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1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR HOUSE CS FOR SENATE BILL NO. 361

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act concerning health care liability insurance; and
7 providing for an 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 67. HEALTH CARE LIABILITY UNDERWRITING ASSOCIATION.

11 Sec. 21.67.010. JOINT UNDERWRITING ASSOCIATION. The director of
12 the division of insurance shall establish by regulation a joint under-
13 writing association to provide health care liability insurance to health
14 care providers in the state on a self-supporting basis. All insurers who
15 are authorized to write and are engaged in writing casualty or disability
16 insurance in the state on a direct basis, and all insurers who are
17 authorized to issue and are issuing subscriber's contracts in the state
18 on a direct basis, shall be members, except that any disability insurer
19 shall be exempted by the director of the division of insurance upon a
20 showing that such insurer is prohibited by charter or by any law of the
21 United States or any state from writing casualty insurance. Membership
22 in the association is a condition of transacting insurance business in
23 the state.

24 Sec. 21.67.020. PARTICIPATION IN ASSOCIATION, DIRECTORS. (a)
25 Each member participates in the writing of policies, expenses, profits
26 and losses of the association in the proportion of the net direct premi-
27 ums written the preceding calendar year in the state by each member,
28 excluding the premiums attributable to the operation of the association,
29 to the aggregate net direct premiums written in the state by all members

1 of the association in the preceding calendar year. Each member's parti-
2 cipation in the association is determined annually on the basis of the
3 annual statements filed by the member with the division of insurance.

4 (b) The association shall be governed by a board of three
5 directors, who are elected by cumulative voting of the members of the
6 association; the votes are weighted according to each member's partici-
7 pation the year of the election. The directors serve terms of two
8 years. The directors on the first board shall be elected at a meeting
9 of members at a time and place designated by the director of insurance.

10 Sec. 21.67.030. POWERS AND DUTIES OF ASSOCIATION. The association
11 may

12 (1) issue or authorize the issuance of policies of insurance
13 to applicants;

14 (2) underwrite the insurance policies issued and adjust and
15 pay losses on the policies;

16 (3) accept and cede reinsurance;

17 (4) appoint, with the permission of the director of insurance,
18 service companies to perform its duties under this chapter; and

19 (5) adopt regulations, subject to approval by the director of
20 insurance, necessary for carrying out the provisions of this chapter.

21 Sec. 21.67.040. OPERATING PLAN. (a) The association shall
22 develop an operating plan to carry out the provisions of this chapter,
23 which is subject to the approval of the director of insurance. In
24 developing the plan the association shall receive input from health care
25 providers in the state and from representatives of the public.

26 (b) The operating plan shall provide for fair, prompt, and eco-
27 nomically self-supporting health care liability insurance and shall
28 include

29 (1) a preliminary assessment to all members for the expenses

1 necessary to begin operation;

2 (2) underwriting standards;

3 (3) appointment of servicing carriers;

4 (4) rating plans and classifications established on an actu-
5 arily sound basis and calculated to be self supporting;

6 (5) other provisions found necessary by the association.

7 (c) The association shall submit the operating plan to the director
8 of insurance for approval within 60 days after the director of insurance
9 establishes the association under sec. 10 of this chapter.

10 (d) The operating plan may be revised by an affirmative vote of a
11 majority of the directors and concurrence of the director of insurance.

12 Sec. 21.67.050. PROFITS AND DEFICITS. (a) Profits made by the
13 association may be added to the reserves of the association.

14 (b) A deficit sustained by the association in any one year shall
15 be recouped by rate increases applicable prospectively or offset against
16 the tax on total direct premiums specified in AS 21.09.210 if the offset
17 is approved by the director of insurance after determining that it is in
18 the best interest of the state and the persons intended to be benefited
19 by this chapter.

20 Sec. 21.67.060. ANNUAL STATEMENTS. The association shall file an
21 annual statement to the director of insurance before March 16 reporting
22 its operations of the preceding year.

23 Sec. 21.67.070. PERSONS COVERED. (a) Any health care provider
24 licensed by the appropriate licensing agency of the state may apply to
25 the association for health care liability insurance.

26 (b) If the applicant meets the underwriting standards of the asso-
27 ciation as provided in the operating plan and there is no unpaid, uncon-
28 tested premium due from the applicant for prior insurance, the associa-
29 tion on receipt of the premium shall issue or cause to be issued a

1 policy of health care liability insurance for a term of one year.

2 (c) In no event may the association deny insurance to a health
3 care provider without the concurrence of the director of the division of
4 insurance.

5 Sec. 21.67.080. HEALTH CARE LIABILITY POLICIES. (a) The associ-
6 ation shall offer policies on both a claims made and occurrence basis.

7 (b) Each policy issued by the association shall provide minimum
8 coverage to the insured in an amount of not less than \$100,000 for each
9 occurrence and \$300,000 for all occurrences in any one policy year for
10 the protection of persons who are legally entitled to recover damages
11 from the insured for errors, omissions or neglect in the performance of
12 the insured's professional services. The association may establish
13 minimum levels of coverage higher than these limits for professional
14 practice involving a high degree of risk.

15 (c) No policy issued on behalf of the association may be cancelled
16 during the term of coverage without the concurrence of the director of
17 the division of insurance.

18 Sec. 21.67.090. APPEALS AND JUDICIAL REVIEW. (a) An applicant to
19 the association, an insured under this chapter, or a member may appeal
20 to the director of insurance within 30 days of any ruling, decision, or
21 action by or on behalf of the association.

22 (b) All orders of the director of insurance under this chapter are
23 subject to judicial review.

24 Sec. 21.67.100. DEFINITIONS. In this chapter

25 (1) "association" means the underwriting group established
26 under the provisions of this chapter;

27 (2) "casualty insurance" means casualty insurance as defined
28 in AS 21.12.070;

29 (3) "director" means a member of the board of directors of

1 the association;

2 (4) "director of insurance" means the director of the division
3 of insurance in the Department of Commerce;

4 (5) "disability insurance" means disability insurance as
5 defined in AS 21.12.050;

6 (6) "health care liability insurance" means insurance against
7 the legal liability of the insured for loss, damage, or expense incident
8 to a claim arising out of the death or injury of a person as a result of
9 negligence in rendering professional service by a health care provider;

10 (7) "health care provider" means a physician licensed under
11 AS 08.64, a nurse licensed under AS 08.68, an institution licensed under
12 AS 18.20, and a dentist licensed under AS 08.36;

13 (8) "net direct premiums" means gross direct premiums written
14 on casualty and disability insurance less return premiums or the unused
15 or unabsorbed portions of premium deposits;

16 (9) "subscriber's contract" means subscriber's contract as
17 defined in AS 21.87.330(6).

18 * Sec. 2. This Act expires on April 1, 1977.

19 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).