

Introduced: 1/12/76
Referred: Commerce

1 IN THE SENATE

BY RODEY, CROFT AND KERTTULA

2 SENATE BILL NO. 483

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND 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. (a) If the
12 director of insurance finds, after public hearing, that health care
13 liability insurance is not available on the voluntary market, or that
14 the insurance available does not provide adequate coverage, he shall
15 establish by regulation a joint underwriting association to provide
16 health care liability insurance to health care providers in the state on
17 a self-supporting basis. All insurers who are authorized to write and
18 are engaged in writing casualty insurance and property insurance in the
19 state on a direct basis, and all insurers who are authorized to issue
20 and are issuing subscriber's contracts in the state on a direct basis
21 are members. After the association has begun operation if the director
22 of insurance, after public hearing, finds that adequate health care
23 liability insurance has become available on the voluntary market, he may
24 terminate operation of the association.

25 (b) Every insurer described in (a) of this section shall be a
26 member of the association and shall remain a member as a condition of
27 its authority to transact that kind of business in the state.

28 Sec. 21.67.020. PARTICIPATION IN ASSOCIATION, DIRECTORS. (a)
29 Each member participates in the writing of policies issued by the

1 association in the proportion of the net direct premiums written the
2 preceding calendar year in the state by each member from the type of
3 insurance which requires the insurer to participate in the association,
4 excluding the premiums attributable to the operation of the association,
5 to the aggregate net direct premiums written in the state by all members
6 of the association in the preceding year. Each member's participation
7 in the association is determined annually on the basis of annual state-
8 ments filed by the member with the division of insurance.

9 (b) The association shall be governed by a board of three direc-
10 tors who are elected by cumulative voting of the members of the associa-
11 tion; the votes are weighted according to each member's participation
12 the year of the election. The directors serve terms of two years. The
13 directors on the first board shall be elected at a meeting of members at
14 a time and place designated by the director of insurance.

15 Sec. 21.67.030. POWERS AND DUTIES OF ASSOCIATION. (a) The asso-
16 ciation may

17 (1) issue or authorize the issuance of policies of insurance
18 to applicants;

19 (2) underwrite the insurance policies issued and adjust and
20 pay losses on the policies;

21 (3) accept and cede reinsurance;

22 (4) appoint, with the permission of the director of insur-
23 ance, servicing carriers to perform its duties under this chapter;

24 (5) borrow or advance funds necessary for carrying out the
25 purposes of this chapter;

26 (6) sue or be sued in the name of the association; and

27 (7) perform other duties necessary for carrying out the pro-
28 visions of this chapter.

29 (b) The association shall

1 (1) annually prepare a report of its losses, the claims made
2 against it, reserves, and other information the director of insurance
3 requests, and file the report with the director of insurance and the
4 legislature; and

5 (2) study the availability and cost of health care liability
6 insurance on the voluntary market in the state and annually report to
7 the legislature its findings regarding methods of increasing availa-
8 bility and lowering the cost of health care liability insurance in the
9 state.

10 Sec. 21.67.040. OPERATING PLAN. (a) The association shall
11 develop an operating plan to carry out the provisions of this chapter,
12 which is subject to the approval of the director of insurance. In
13 developing the plan the association shall receive input from health care
14 providers in the state and from the public.

15 (b) The operating plan shall establish procedures for providing
16 health care liability insurance to health care providers in the state
17 and shall include

18 (1) a preliminary assessment to all members for the expenses
19 necessary to begin operation; this assessment shall be repaid to members
20 within three years after the association has begun operation;

21 (2) appointment of servicing carriers;

22 (3) rating plans and classifications established on an actu-
23 arily sound basis;

24 (4) procedures for handling assets and discharging liabili-
25 ties of the association; and

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

27 (c) The association shall submit the operating plan to the direc-
28 tor of insurance for approval within 60 days after the director of
29 insurance establishes the association under sec. 10 of this chapter; if

1 the association does not submit an operating plan that meets the direc-
2 tor of insurance's approval, the director of insurance shall promulgate
3 an operating plan meeting the requirements of (b) of this section.

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

6 Sec. 21.67.050. PROFITS AND DEFICITS. (a) Profits made by the
7 association shall be added to the reserves of the association.

8 (b) A deficit sustained by the association in any one year shall
9 be recouped by rate increases applicable prospectively.

10 Sec. 21.67.060. PERSONS COVERED. (a) Any health care provider
11 licensed by the appropriate licensing agency of the state may apply to
12 the association for health care liability insurance.

13 (b) If the applicant has no unpaid, uncontested premium due for
14 prior insurance, the association on receipt of the premium shall issue
15 or cause to be issued a policy of health care liability insurance for a
16 term of one year.

17 Sec. 21.67.070. HEALTH CARE LIABILITY POLICIES. (a) The associa-
18 tion shall offer policies on an occurrence basis.

19 (b) Each policy issued by the association shall provide minimum
20 coverage to the insured in an amount of not less than \$200,000 for each
21 occurrence and \$600,000 for all occurrences in any one policy year for
22 the protection of persons who are legally entitled to recover damages
23 from the insured for errors, omissions or neglect in the performance of
24 the insured's professional services. The director of insurance may
25 establish minimum levels of coverage higher than the above levels for
26 practice involving a high degree of risk.

27 (c) A policy issued on behalf of the association may be cancelled
28 during the term of coverage only for nonpayment of premiums or for loss
29 of professional license by the insured.

1 Sec. 21.67.080. APPEALS AND JUDICIAL REVIEW. (a) An applicant to
2 the association, an insured under this chapter, or a member may appeal
3 to the director of insurance within 30 days of any ruling, decision, or
4 action by or on behalf of the association.

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

7 Sec. 21.67.090. DEFINITIONS. In this chapter

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

10 (2) "casualty insurance" means casualty insurance as defined
11 in AS 21.12.070;

12 (3) "property insurance" means property insurance as defined
13 in AS 21.12.060;

14 (4) "subscriber's contract" means subscriber's contract as
15 defined in AS 21.87.330(6);

16 (5) "director" means a member of the board of directors of
17 the association;

18 (6) "director of insurance" means the director of the divi-
19 sion of insurance in the Department of Commerce;

20 (7) "health care liability insurance" means insurance against
21 the legal liability of the insured for loss, damage, or expense incident
22 to a claim arising out of the death or injury of a person as a result of
23 errors, omissions, or neglect in the performance of the insured's pro-
24 fessional services, but does not include insurance against liability for
25 injuries inflicted intentionally by a health care provider;

26 (8) "health care provider" means a person licensed under
27 AS 08.64 and an institution licensed under AS 18.20;

28 (9) "net direct premiums" means gross direct premiums written
29 on casualty insurance, property insurance, and subscriber's contracts,

1 less return premiums or the unused or unabsorbed portions of premium
2 deposits.

3 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
4 070(c).

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