  
13 odic payments shall be made from the fund each year the payment is due.

14 Sec. 21.88.150. ATTORNEY FEES. The prevailing party in a proceed-  
15 ing before the board is entitled to recover from the opposing party  
16 costs and attorney fees in the amount allowable in Rule 82 of the Alaska  
17 Rules of Civil Procedure.

18 Sec. 21.88.160. EFFECT OF AWARD. An award of the board, whether  
19 in favor of the claimant or health care provider, has the same effect as  
20 a judgment of the superior court, except as to amounts payable from the  
21 patient compensation fund.

22 Sec. 21.88.170. APPEAL TO SUPERIOR COURT. A party may, within  
23 60 days of the date of an award by the board, bring an action in the  
24 superior court for a trial de novo. The decision of the board and the  
25 findings of the advisory expert panel are admissible as evidence in the  
26 trial de novo. The provisions of secs. 60, 90, 120, 130 and 140 of  
27 this chapter apply in any trial under this section.

28 Sec. 21.88.180. ARBITRATION. Nothing in this chapter may be  
29 construed to prohibit agreements to submit claims against a physician to

1 arbitration in accordance with an applicable statutory provision, rule  
2 of court, or arbitration procedure agreed to in writing.

3 Sec. 21.88.190. REVIEW OF MEDICAL CARE PROVIDER'S LICENSE. (a)  
4 Within 90 days after the date a person licensed under AS 08.64, AS 08.36,  
5 or AS 08.68 is found by the board to have been negligent within the  
6 meaning of sec. 60 of this chapter, the appropriate licensing board  
7 shall review the qualifications of that person. The board may censure  
8 or reprimand him, restrict the practice, place him on professional  
9 probation, require him to undergo further formal training approved by  
10 the board, revoke or suspend his license, or take any other action that  
11 the licensing board finds appropriate.

12 (b) Within 90 days after the date when an institution licensed  
13 under AS 18.20 is found by the board to have been negligent within the  
14 meaning of sec. 60 of this chapter, the Department of Health and Social  
15 Services shall review the qualifications of the institution. It may  
16 conduct special inspections, require changes of procedure, suspend or  
17 revoke the license, or take any other appropriate action.

18 Sec. 21.88.200. INFORMED CONSENT. (a) A health care provider  
19 is not liable for failure to obtain the informed consent of a patient  
20 unless the claimant establishes by clear and convincing evidence that  
21 the provider, in violation of prevailing medical custom, has failed to  
22 inform the patient of common risks and reasonable alternatives to the  
23 proposed treatment or procedure, and that, but for this failure, a  
24 reasonable person would not have consented to the proposed treatment or  
25 procedure. A claim based upon lack of informed consent is limited to  
26 those cases involving either nonemergency treatment, procedure or  
27 surgery, or a diagnostic procedure which involves invasion or disruption  
28 of the integrity of the body.

29 (b) It is a defense to any action for medical malpractice based

1 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 warrant disclosure;

4 (2) the patient stated to the medical practitioner 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) consent by or on behalf of the patient was not reasonably  
9 possible; or

10 (4) the provider, after considering all of the facts and  
11 circumstances regarding the case, used reasonable discretion as to the  
12 manner and extent to which alternatives or risks were disclosed to the  
13 patient because he reasonably believed that the manner and extent of  
14 the disclosure could reasonably be expected to adversely and substan-  
15 tially affect the patient's condition.

16 Sec. 21.88.210. IMPLIED CONSENT. A person who submits to the  
17 care and treatment of a health care provider licensed by the state, and  
18 a health care provider rendering this care and treatment, is considered  
19 to consent to disposition in accordance with this chapter of any claim  
20 or defense which one may have against the other that arises out of or  
21 during the course of the care and treatment rendered.

22 Sec. 21.88.220. REGULATIONS. The commissioner may enact regula-  
23 tions necessary for the implementation of this Act.

24 Sec. 21.88.230. INTERIM STUDY COMMISSION. The governor shall  
25 appoint, subject to confirmation by the legislature, a commission to  
26 study and report annually to the governor on problems of medical mal-  
27 practice in Alaska. The commission consists of five persons and shall  
28 be known as the Governor's Interim Study Commission on Medical Malprac-  
29 tice. The commission shall submit its last annual report on December 31,

1 1980. The annual reports of the commission shall include information  
2 concerning the experience of the state in the implementation of this Act,  
3 recommendations, if any, for modification or amendment of this Act, the  
4 status of the patient compensation fund, and current approaches to  
5 medical malpractice problems in other jurisdictions. The commission  
6 shall receive expenses and per diem as provided by law.

7 Sec. 21.88.240. DEFINITIONS. In this chapter

8 (1) "board" means the Medical Injury Compensation Board;

9 (2) "commissioner" means the commissioner of commerce;

10 (3) "fund" means the patient compensation fund;

11 (4) "health care provider" means a person licensed under  
12 AS 08.36, a person licensed under AS 08.68, a person licensed under  
13 AS 08.64, and an institution licensed under AS 18.20.

14 \* Sec. 2. AS 08.64.200 is amended by adding a new paragraph to read:

15 (6) demonstrate financial responsibility as required under  
16 sec. 201 of this chapter.

17 \* Sec. 3. AS 08.64.205 is amended to read:

18 Sec. 08.64.205. QUALIFICATIONS FOR OSTEOPATH APPLICANTS. Each  
19 osteopath applicant shall meet the qualifications prescribed in sec.  
20 200(1), (4), [AND] 5 and 6 of this chapter and shall

21 (1) submit a certificate of graduation from the legally  
22 chartered school of osteopathy approved by the board;

23 (2) submit a certificate from a hospital approved by the  
24 American Medical Association or the American Osteopathic Association  
25 which certifies that he has satisfactorily completed and performed the  
26 duties of intern or resident physician for one year;

27 (3) take the examination required by sec. 210 of this chapter  
28 or be certified to practice by the National Board of Examiners for  
29 Osteopathic Physicians and Surgeons.

1 \* Sec. 4. AS 08.64.225 is amended to read:

2       Sec. 08.64.225. FOREIGN MEDICAL GRADUATES. Applicants who are  
3 graduates of medical colleges not accredited by the American Medical  
4 Association or one of its agencies shall meet the requirements of sec.  
5 200(1), (3), (4), [AND] (5), and (6) of this chapter and must have  
6 passed an examination and be certified by the Education Council on For-  
7 eign Medical Graduates, or be licensed by examination in another state  
8 or territory of the United States or province of Canada.

9 \* Sec. 5. AS 08.64.311 is amended to read:

10       Sec. 08.64.311. BIENNIAL LICENSE RENEWAL. Licenses shall be re-  
11 newed biennially if the licensee has complied with continuing education  
12 requirements established by the board.

13 \* Sec. 6. AS 08.64 is amended by adding a new section to read:

14       Sec. 08.64.201. FINANCIAL RESPONSIBILITY OF LICENSEES. As a  
15 condition of obtaining or renewing a license under this chapter, a per-  
16 son shall demonstrate to the board financial responsibility as follows:

17       (1) persons who participate in the patient compensation fund  
18 under AS 21.88.020 shall have \$25,000 in the form of an approved zero  
19 deductible liability insurance policy or in the form of other assets  
20 approved by the board; or

21       (2) persons not participating in the patient compensation  
22 fund shall have an approved zero deductible liability insurance policy  
23 for at least \$500,000 coverage per policy year.

24 \* Sec. 7. AS 08.68.170 is amended by adding a new subsection to read:

25       (b) An applicant for a license or renewal of a license to practice  
26 professional nursing shall also submit to the board evidence that he  
27 has \$25,000 in the form of an approved zero deductible liability in-  
28 surance policy or in the form of other assets satisfactory to the  
29 board.

1 \* Sec. 8. AS 08.36.110 is amended by adding a new subsection to read:

2 (b) as a condition of obtaining or renewing a license under this  
3 chapter a person shall demonstrate to the board financial responsibility  
4 as follows:

5 (1) persons who participate in the patient compensation fund  
6 under AS 21.88.020 shall have \$25,000 in the form of an approved zero  
7 deductible liability insurance policy or in the form of other assets  
8 approved by the board; or

9 (2) persons not participating in the patient compensation  
10 fund shall have an approved zero deductible liability insurance policy  
11 for at least \$100,000 coverage per policy year.

12 \* Sec. 9. AS 18.20.040 is amended by adding a new subsection to read:

13 (b) As a condition to obtaining or renewing a license to practice  
14 or operate, a hospital shall demonstrate to the department financial  
15 responsibility as follows:

16 (1) hospitals which participate in the patients compensation  
17 fund established under AS 21.88.020 shall have \$25,000 in the form of an  
18 approved zero deductible liability insurance policy or in the form of  
19 other assets approved to the department; or

20 (2) hospitals which do not participate in the patient compen-  
21 sation fund shall have an approved zero deductible liability insurance  
22 policy for at least \$1,000,000 coverage per policy year.

23 \* Sec. 10. AS 08.64.330 is repealed and re-enacted to read:

24 Sec. 08.64.330. GROUNDS FOR REVOCATION OF LICENSE. (a) A license  
25 may be revoked or suspended for failure to pay the license renewal fee  
26 prescribed in sec. 315 of this chapter or to satisfy the financial re-  
27 sponsibility requirements of sec. 201 of this chapter. If the license  
28 renewal fee is not paid within the time provided, the board shall give  
29 written notice to the licensee that he is in default. Notice may be

1 served on the licensee personally or by registered mail addressed to his  
2 last known residence. If the licensee fails to pay the fee within  
3 three months after notice of default, the board shall revoke the license  
4 and notify the licensee of the revocation by mail or by personal service  
5 of the revocation.

6 (b) A license may be revoked for unprofessional or dishonorable  
7 conduct as defined in sec. 380(3) of this chapter, for professional in-  
8 competence, or revoked or suspended for failure to complete at least 20  
9 hours of continuing education programs or courses of study approved by  
10 the board within the two calendar years immediately preceding; however,  
11 the board may waive these requirements if it finds that exceptional  
12 circumstances such as prolonged illness, disability or other similar  
13 circumstances have prevented a person from meeting the requirements.

14 \* Sec. 11. AS 08.64.365 is repealed and re-enacted to read:

15 Sec. 08.64.365. PHYSICIANS ACTING UNDER CIRCUMSTANCES REQUIRING  
16 IMMEDIATE CARE. A physician licensed in this state or any other state,  
17 who voluntarily attempts to aid an ill or injured person in this state  
18 who is in need of immediate medical care, and under circumstances that  
19 reasonably suggest to the physician that the giving of aid is the only  
20 alternative to death or serious bodily injury or harm, or that the ren-  
21 dering of aid will substantially reduce the risk of death or of serious  
22 bodily injury or harm is not liable except for wilful wrongs committed in  
23 rendering the aid.

24 \* Sec. 12. AS 08.64 is amended by adding a new section to read:

25 Sec. 08.64.369. HEALTH SCIENCES LIBRARY. It is the duty of the  
26 board to administer a health sciences library. Administration of the  
27 library shall include preparation of lists of publications available to  
28 users of the library, provision for circulation of requested publica-  
29 tions to medical care practitioners and the establishment of policies

1 and criteria for the acquisition of publications.

2 \* Sec. 13. AS 09.55.530, 09.55.540 and 09.55.550 are repealed.

3 \* Sec. 14. This Act takes effect immediately in accordance with AS 01.10  
4 070(c).

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