

Introduced: 1/15/76
Referred: Commerce and
Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 522

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 liability for the provision of
7 health-care services; changing the Alaska Supreme
8 Court's Rules of Civil Procedure; and providing for
9 an effective date."

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

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

12 (19) provide investigative services to the boards estab-
13 lished under chapters 20, 32, 36, 64, 68, 71, 72, 80, 84, and 86, for
14 the purpose of assisting those boards in matters of professional
15 discipline.

16 * Sec. 2. AS 08.20 is amended by adding new sections to read:

17 Sec. 08.20.115. INSURANCE REQUIRED. (a) To be eligible for an
18 active license under this chapter, a person must maintain insurance
19 issued by the Health-Care Providers Indemnity Corporation against
20 liability to patients for chiropractic malpractice in limits of not
21 less than \$200,000 per occurrence and \$600,000 aggregate liability per
22 year.

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

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

2 In addition to action under sec. 170 of this chapter, upon a finding
3 that, by reason of demonstrated competence, experience, or education,
4 the authority to practice chiropractic should be so limited or con-
5 ditioned or the practitioner so disciplined, the board may reprimand;
6 censure; place on probation; restrict practice by specialty, procedure,
7 or facility; or require continuing education or retraining.

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

10 * Sec. 3. AS 08.32 is amended by adding new sections to read:

11 Sec. 08.32.015. INSURANCE REQUIRED. (a) To be eligible for an
12 active license under this chapter, a person must maintain insurance
13 issued by the Health-Care Providers Indemnity Corporation against
14 liability to patients for malpractice in limits of not less than
15 \$200,000 per occurrence and \$600,000 aggregate liability per year.

16 (b) The commissioner of commerce and economic development or his
17 designee may waive the requirement in (a) of this section for a person
18 if that person furnishes satisfactory evidence of his or her having
19 other insurance providing coverage in amounts not less than those
20 specified in (a). No waiver granted under this subsection may extend
21 beyond the normal expiration date of the person's insurance policy or
22 January 1, 1977, whichever occurs first.

23 Sec. 08.32.165. LIMITS OR CONDITIONS ON LICENSE. (a) In
24 addition to action under sec. 160 of this chapter, upon a finding
25 that, by reason of demonstrated competence, experience, or education,
26 the authority to practice dental hygiene should be so limited or con-
27 ditioned or the practitioner so disciplined, the board may reprimand;
28 censure; place on probation; restrict practice by specialty, procedure,
29 or facility; or require continuing education or retraining.

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

3 * Sec. 4. AS 08.36 is amended by adding new sections to read:

4 Sec. 08.36.115. INSURANCE REQUIRED. (a) To be eligible for an
5 active license under this chapter, a person must maintain insurance
6 issued by the Health-Care Providers Indemnity Corporation against
7 liability to patients for dental malpractice in limits of not less
8 than \$200,000 per occurrence and \$600,000 aggregate liability per
9 year.

10 (b) The commissioner of commerce and economic development or his
11 designee may waive the requirement in (a) of this section for a person
12 if that person furnishes satisfactory evidence of his or her having
13 other insurance providing coverage in amounts not less than those
14 specified in (a). No waiver granted under this subsection may extend
15 beyond the normal expiration date of the person's insurance policy or
16 January 1, 1977, whichever occurs first.

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
19 reason of demonstrated competence, experience, or education, the
20 authority to practice dentistry should be so limited or conditioned or
21 the practitioner so 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. 5. AS 08.64 is amended by adding new sections to read:

27 Sec. 08.64.215. INSURANCE REQUIRED. (a) To be eligible for an
28 active license under this chapter, a person must maintain insurance
29 issued by the Health-Care Providers Indemnity Corporation against

1 liability to patients for medical malpractice in limits of not less
2 than \$200,000 per occurrence and \$600,000 aggregate liability per
3 year.

4 (b) The commissioner of commerce and economic development or his
5 designee may waive the requirement in (a) of this section for a person
6 if that person furnishes satisfactory evidence of his or her having
7 other insurance providing coverage in amounts not less than those
8 specified in (a). No waiver granted under this subsection may extend
9 beyond the normal expiration date of the person's insurance policy or
10 January 1, 1977, whichever occurs first.

11 Sec. 08.64.325. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE.

12 (a) In addition to action under sec. 330 of this chapter, upon a
13 finding that, by reason of demonstrated competence, experience, or
14 education, the authority to practice under this chapter should be so
15 limited or conditioned, or the practitioner so disciplined, the board
16 may reprimand; censure; place on probation; restrict practice by
17 specialty, procedure, or facility; or require continuing education or
18 retraining.

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

21 * Sec. 6. AS 08.68 is amended by adding new sections to read:

22 Sec. 08.68.165. INSURANCE REQUIRED. (a) To be eligible for an
23 active license as a nurse under this chapter, a person must maintain
24 insurance issued by the Health-Care Providers Indemnity Corporation
25 against liability to patients for malpractice in limits of not less
26 than \$200,000 per occurrence and \$600,000 aggregate liability per
27 year.

28 (b) The commissioner of commerce and economic development or his
29 designee may waive the requirement in (a) of this section for a person

1 if that person furnishes satisfactory evidence of his or her having
2 other insurance providing coverage in amounts not less than those
3 specified in (a). No waiver granted under this subsection may extend
4 beyond the normal expiration date of the person's insurance policy or
5 January 1, 1977, whichever occurs first.

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

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

15 * Sec. 7. AS 08.71 is amended by adding new sections to read:

16 Sec. 08.71.085. INSURANCE REQUIRED. (a) To be eligible for an
17 active license under this chapter, a person must maintain insurance
18 issued by the Health-Care Providers Indemnity Corporation against
19 liability to patients for malpractice in limits of not less than
20 \$200,000 per occurrence and \$600,000 aggregate liability per year.

21 (b) The commissioner of commerce and economic development or his
22 designee may waive the requirement in (a) of this section for a person
23 if that person furnishes satisfactory evidence of his or her having
24 other insurance providing coverage in amounts not less than those
25 specified in (a). No waiver granted under this subsection may extend
26 beyond the normal expiration date of the person's insurance policy or
27 January 1, 1977, whichever occurs first.

28 Sec. 08.71.175. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE.

29 (a) In addition to action under sec. 170 of this chapter, upon a

1 finding that, by reason of demonstrated competence, experience, or
2 education, the authority to practice as a dispensing optician under
3 this chapter should be so limited or conditioned or the practitioner
4 so disciplined, the board may reprimand; censure; place on probation;
5 restrict practice by procedure, or facility; or require continuing
6 education or retraining.

7 * Sec. 8. AS 08.72 is amended by adding new sections to read:

8 Sec. 08.72.115. INSURANCE REQUIRED. (a) To be eligible for an
9 active license under this chapter, a person must maintain insurance
10 issued by the Health-Care Providers Indemnity Corporation against
11 liability to patients for malpractice in limits of not less than
12 \$200,000 per occurrence and \$600,000 aggregate liability per year.

13 (b) The commissioner of commerce and economic development or his
14 designee may waive the requirement of (a) of this section for a person
15 if that person furnishes satisfactory evidence of his or her having
16 other insurance providing coverage in amounts not less than those
17 specified in (a). No waiver granted under this subsection may extend
18 beyond the normal expiration date of the person's insurance policy or
19 January 1, 1977, whichever occurs first.

20 Sec. 08.72.255. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE.

21 (a) In addition to action under secs. 240 and 250 of this chapter,
22 upon a finding that, by reason of demonstrated competence, experience,
23 or education, the authority to practice optometry under this chapter
24 should be so limited or conditioned or the practitioner so disciplined,
25 the board may reprimand; censure; place on probation; restrict practice
26 by specialty, procedure, or facility; or require continuing education
27 or retraining.

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

1 * Sec. 9. AS 80.80 is amended by adding new sections to read:

2 Sec. 08.80.115. INSURANCE REQUIRED. (a) To be eligible for
3 active registration as a pharmacist, a person must maintain insurance
4 issued by the Health-Care Providers Indemnity Corporation against
5 liability to patients for malpractice in limits of not less than
6 \$200,000 per occurrence and \$600,000 aggregate liability per year.

7 (b) The commissioner of commerce and economic development or his
8 designee may waive the requirement of (a) of this section for a person
9 if that person furnishes satisfactory evidence of his or her having
10 other insurance providing coverage in amounts not less than those
11 specified in (a). No waiver granted under this subsection may extend
12 beyond the normal expiration date of the person's insurance policy or
13 January 1, 1977, whichever occurs first.

14 Sec. 08.80.265. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE.

15 (a) In addition to action under sec. 260 of this chapter, upon a
16 finding that, by reason of demonstrated competence, experience, or
17 education, the authority to practice pharmacy under this chapter
18 should be so limited or conditioned or the practitioner so disciplined,
19 the board may reprimand; censure; place on probation; restrict practice
20 by specialty, procedure, or facility; or require continuing education
21 or retraining.

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

24 * Sec. 10. AS 08.84 is amended by adding new sections to read:

25 Sec. 08.84.035. INSURANCE REQUIRED. (a) To be eligible for
26 active registration as a physical therapist under this chapter, a
27 person must maintain insurance issued by the Health-Care Providers
28 Indemnity Corporation against liability to patients for malpractice in
29 limits of not less than \$200,000 per occurrence and \$600,000 aggregate

1 liability per year.

2 (b) The commissioner of commerce and economic development or his
3 designee may waive the requirement of (a) of this section for a person
4 if that person furnishes satisfactory evidence of his or her having
5 other insurance providing coverage in amounts not less than those
6 specified in (a). No waiver granted under this subsection may extend
7 beyond the normal expiration date of the person's insurance policy or
8 January 1, 1977, whichever occurs first.

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

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

18 * Sec. 11. AS 08.86.120 is amended to read:

19 Sec. 08.86.120. ENTITLEMENT TO LICENSURE. A person who passes
20 the examination given by the board and possesses the insurance required
21 by sec. 125 of this chapter is entitled to be licensed as a psycholo-
22 gist.

23 * Sec. 12. AS 08.86.160 is amended to read:

24 Sec. 08.86.160. ASSOCIATES: ENTITLEMENT TO LICENSURE. A person
25 who passes the examination given by the board and who possesses insurance
26 in accordance with sec. 125 of this chapter is entitled to be licensed
27 as a psychological associate.

28 * Sec. 13. AS 08.86 is amended by adding new sections to read:

29 Sec. 08.86.125. INSURANCE REQUIRED. (a) To be eligible for

1 active licensure as a psychologist under this chapter, a person must
2 maintain insurance issued by the Health-Care Providers Indemnity
3 Corporation against liability to patients for malpractice in limits of
4 not less than \$200,000 per occurrence and \$600,000 aggregate liability
5 per year.

6 (b) The commissioner of commerce and economic development or his
7 designee may waive the requirement of (a) of this section for a person
8 if that person furnishes satisfactory evidence of his or her having
9 other insurance providing coverage in amounts not less than those
10 specified in (a). No waiver granted under this subsection may extend
11 beyond the normal expiration date of the person's insurance policy or
12 January 1, 1977, whichever occurs first.

13 Sec. 08.86.220. LIMITS OR CONDITIONS ON LICENSE; DISCIPLINE.

14 (a) Upon a finding that, by reason of demonstrated competence, experi-
15 ence, or education, the authority to practice psychology or as a
16 psychological associate under this chapter should be so limited or
17 conditioned or the practitioner so disciplined, the board may reprimand;
18 censure; place on probation; restrict practice by time, specialty,
19 procedure, 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. 14. AS 09.55.530 is repealed and re-enacted to read:

23 ARTICLE 6. MALPRACTICE ACTIONS.

24 Sec. 09.55.530. DECLARATION OF PURPOSE. The legislature finds
25 that the health of the people is threatened by curtailment of health-
26 care services due to the difficulty in obtaining adequate malpractice
27 insurance at a reasonable cost to the health-care provider. It is the
28 purpose of secs. 530 - 560 of this chapter to protect the health and
29 safety of the people of this state by establishing a procedure for

1 handling malpractice claims which will help ensure the ready avail-
2 ability of adequate insurance at a reasonable cost and which will be
3 fair to all parties concerned.

4 * Sec. 15. AS 09.55 is amended by adding a new section to read:

5 Sec. 09.55.536. EXPERT ADVISORY PANEL. (a) In any action for
6 damages due to personal injury or death, based upon the provision of
7 professional services by a health-care provider, the court shall
8 establish an expert advisory panel in accordance with this section.
9 When such an action is filed, the court shall, by order, determine
10 professions or specialities to be represented on the expert advisory
11 panel and shall advise each party of the professions or specialities
12 to be represented, giving the parties the opportunity to object or
13 make suggestions. The court may, in its discretion, conduct such
14 other preliminary proceedings relative to the composition of the panel
15 as it considers appropriate. The court may order a preliminary con-
16 ference relative to composition of the panel.

17 (b) Each expert advisory panel shall consist of three members.
18 In any case in which there is no defendant other than a physician or
19 hospital, the panel shall consist exclusively of persons licensed to
20 practice medicine in the State of Alaska. In all other cases against
21 a health-care provider, the panel shall consist of two persons licensed
22 to practice medicine in the State of Alaska and one person licensed to
23 practice in the State of Alaska in the field in which the defendant is
24 licensed. If, in a case against more than one defendant, it is
25 impossible or impracticable to comply strictly with the preceding
26 requirements of this subsection, the court shall order panel composi-
27 tion it considers just under the circumstances; however, each panel
28 must have at least one member who is licensed to practice medicine in
29 the State of Alaska, and no panel may contain a member who is not a

1 health-care provider licensed by the State of Alaska.

2 (c) After entering its order concerning the professions or
3 specialities to be represented on the panel, the court shall select
4 three times the number of persons licensed in each profession or
5 practicing in the speciality to be represented, and if more than one
6 panel member is to be from the same profession or speciality, it shall
7 select six or nine persons from that profession or speciality, as the
8 case may be. Each person so selected shall execute an oath to be
9 prescribed by the court to the effect that he will and can serve as an
10 impartial and unbiased member of the panel, and is not disqualified to
11 do so by reason of financial, personal or professional relationship
12 with the parties or an interest in the outcome of the proceeding. In
13 any case in which the person selected does not execute such an oath, a
14 substitute member shall be selected. The list of names shall be
15 supplied to each party by the court, and persons so listed are subject
16 to challenge for cause. If a challenge is sustained, a substitute
17 member shall be selected. When all challenges for cause have been
18 exhausted or waived, the court shall afford each party the right to
19 peremptory challenges until an expert advisory panel of three has been
20 selected with a composition conforming to the court's order issued
21 under (a) and (b) of this section. In a case of multiple defendants,
22 the court may make an order it considers just to govern peremptory
23 challenges. Challenges to prospective panel members shall be exercised
24 by mail, or in whatever other expedient manner the court may direct.

25 (d) Before submission of the matter to the expert advisory
26 panel, the parties may submit questions in writing to be answered by
27 the panel in addition to those required by this section. The court
28 may, by order, restrict those questions.

29 (e) The expert advisory panel may compel the attendance of

1 witnesses, physically or orally examine the parties, consult with the
2 specialists or learned works they consider appropriate, and compel the
3 production of, and examine, all relevant hospital, medical, or other
4 records relating to health-care treatment. The panel may meet in
5 camera, but shall maintain a record of any testimony or oral statements
6 of witnesses, and shall maintain copies of any written statements or
7 opinions that it receives. Not less than 30 days after selection of
8 the panel, it shall make a written report to the parties and to the
9 court, substantially answering the following questions in addition to
10 any other question which the court puts to the panel:

11 (1) Was the claimant adversely affected by the medical
12 services? If so, how?

13 (2) What was the adverse affect?

14 (3) What is the prognosis?

15 (4) How did the medical services alter the natural course
16 of the pre-existing disorder for which the services were originally
17 rendered?

18 (5) How did the medical condition existing after performance
19 of the medical services differ from the medical condition which might
20 otherwise have been expected?

21 (f) In any case in which the answer to one or more of the
22 questions under (e) of this section depends upon the resolution of
23 factual questions which are not the proper subject of expert opinion,
24 the report shall so state and may answer such a question based upon
25 hypothetical facts that are fully and completely set out in the
26 opinion. The report shall include copies of all written statements,
27 opinions, or records relied upon by the panel, and either a trans-
28 cription or other record of any oral statements or opinions; shall
29 specify any medical or scientific authority relied upon by the panel;

1 and shall include the results of any physical or mental examination
2 performed on the plaintiff. Each member shall sign the report and his
3 signature constitutes his adoption of all statements and opinions
4 contained in it; however, a member may, instead of signing the report,
5 submit a concurring or dissenting report which complies with the
6 requirements of this subsection, and a member shall not attest to any
7 portion of the report as to which he is not qualified to give expert
8 testimony.

9 (g) No discovery may be undertaken in a case until the report of
10 the expert advisory panel is received. However, the court may relax
11 this prohibition upon a showing of good cause by any party. If the
12 panel has not completed its report within the 30-day period prescribed
13 in (e) of this section, the court may, upon application, grant it an
14 additional 30 days.

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

27 (i) Members of a panel are entitled to travel expenses and per
28 diem in accordance with state law pertaining to members of boards and
29 commissions for all time spent in preparing its report and matters

1 incidental to it, which shall be paid by the state. If a panel member
2 is called upon as a witness at trial or upon deposition, he is en-
3 titled to payment of an expert witness fee. In any case in which the
4 court determines that a party has made a patently frivolous claim or a
5 patently frivolous denial of liability, it shall order that all costs
6 of the expert advisory panel be borne by the party making that claim
7 or denial.

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

12 * Sec. 16. AS 09.55.540 is amended to read:

13 Sec. 09.55.540. BURDEN OF PROOF. (a) In a malpractice action
14 based on the negligence of wilful misconduct of a health-care provider
15 [PHYSICIAN LICENSED UNDER AS 08.64, OR A DENTIST LICENSED UNDER AS
16 08.36], the plaintiff has [SHALL HAVE] the burden of proving

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

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

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

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

1 (c) In malpractice actions filed within three years after the
2 performance of the act which is the basis of the claim, the health-
3 care provider's negligence or wilful misconduct must be proved by a
4 preponderance of the evidence. In actions filed three years or more
5 after performance of the act which is the basis of the claim, the
6 health-care provider's negligence must be proved by clear and con-
7 vincing evidence.

8 * Sec. 17. AS 09.55 is amended by adding a new section to read:

9 Sec. 09.55.546. PROVIDER'S LIABILITY; AWARDS. (a) In a mal-
10 practice action filed three years or more after performance of the
11 service which is the basis of the claim, but within two years after
12 discovery of the injury or after the time when with reasonable dili-
13 gence the injury would have been discovered, any judgment shall be
14 paid out of the Health-Care Providers Late Claims Fund established
15 under AS 21.88.210, for those health-care providers who had valid
16 insurance under AS 21.88 at the time of performing that service, or,
17 for services performed before the coverage period of insurance issued
18 under AS 21.88, other malpractice insurance. A health-care provider
19 not so insured is personally liable. The late claims fund has no
20 right of subrogation against a health-care provider.

21 (b) Damages shall be awarded in accordance with principles of
22 the common law. The jury in a malpractice action shall render its
23 verdict as to damages, by category of loss. The court may enter a
24 judgment that future damages be paid in whole or in part by periodic
25 payments rather than by a lump-sum payment. In this subsection,
26 "future damages" includes damages for future medical treatment, care
27 or custody, loss of future earnings or loss of bodily function of the
28 claimant.

29 (c) Except when the collateral source is a federal program

1 which, by law, must seek subrogation, an award to which a claimant is
2 entitled may only cover damages which exceed any amounts received by
3 the claimant, as compensation for his injuries, from collateral sources,
4 whether private, group, or governmental, and whether contributory or
5 non-contributory, except life insurance. Evidence of damages compen-
6 sated by a collateral source, other than a federal program which must
7 seek subrogation, is not admissible. Notwithstanding other provisions
8 of state law, and except as provided in this subsection, a collateral
9 source does not have a right of subrogation.

10 * Sec. 18. AS 09.55.550 is amended to read:

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

20 * Sec. 19. AS 09.55 is amended by adding new sections to read:

21 Sec. 09.55.554. ORAL CONTRACTS. No cause of action against a
22 health-care provider arises for his or her breach of an oral contract
23 to provide a cure or achieve a specific medical result.

24 Sec. 09.55.556. INFORMED CONSENT. (a) A health-care provider
25 is not liable for failure to obtain the informed consent of a patient
26 unless the claimant establishes by a preponderance of the evidence
27 that the provider has failed to inform the patient of common risks and
28 reasonable alternatives to the proposed treatment or procedure, and
29 that, but for that failure, a reasonable person would not have con-

1 sented to the proposed treatment or procedure. A cause of action
2 based upon treatment or procedure performed in the absence of informed
3 consent arises only in those cases involving either

4 (1) non-emergency treatment, procedure or surgery; or

5 (2) a diagnostic procedure which involved invasion or dis-
6 ruption of the integrity of the body.

7 (b) It is a defense to any action for health-care malpractice
8 based upon an alleged failure to obtain such an informed consent that:

9 (1) the risk not disclosed is too commonly known, or is too
10 remote, to require disclosure; or

11 (2) the patient stated to the health-care provider that he
12 would undergo the treatment or procedure regardless of the risk in-
13 volved, or that he did not want to be informed of the matters to which
14 he would be entitled to be informed; or

15 (3) consent by or on behalf of the patient was not reasonably
16 possible; or

17 (4) the health-care provider, after considering all of the
18 attendant facts and circumstances, used reasonable discretion as to
19 the manner and extent to which the alternatives or risks were disclosed
20 to the patient because he reasonably believed that the manner and
21 extent of such a disclosure would reasonably be expected to adversely
22 and substantially affect the patient's condition.

23 Sec. 09.55.560. DEFINITIONS. In secs. 530 - 560 of this chapter

24 (1) "health-care provider" means a chiropractor licensed
25 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
26 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
27 optician licensed under AS 08.71; an optometrist licensed under AS
28 08.72; a pharmacist licensed under AS 08.80; a physical therapist
29 licensed under AS 08.84; a physician licensed under AS 08.64; a

1 podiatrist; a psychologist and a psychological associate licensed
2 under AS 08.86; and a hospital as defined in AS 18.20.130, including a
3 governmentally owned or operated hospital;

4 (2) "panel" means a health-care malpractice panel, estab-
5 lished under sec. 536 of this chapter.

6 * Sec. 20. AS 09.65.090 is repealed and re-enacted to read:

7 Sec. 09.65.090. CIVIL LIABILITY FOR EMERGENCY AID. (a) A
8 person, at a hospital or at any other location, who renders emergency
9 care or emergency counseling to an injured, ill, or emotionally dis-
10 traught person who reasonably appears to the person rendering the aid
11 to be in immediate need of emergency aid in order to avoid serious
12 harm or death is not liable for civil damages as a result of an act or
13 omission in rendering emergency aid or in providing for further care
14 unless the circumstances are such that remuneration for the services
15 would normally be expected.

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

18 * Sec. 21. AS 18.20 is amended by adding a new section to read:

19 Sec. 18.20.045. INSURANCE REQUIRED. Every hospital, as a con-
20 dition of licensure, shall submit to the department and maintain
21 evidence of insurance against liability to in-patients and out-patients
22 for malpractice issued by the Health-Care Providers Indemnity Corpora-
23 tion, in amounts of not less than \$200,000 per occurrence, and an
24 aggregate liability per year of not less than \$1,000,000 for every 50
25 beds or fraction of that number for which the hospital is licensed.

26 * Sec. 22. 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
2 other relief, by reason of having furnished that information, unless
3 the information is false and the person providing the information
4 knew, or 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
10 in an advisory capacity to, or who furnishes counsel or services to,
11 a review organization is liable for damages or other relief in an
12 action brought by a person whose activities have been or are being
13 scrutinized or reviewed by a review organization, by reason of his or
14 her performance of a duty, function or activity of the review organi-
15 zation, unless the performance of the duty, function or activity was
16 motivated by malice toward the affected person. No person is liable
17 for damages or other relief in an action by reason of his or her
18 performance of a duty, function, or activity as a member of a review
19 organization or by reason of a recommendation or action of the review
20 organization when the person acts in the reasonable belief that his
21 action or recommendation is warranted by facts known to him or to the
22 review organization after reasonable efforts to ascertain the facts
23 upon which the review organization's 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 informa-
26 tion acquired by a review organization, in the exercise of its duties
27 and functions, shall be held in confidence, may not be disclosed to
28 anyone except to the extent necessary to carry out one or more of the
29 purposes of the review organization, and is not subject to subpoena or

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

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

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

1 Sec. 18.23.040. GUIDELINES NOT ADMISSIBLE IN EVIDENCE. No
2 guideline established by a review organization is admissible in
3 evidence in a proceeding brought by or against a health-care provider
4 by a person to whom the provider has rendered professional services.

5 Sec. 18.23.050. PENALTY FOR VIOLATION. Other than as authorized
6 by sec. 30 of this chapter, a disclosure of data and information
7 acquired by a review committee or of what transpired at a review
8 meeting, is a misdemeanor and punishable under AS 11.05.010.

9 Sec. 18.23.060. PROTECTION OF PATIENT. Nothing in this chapter
10 relieves a person of liability which he has incurred or may incur to
11 a person as a result of furnishing health care to the patient.

12 Sec. 18.23.070. PARTIES BOUND BY REVIEW. When a review organi-
13 zation reviews matters under sec. 80(5)(H) of this chapter no party is
14 bound by a ruling of the organization in a controversy, dispute or
15 question unless he agrees in advance either specifically or generally,
16 to be bound by the ruling.

17 Sec. 18.23.080. DEFINITIONS. In this chapter, unless the context
18 otherwise requires

19 (1) "administrative staff" means the staff of a hospital or
20 clinic;

21 (2) "health care" means professional services rendered by
22 a health-care provider or an employee of a health-care provider, and
23 services furnished by a sanatorium, rest home, nursing home, boarding
24 home or other institution for the hospitalization or care of human
25 beings;

26 (3) "health-care provider" means a chiropractor licensed
27 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
28 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
29 optician licensed under AS 08.71; an optometrist licensed under AS

1 08.72; a pharmacist licensed under AS 08.80; a physical therapist
2 licensed under AS 08.84; a physician licensed under AS 08.64; a
3 podiatrist; a psychologist and a psychological associate licensed
4 under AS 08.86; and a hospital as defined in AS 18.20.130, including a
5 governmentally owned or operated hospital;

6 (4) "professional service" means service rendered by a
7 health-care provider of the type he or she is licensed to render;

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

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

20 (B) reducing morbidity or mortality;

21 (C) obtaining and disseminating statistics and infor-
22 mation relative to the treatment and prevention of diseases,
23 illness and injuries;

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

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

28 (F) reviewing the quality or cost of health care
29 services provided to enrollees of health maintenance organizations;

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

3 (H) reviewing, ruling on, or advising on controversies,
4 disputes or questions between:

5 (i) a health insurance carrier or health mainte-
6 nance organization and one or more of its insured or en-
7 rollees;

8 (ii) a professional licensing board, acting under
9 its powers of discipline or license revocation or suspension,
10 and a health-care provider licensed by it when the matter is
11 referred to a review organization by the professional
12 licensing board;

13 (iii) a health-care provider and his or her
14 patients concerning diagnosis, treatment or care, or a
15 charge of fee;

16 (iv) a health-care provider and a health in-
17 surance carrier or health maintenance organization con-
18 cerning a charge or fee for health care services provided to
19 an insured or enrollee; or

20 (v) a health-care provider or his or her patients
21 and the federal, or a state or local government, or an
22 agency of the federal or a state or local government;

23 (I) acting on the recommendation of a credential
24 review committee or a grievance committee.

25 * Sec. 23. AS 21 is amended by adding a new chapter to read:

26 CHAPTER 88. HEALTH-CARE PROVIDERS INSURANCE.

27 ARTICLE 1. PURPOSE.

28 Sec. 21.88.010. PURPOSE OF CHAPTER. It is the purpose of this
29 chapter to provide a means of assuring all health care providers with

1 a continuous, affordable and adequate insurance against liability for
2 medical negligence by concentrating all such insurance in one entity
3 which can negotiate more successfully for insurance from casualty
4 insurers licensed by this state and to distribute equitably the true
5 cost of the insurance among the health-care providers insured.

6 ARTICLE 2. INDEMNITY CORPORATION.

7 Sec. 21.88.020. CORPORATION CREATED. There is hereby created
8 the Alaska Health-Care Providers Indemnity Corporation.

9 Sec. 21.88.030. CORPORATION BOARD OF GOVERNORS. (a) The cor-
10 poration shall exercise its powers through a board of governors which
11 shall be appointed by the director as provided in (b) of this section.

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

14 (1) a member of the Alaska State Medical Association,
15 appointed from a list of no less than three persons recommended by the
16 governing board of that association;

17 (2) a member of the Alaska State Hospital Association
18 appointed from a list of no less than three persons recommended by the
19 governing board of that association;

20 (3) a member of the Alaska Nurses Association appointed
21 from a list of no less than three persons recommended by the governing
22 board of that association;

23 (4) a member of the Alaska Dental Association appointed
24 from a list of no less than three persons recommended by the governing
25 board of that association;

26 (5) three professionals in the insurance field.

27 (c) The term of office of each governor is three years, except
28 that the director shall designate three initially appointed governors
29 to serve for only one year, and two initially appointed governors to

1 serve for only two years.

2 (d) Upon the expiration of the term of a governor, the director
3 shall appoint a successor who shall be from the same class described
4 in (b) of this section as the governor whose term has expired.

5 (e) Upon a governor's early resignation, death or inability to
6 serve, the director shall appoint a successor from the same class
7 defined in (b) of this section as the terminating governor, who shall
8 serve for the unexpired term.

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

13 (g) Each member of the board of governors shall be allowed com-
14 pensation for services and reimbursement for reasonable expenses
15 incurred in attending meetings of the board and transacting corporation
16 business, as set out in the plan of operation.

17 Sec. 21.88.040. CORPORATION PLAN OF OPERATION. (a) Within 30
18 days after the effective date of this chapter, the board of governors
19 shall cause to be prepared and submitted to the director for approval
20 a plan of operation which provides for the fair, reasonable and
21 equitable administration of the affairs of the corporation and the
22 discharge of the purposes for which it is created. The plan and any
23 amendments of it become effective upon the director's approval. If
24 the board of governors has failed to submit a plan of operation, or if
25 at any subsequent time the board of governors fails to submit suitable
26 amendments to the plan, the director shall, after notice and hearing
27 adopt and promulgate a plan of operation or amendments which are
28 necessary or advisable to effectuate the provisions of this chapter.
29 Adoption of the plan is not subject to the Administrative Procedure

1 Act (AS 44.62).

2 (b) The plan of operation shall:

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

6 (2) establish procedures for handling assets and discharging
7 liabilities of the corporation;

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

10 (4) establish procedures for records to be kept of all
11 financial transactions of the corporation, its agents and the board of
12 governors;

13 (5) establish the amount and method of reimbursing and
14 compensating members of the board of governors;

15 (6) establish the procedures for awarding contracts to
16 indemnify or defend or to provide other services and to compensate the
17 indemnitors or vendors;

18 (7) establish the procedures for issuing contracts of
19 insurance as provided in sec. 50 of this chapter and for the determi-
20 nation of rates;

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

23 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
24 corporation shall:

25 (1) in the form approved by the director, issue to all
26 health-care providers who pay the premiums for it a contract indemnify-
27 ing the health-care provider and his employees who are health-care
28 providers against loss by reason of liability and agreeing to tender
29 on behalf of the health-care providers and his employees who are

1 health-care providers a defense of the health-care provider in a
2 proceeding brought under AS 09.55.530 -- 09.55.560; the limit of
3 liability shall be no less than the minimum liability coverage re-
4 quired to be maintained as stated in AS 08.20.115, 08.32.015, 08.36.115,
5 08.64.215, 08.68.165, 08.71.085, 08.72.115, 08.80.115, 08.84.035,
6 08.86.125, and 18.20.045; the contract shall cover the defense against
7 but need not indemnify a claim for punitive damages; the contract
8 shall cover claims against health-care providers:

9 (A) which arise out of professional services performed
10 by the health-care provider during the period for which the
11 premium is paid and which are filed within three years after
12 those services were performed; and, at the option of the health-
13 care provider,

14 (B) which arise out of professional services performed
15 by the health-care provider after January 1, 1975 and which are
16 filed within three years after those services were performed;

17 (2) charge a premium for the protection provided by the
18 contracts issued under (1) of this subsection which shall be deter-
19 mined by the board of governors in accordance with sec. 80 of this
20 chapter and subject to the approval of the director;

21 (3) negotiate for and procure reinsurance from an admitted
22 casualty insurer or reinsurer for all of its liability incurred by
23 contracts issued under (1) of this subsection; the corporation may not
24 incur or retain under those contracts liability which is not reinsured
25 as provided in this paragraph; if, after the exercise of due diligence,
26 no reinsurance can be procured from an admitted casualty insurer or
27 reinsurer, or the premiums being charged for health-care malpractice
28 insurance are so high as to have caused or threaten to cause in the
29 immediate future a significant unavailability of needed health-care

1 service to residents of the state, then the corporation, through the
2 board of governors, shall so certify to the director; reinsurance
3 shall then be provided by the Health-Care Joint Underwriting Association
4 as provided in sec. 110 et seq. of this chapter;

5 (4) comply with or be subject to AS 21.06.090; 21.06.120;
6 21.06.140; 21.06.160; 21.06.250; 21.09.180; 21.09.190; 21.09.200;
7 21.09.250; 21.09.280; 21.12.020(b), (c), (d), and (e); and chapters
8 18, 21, 24, and 36 of this title;

9 (5) carry out the obligations of the contracts issued under
10 (1) of this subsection by defending all covered claims made against
11 insured health-care providers and by paying all liabilities which are
12 finally adjudicated against the insured health-care provider or which
13 may in the opinion of the corporation reasonably be expected to be
14 finally adjudicated against the health-care provider to the extent of
15 the contract obligation;

16 (6) provide coverage to health-care providers for liability
17 under AS 09.55.530 -- 09.55.560 in excess of the minimum limits re-
18 quired for licensure as a health-care provider, but limited to
19 \$1,000,000 for individual health-care providers and \$5,000,000 for
20 hospitals, where there is a finding by the director that this coverage
21 is unavailable at a reasonable cost and that this coverage can be made
22 available at a reasonable cost through the corporation; if this paragraph
23 is implemented, then each health-care provider obtaining excess
24 coverage up to these amounts shall obtain it from the corporation.

25 (b) The corporation may:

26 (1) employ or retain persons, individual or corporate, to
27 discharge its obligations and shall pay, by way of salary, wage,
28 fee or commission, reasonable compensation for those services; employees
29 of the corporation are not considered state employees;

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

4 (3) borrow or advance funds necessary to effectuate the
5 purposes of the corporation;

6 (4) negotiate and become a party to those contracts as are
7 necessary to carry out the purposes of the corporation;

8 (5) sue or be sued in the name of the corporation;

9 (6) perform all other acts necessary and proper to effect-
10 uate the corporation.

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

21 Sec. 21.88.070. STATISTICS. The corporation shall collect,
22 maintain and report information concerning claims against health-care
23 providers. All such information shall be on forms prescribed by the
24 director, and shall be sufficient to enable a proper determination of
25 losses for rate making and to identify causes and sources of loss for
26 loss control. No less often than annually, the corporation shall
27 report to the director, which report shall be kept available to the
28 public, the number and amount of claims filed, reserved, paid, settled
29 and adjudicated during the year, the premiums paid to and the expenses

1 incurred by the corporation during the year. The director may require
2 that supplemental reports include the names of insured health-care
3 providers and the claimants; however, no reports which become publicly
4 available may include the names of health-care providers or claimants
5 or information that will permit by inference the identity of specific
6 health-care providers or claimants. All statistics shall be made
7 available to the appropriate licensing boards or agencies.

8 Sec. 21.88.080. RATES. The rates and rating plans used by the
9 corporation for the policies issued shall be determined by license
10 category of health-care providers in accordance with all of the
11 following:

12 (1) rates shall not be excessive; rates are excessive if,
13 after a period of time and with respect to an amount of gross premium
14 which are actuarially credible, the premiums exceed losses incurred by
15 the corporation, including losses paid, and reserves for unreported
16 cases unpaid and reserves for incurred but unreported claims, and
17 reasonable expenses for the operation of the corporation and a reason-
18 able profit to the indemnifying carrier;

19 (2) rates shall not be inadequate; rates are inadequate if,
20 based on available actuarial data, the premiums to be paid by the
21 health-care providers are or may reasonably be expected to be insuf-
22 ficient to pay for losses incurred by the corporation, including
23 claims paid, reserves for cases reported but unpaid, reserves for
24 cases incurred but unreported, reasonable expenses incurred for the
25 operation of the corporation and a reasonable profit to the indemnify-
26 ing carrier;

27 (3) rates shall be adjusted no less often than annually;

28 (4) rates for any policy year shall be calculated to
29 include the adjustment for actual experience of the corporation as

1 developed for the preceding four policy years;

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

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

7 (7) individual risk underwriting factors shall be con-
8 sidered;

9 (8) disciplines and classifications within the license
10 categories of health-care providers shall be considered.

11 Sec. 21.88.090. REQUIRED INSURANCE; CANCELLATION. The corpora-
12 tion shall provide insurance to all health-care providers otherwise
13 eligible for licensure under the appropriate chapter of AS 08. The
14 corporation may provide for installment payment of premiums in which
15 event each installment is due by the date specified. However, the
16 corporation may cancel any of its policies in the event of non-payment
17 of any premium, or installment on a premium, assessment (including
18 assessment for the fund), or other charge, by mailing or delivering to
19 the insured at the address shown on the policy and to the agency of
20 the state issuing the insured's license written notice stating when,
21 not less than 10 days after notice is received by the insured, the
22 cancellation is effective.

23 ARTICLE 3. JOINT UNDERWRITING ASSOCIATION.

24 Sec. 21.88.110. ASSOCIATION CREATED. (a) A Health-Care Pro-
25 viders Joint Underwriting Association is hereby created consisting of
26 all health-care service corporations as defined in AS 21.87.330 and
27 all insurers licensed by this state to write:

28 (1) disability insurance as defined in AS 21.12.050;

29 (2) property insurance as defined in AS 21.12.060; or

1 (3) casualty insurance as defined in AS 21.12.070.

2 (b) Every insurer described in (a) of this section shall be a
3 member of the association and shall remain a member as a condition of
4 its authority to continue to transact that kind of business in this
5 state.

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 by the corporation from an
9 admitted casualty insurer or reinsurer, or that the premiums being
10 charged for health-care malpractice insurance are so high as to have
11 caused or threaten to cause in the immediate future a significant
12 unavailability of needed health-care service to the residents of this
13 state. After the association has commenced operation, if the director
14 determines, after public hearing, that health-care malpractice insurance
15 is available through insurers licensed in this state with respect to
16 which he has previously made the former finding, the association shall
17 cease its underwriting operations. At any time, after notice and
18 hearing, the director may, upon a finding that it is no longer needed,
19 terminate the operation of the association.

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

23 Sec. 21.88.130. ASSOCIATION BOARD OF GOVERNORS. The association
24 shall be governed by a board of governors consisting of the same per-
25 sons serving as governors of the corporation.

26 Sec. 21.88.140. ASSOCIATION PLAN OF OPERATION. Within 30 days
27 after the association's creation, the board of governors shall cause
28 to be prepared and submitted to the director for his approval, a plan
29 of operation which provides for the fair, reasonable and equitable

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

11 (b) The plan of operation shall:

12 (1) establish the procedures by which all the powers and
13 duties of the association specified in sec. 150 of this chapter will
14 be performed;

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 governors;

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

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

24 (6) establish the procedures for awarding contracts to
25 indemnify or defend or to provide other services and to compensate the
26 indemnitors or vendors;

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

1 (8) contain additional provisions necessary or proper for
2 the 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 con-
6 tracts issued by the corporation indemnifying health-care providers
7 and their employees who are health-care providers against loss by
8 reason of liability for professional services and agreeing to tender
9 on behalf of the health-care providers and their employees who are
10 health-care providers a defense of the health-care providers in an
11 action brought under AS 09.55.530 -- 09.55.560; the limit of liability
12 shall be no less than the minimum liability required to be indemnified
13 as provided in AS 08.20.115, 08.32.015, 08.36.115, 08.64.215, 08.68.165,
14 08.71.085, 08.72.115, 08.80.115, 08.84.030, 08.86.125, and 18.20.045;
15 and the coverage shall be the same as that which the Health-Care
16 Providers Indemnity Corporation is required to provide under sec. 50
17 of this chapter;

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

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

26 (4) carry out the obligations of the contracts issued under
27 sec. 50 of this chapter by defending all covered claims made against
28 insured health-care providers and paying all liabilities which are
29 finally adjudicated against the insured health-care provider or which

1 may in the opinion of the association reasonably be expected to be
2 finally adjudicated against the health-care provider to the extent of
3 the contract obligation.

4 (b) The association may:

5 (1) employ or retain persons, individual or corporate, to
6 discharge its obligations and shall pay, by way of salary, wage, fee
7 or commission, reasonable compensation for those services;

8 (2) provide reinsurance to the corporation for coverage of
9 health-care services which were performed after January 1, 1975 and
10 which are the basis of a claim made during the period for which the
11 premium has been paid, even if the health-care provider had no other
12 coverage at the time of performing the services;

13 (3) provide reinsurance to the corporation for coverage to
14 health-care providers for other hazards where there is a finding by
15 the director that this coverage is otherwise unavailable by reason of
16 the operation of the corporation;

17 (4) provide reinsurance to the corporation for coverage to
18 health-care providers for liability under AS 09.55.530 -- 09.55.560 in
19 excess of the minimum limits required for licensure as a health-care
20 provider where there is a finding by the director that this coverage
21 is unavailable at a reasonable cost and that this coverage can be made
22 available at a reasonable cost through the corporation;

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

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

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

28 (8) cede or assume reinsurance;

29 (9) perform all other acts necessary and proper to effec-

1 tuate the association.

2 Sec. 21.88.160. RATES AND RATING PLANS. The rates and rating
3 plans shall be determined as provided in sec. 80 of this chapter,
4 except that allowance may not be made for profit to an indemnifying
5 carrier nor for income from investment of member-contributed-funds.

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

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

24 (b) In calculating the increase in rates, consideration shall be
25 given to charging the costs to the category of health-care provider
26 which made the assessment necessary.

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

1 (d) If, after establishing required reserves, there is an excess
2 amount in reserve, the excess premium shall be refunded to the insured
3 health-care providers.

4 Sec. 21.88.190. REPORTS. The association shall report to the
5 director, not less often than annually, concerning its affairs. The
6 report shall be in the form prescribed by the director.

7 ARTICLE 4. LATE CLAIMS FUND.

8 Sec. 21.88.210. CREATION OF FUND. There is created a Health-
9 Care Providers Late Claims Fund.

10 Sec. 21.88.220. PURPOSE OF FUND. The purpose of the fund is to
11 provide a source for paying awards for claims filed three or more
12 years after performance of the services which are the basis of the
13 claims, in accordance with AS 09.55.546.

14 Sec. 21.88.230. ADMINISTRATION OF FUND. (a) The director is
15 the administrator of the fund.

16 (b) The director shall:

- 17 (1) defend all claims made against the fund;
18 (2) determine an assessment against all health-care pro-
19 viders as provided in sec. 240 of this chapter;
20 (3) pay all liabilities which are finally adjudicated
21 against the health-care providers covered or which may in the opinion
22 of the director reasonably be expected to be finally adjudicated
23 against the health-care providers covered;
24 (4) pay the assets of the fund to the Department of Revenue
25 for investment in accordance with AS 37.10.

26 (c) The director may:

- 27 (1) negotiate for and procure reinsurance for all or any
28 portion of the fund's liability;
29 (2) employ or retain persons, individuals or corporate, to

1 discharge its obligations and shall pay, by way of salary, wage, fee
2 or commission, reasonable compensation for those services; employees
3 of the fund are not considered state employees;

4 (3) borrow or advance money necessary to effectuate the
5 purposes of the fund;

6 (4) sue or be sued in the name of the fund; however, this
7 provision does not authorize direct action against the fund as defen-
8 dant in a malpractice action;

9 (5) negotiate and become a party to those contracts as are
10 necessary to carry out the purposes of the fund;

11 (6) perform all other acts necessary and proper to effec-
12 tuate the purposes of the fund.

13 Sec. 21.88.240. ASSESSMENT FOR FUND. No less often than annually,
14 the director, after public hearing held under the provisions of ch. 6
15 of this title, shall determine an assessment against all health-care
16 providers. The amount of the assessment shall be adequate to cover
17 all losses reasonably expected to be paid by the fund during the
18 period for which the assessment is charged, and reasonable expenses
19 for operation of the fund. This assessment shall be determined by
20 March 1 of each year for the following fiscal year. For each of the
21 first three years of the operation of the fund, the director shall, in
22 addition, assess an amount adequate to establish a reasonable surplus
23 in the fund.

24 Sec. 21.88.250. UNAFFORDABLE ASSESSMENT. (a) The board of
25 governors of the corporation shall be notified of the assessment order
26 within 10 days after the order is issued. The board of governors
27 shall report to the legislature within 15 days after receipt of that
28 notice that the assessment is unaffordable if it so determines. If an
29 appropriation to the fund is enacted which is effective no later than

1 July 1 of the year in which the assessment order is made, the director
2 shall abate the assessment to the extent of the appropriation. If no
3 appropriation is timely enacted, the assessment order becomes final
4 and the assessment shall be collected.

5 (b) In determining whether an assessment is affordable, the
6 board of governors may consider:

7 (1) the actual medical practice revenues and expenses of
8 the health-care providers, both in and out of this state;

9 (2) average cost to health-care providers, both in and out
10 of this state, for health-care malpractice insurance coverage;

11 (3) the impact of the assessments on the cost of medical
12 care to patients;

13 (4) any other criteria and evidence that the board considers
14 relevant.

15 Sec. 21.88.260. PAYMENT OF FUND ASSESSMENT. All health-care
16 providers shall pay to the fund the full amount of the assessment,
17 except that the director may provide for installment payment of the
18 assessment in which event each installment is due by the date specified.
19 If any assessment or installment is not timely paid, the director
20 shall notify the corporation and cause cancellation of the insurance
21 by the corporation.

22 Sec. 21.88.270. FUND DEFICIENCY. If the fund is required to
23 discharge a liability in excess of the amount of assets then in the
24 fund, the balance is an obligation of the state.

25 Sec. 21.88.280. FUND STATISTICS. The fund shall collect, main-
26 tain and report information concerning claims against health-care
27 providers. All of this information must on forms as prescribed by the
28 director, and shall be sufficient to enable a proper determination of
29 losses for rate making and to identify causes and sources of loss for

1 loss control. No less often than annually, the director shall report
2 to the legislature, which report shall be kept available to the
3 public, the number and amount of claims filed, reserves paid, settled
4 and adjudicated during the year, the assessments paid to the fund and
5 the expenses incurred by the fund during the year. The director may
6 require that supplemental reports include the names of insured health-
7 care providers and claimants; however, no reports which become publicly
8 available may include the names of health-care providers or claimants
9 or information that will permit by inference the identity of specific
10 health-care providers or claimants. All statistics shall be made
11 available to the health-care licensing boards.

12 ARTICLE 5. GENERAL PROVISIONS.

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

14 (1) "association" means the Health-Care Providers Joint
15 Underwriting Association;

16 (2) "corporation" means the Health-Care Providers Indemnity
17 Corporation;

18 (3) "director" means the director of the Division of
19 Insurance for the State of Alaska;

20 (4) "fund" means the Health-Care Providers Late Claims
21 Fund;

22 (5) "health-care provider" means a chiropractor licensed
23 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
24 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
25 optician licensed under AS 08.71; an optometrist licensed under AS
26 08.72; a pharmacist licensed under AS 08.80; a physical therapist
27 licensed under AS 08.84; a physician licensed under AS 08.64; a
28 podiatrist; a psychologist and psychological associate licensed under
29 AS 08.86; and a hospital as defined in AS 18.20.130, including a
SB 522

1 hospital or health-care facility owned or operated by the state or one
2 or more of its political subdivisions.

3 * Sec. 24. AS 09.55.536, enacted in sec. 14 of this Act, has the
4 effect of changing the Alaska Supreme Court's Rules of Civil Procedure, by
5 requiring the submission of each health-care malpractice action to a panel
6 of experts.

7 * Sec. 25. AS 08.64.365 is repealed.

8 * Sec. 26. This Act takes effect 30 days after enactment.
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