

Original sponsor: Beirne

Offered: 5/17/77
Referred: Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 484

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to medical malpractice insurance
7 coverage; and providing for an effective date."

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

9 * Section 1. PURPOSE. The purpose of this Act is to insure that no
10 person suffers denial or revocation of licensure for any period of time for
11 failure to procure insurance from the Medical Indemnity Corporation of Alaska
12 or for failure to comply with any other requirement imposed by ch. 102 SLA
13 1976. This Act is for the further purpose of insuring that the coverage of
14 occurrence policies issued by the Medical Indemnity Corporation of Alaska
15 before the effective date of this Act continues to extend to claims arising
16 out of occurrences before the effective date of this Act, but that (1) the
17 Medical Indemnity Corporation of Alaska not be liable on an occurrence basis
18 for any claims arising after the effective date of this Act; (2) persons who
19 procured coverage from the Medical Indemnity Corporation of Alaska before
20 the effective date of this Act neither be allowed to cancel the coverage
21 procured nor evade the requirement of payment of premiums for that coverage;
22 and (3) persons who did not procure retroactive coverage from the Medical
23 Indemnity Corporation of Alaska by January 1, 1977 are not entitled to, nor
24 may the Medical Indemnity Corporation of Alaska issue, that coverage.

25 * Sec. 2. AS 21.88.030(a)(1) is repealed and re-enacted to read:

26 (1) four physicians licensed in the state and engaged in
27 private practice in the state; no more than two of the physicians shall
28 practice or live in a municipality having a population of more than
29 100,000;

1 * Sec. 3. AS 21.88.030 is amended by adding a new subsection to read:

2 (f) No governor, officer, or employee or former governor, officer,
3 or employee of the corporation is liable for damages or other relief
4 in any action by reason of his actions or inactions as a governor,
5 officer, or employee of the corporation, or by reason of the actions
6 or inactions of the corporation, its board of governors, officers or
7 employees unless the person acts with actual knowledge that he was
8 acting outside the scope of his authority, or at the time was acting
9 for a purpose which he knew was not in the best interests of the corpora-
10 tion, or with respect to any criminal action he had actual knowledge or
11 should have known his action was unlawful.

12 * Sec. 4. AS 21.88.050(a)(1) is amended to read:

13 (1) in the form approved by the director, issue to all
14 physicians and hospitals who pay the premiums for it a contract or con-
15 tracts indemnifying physicians and hospitals and their employees who are
16 health care providers against loss by reason of liability for covered
17 claims for an act or omission in the delivery of professional health
18 care in this state [PROFESSIONAL SERVICES RENDERED IN THE STATE ON AN
19 OCCURRENCE BASIS], and agreeing to tender on behalf of the physicians
20 and hospitals and their employees who are health care providers a defense
21 to [IN] a covered claim in a proceeding brought under AS 09.55.530 -
22 09.55.560; the limit of liability issued to physicians shall be \$200,000
23 per occurrence and \$600,000 aggregate liability per year, and the limit
24 of liability provided in contracts issued to hospitals shall be \$200,000
25 per occurrence and an annual aggregate liability of \$1,000,000 plus an
26 additional \$20,000 per bed for each bed over 50 [SHALL BE NO LESS THAN
27 THE MINIMUM LIABILITY COVERAGE REQUIREMENTS TO BE MAINTAINED UNDER
28 AS 08.64.215 AND AS 18.20.045]; the contract shall cover the defense
29 against but need not indemnify a covered claim for punitive damages;

1 at the option of the physician or hospital and for an additional pre-
2 mium the contract may cover claims against the physician or hospital
3 that arise out of professional services performed by the physician or
4 hospital for any period after December 31, 1974 if the coverage is issued
5 before January 1, 1977 except that coverage will not be provided for a
6 claim already filed or of which the physician or hospital had or rea-
7 sonably should have had notice at the time the retroactive insurance was
8 purchased;

9 * Sec. 5. AS 21.88.050(a) is amended by adding a new paragraph to read:

10 (8) cease operation and terminate its affairs if, for two
11 consecutive annual periods, the corporation posts written premium in
12 amounts less than 50 per cent or if, for one annual period, it posts
13 written premium in an amount less than 35 per cent of the total written
14 premium of all medical malpractice insurance for risks of physicians and
15 hospitals in Alaska; in any event, the corporation shall cease operation
16 and terminate its affairs not later than June 30, 1979.

17 * Sec. 6. AS 21.88.050(b)(2) is repealed and re-enacted to read:

18 (2) negotiate for and procure reinsurance from private
19 casualty insurers or reinsurers for any and all liability incurred by
20 contracts issued by it;

21 * Sec. 7. AS 21.88.050(b) is amended by adding a new paragraph to read:

22 (10) in a form approved by the director and for an additional
23 premium determined under sec. 80 of this chapter, issue endorsements
24 which provide indemnity for claims not yet reported which arise out of
25 professional services rendered during a period of continuous coverage
26 under the originally issued contract, to physicians and hospitals who
27 pay the premium for it and who are terminating their original covered
28 claims contract with the corporation for a period of not less than one
29 year.

1 * Sec. 8. AS 21.88 is amended by adding a new section to read:

2 Sec. 21.88.055. TERMINATION. Upon termination of the affairs of
3 the corporation the director shall be appointed receiver for the cor-
4 poration by the court and the corporation shall be liquidated in accor-
5 dance with ch. 78 of this title as if the corporation were a domestic
6 insurer. When the director is appointed receiver, all officers and
7 directors shall be discharged.

8 * Sec. 9. AS 21.88.080(4), (5) and (14) are amended to read:

9 (4) rates may not be excessive; rates are excessive if, after
10 a period of time and with respect to an amount of gross premium which
11 are actuarially credible, the premiums exceed losses incurred by the
12 corporation, including losses paid, reserves for covered claims reported
13 and unpaid, reserves for covered claims incurred during the policy
14 period and not reported, [PROVIDED THAT RESERVES FOR CLAIMS INCURRED
15 DURING THE POLICY PERIOD AND REASONABLY EXPECTED TO BE REPORTED AFTER
16 THREE YEARS AFTER THE INCIDENT MAY BE INCLUDED ON A DIFFERENT BASIS DUE
17 TO THE ADDITIONAL FINANCIAL FLEXIBILITY PROVIDED BY THE CORPORATION,]
18 and reasonable expenses for the operation of the corporation;

19 (5) rates shall not be inadequate; rates are inadequate if,
20 based on available actuarial data, the premiums to be paid by the health
21 care providers are or may reasonably be expected to be insufficient to
22 pay for losses incurred by the corporation, including covered claims
23 paid, reserves for covered claims reported and unpaid, reserves for
24 covered claims incurred during the policy period and not reported,
25 [PROVIDED THAT RESERVES FOR CLAIMS INCURRED DURING THE POLICY PERIOD AND
26 REASONABLY EXPECTED TO BE REPORTED AFTER THREE YEARS AFTER THE INCIDENT
27 MAY BE INCLUDED ON A DIFFERENT BASIS DUE TO THE ADDITIONAL FINANCIAL
28 FLEXIBILITY PROVIDED BY THE CORPORATION,] and reasonable expenses for
29 the operation of the corporation;

1 (14) [IF THE APPROACH UNDER SEC. 50(a)(3)(B) OF THIS CHAPTER
2 IS ADOPTED BY THE CORPORATION,] provisions may [SHALL] be made for
3 underwriting profit at a reasonable level for any reinsurer [, EXCEPT
4 THAT IF THE CORPORATION IS UNABLE TO PURCHASE ALL ITS REINSURANCE FROM
5 THE PRIVATE MARKET AND MUST PURCHASE A PORTION FROM THE ASSOCIATION, NO
6 PROVISION FOR UNDERWRITING PROFIT FOR PRIVATE CARRIERS MAY BE MADE].

7 * Sec. 10. AS 21.88.080 is amended by adding new paragraphs to read:

8 (15) if the collected premiums of the corporation for any
9 given year are less than the incurred claims, claim expense, under-
10 writing expense, reserves for that year and provision for repayment of
11 any loans, the corporation shall, subject to the prior approval of the
12 director, levy an assessment upon the insureds who held policies during
13 that year; the assessment, which may be made in periodic installments,
14 shall be made within three years and may not exceed 150 per cent of the
15 physician's premium for that year; the termination of any policy does
16 not relieve the insured of contingent liability for his proportionate
17 share of the obligations to the corporation which accrued while the
18 policy was in force;

19 (16) if the collected premiums of the corporation for any
20 given year exceed its incurred claim expense, underwriting expense,
21 reserves for that year and provision for repayment of any loan, the
22 corporation may, subject to the prior approval of the director, appor-
23 tion and pay or credit its insureds who held policies during that year;
24 a payment or credit shall be proportionate to the insured's earned
25 premium for that year.

26 * Sec. 11. AS 21.88 is amended by adding a new section to read:

27 Sec. 21.88.095. TRANSFER OF CORPORATE ASSETS AND LIABILITIES. (a)
28 The corporation shall transfer its assets and liabilities to a company
29 which meets all of the following conditions:

1 (1) the company possesses a valid certificate of authority to
2 transact business in the state; in evaluating the capital and surplus of
3 the company for qualification for a certificate of authority, the value
4 of the assets and liabilities transferred by the corporation may not be
5 considered;

6 (2) the company pays to the corporation the full value of any
7 surplus in the corporation not represented by any unrepaid proceeds of
8 loans by the loan fund to the corporation;

9 (3) the company executes a complete reinsurance and hold
10 harmless agreement in a form approved by the director covering all of
11 the obligations of the corporation to its creditors and policyholders;
12 and

13 (4) the company executes modifications of loan agreements
14 with the loan fund by which the company agrees

15 (A) to assume the obligations;

16 (B) that, if at any time the company writes less than
17 the premium levels provided in sec. 50(a)(8) of this chapter, the
18 loan provisions shall be modified to provide a scheduled amortiza-
19 tion repayment of the principal over a period not to exceed 10
20 years; and

21 (C) that the provision for repayment provided in sec.
22 210(b)(1) of this chapter shall be modified to provide for annual
23 installments of at least 25 per cent of the excess of premium and
24 investment income collected over the total of claims, reserves and
25 expenses on the medical malpractice book of business or 25 per cent
26 of the excess of premiums and investment income collected over the
27 total of claims, reserves and expenses on the corporation's total
28 book of business, whichever is greater;

29 (5) the company provides the board of governors with a

1 written statement from the director that the company qualifies under
2 (1) - (4) of this subsection.

3 (b) If the company to which the assets and liabilities of the
4 corporation are transferred in the manner provided in (a) of this section
5 continues to write premiums in excess of the levels provided in sec.
6 50(a)(8) of this chapter, it shall enjoy the benefit of the following
7 provisions:

8 (1) the company is entitled to carry forward and offset
9 against its premium tax obligation the amount by which the aggregate
10 claims paid on reinsurance assumed under (a)(3) of this section exceeds
11 aggregate reserves on the same business; and

12 (2) the obligation to repay to the loan fund loans assumed by
13 the company at the time of transfer of the assets and liabilities of the
14 corporation need not be shown as a liability on the books of the corpora-
15 tion.

16 (c) Upon transfer of all of its assets and liabilities in accor-
17 dance with this section and winding up its affairs, the corporation is
18 dissolved and the corporation, its governors, officers and employees are
19 relieved of all further liabilities for all of their obligations to the
20 creditors and policyholders of the corporation.

21 * Sec. 12. AS 21.88.210(b)(1) is amended to read:

22 (1) to provide surplus in respect to policyholders which may
23 not exceed a total of \$3,000,000 outstanding at any time; these obliga-
24 tions shall be subordinated to all other obligations of the corporation;
25 loans made under this paragraph shall be repaid to the fund in annual
26 installments of at least 25 per cent of the excess of premiums collected
27 over the total of claims, reserves, expenses, and assessments made by
28 the association, if any; interest shall be paid on the outstanding
29 balance at a rate equal to one [FOUR] percentage point [POINTS] above

1 the annual rate charged member banks for advances by the 12th Federal
2 Reserve District;

3 * Sec. 13. AS 21.88.900 is amended by adding new paragraphs to read:

4 (16) "continuous coverage" means one or more successive
5 policy periods which is uninterrupted by cancellation or failure to re-
6 new for any reason;

7 (17) "covered claim" means a claim by an injured patient re-
8 ported to the corporation during the period of continuous coverage by
9 the corporation of the insured health care provider for an act or omis-
10 sion in the delivery of health care services during the same period of
11 continuous coverage.

12 * Sec. 14. (a) The coverage obligations and duties of the insured under
13 policies issued by the Medical Indemnity Corporation of Alaska before the
14 effective date of this Act may not be breached without the consent of the
15 Medical Indemnity Corporation of Alaska and the director of the division of
16 insurance.

17 (b) All policies issued by the Medical Indemnity Corporation of Alaska
18 before the effective date of this Act are terminated as of the effective date
19 of this Act; however, if a person elects to purchase a policy for any term
20 beginning after the effective date of this Act, a new policy may be issued
21 that person provided that any new policies issued may only cover "covered
22 claims", as defined in sec. 13 of this Act, which occur after the effective
23 date of this Act.

24 * Sec. 15. The following laws are repealed: AS 08.20.115; AS 08.32.015;
25 AS 08.36.115; AS 08.64.215; AS 08.68.165; AS 08.71.085; AS 08.72.115; AS
26 08.80.115; AS 08.84.035; AS 08.86.125; AS 18.20.045; and AS 21.88.050(a)(2).

27 * Sec. 16. AS 21.88.210(b)(2) and (d) are repealed.

28 * Sec. 17. AS 21.18.090(5) and (6), AS 21.88.050(a)(3) and (7),
29 21.88.080(1), 21.88.110 - 21.88.180, and 21.88.900(1) are repealed.

1 * Sec. 18. Sections 3 and 15 of this Act are retroactive to June 28, 1976.

2 * Sec. 19. Sections 1, 2, 4 - 14 and 16 - 17 of this Act take effect
3 July 1, 1977.

4 * Sec. 20. Sections 3 and 15 of this Act take effect immediately in
5 accordance with AS 01.10.070(c).

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