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Referred: State Affairs

BY COLLETTA, KERTTULA, RODEY,
AND HUBER BY REQUEST

1 IN THE SENATE

2 HCS CS SENATE BILL NO. 326 (Fin) (Juo) AmH
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. AS 21.88.030(a)(1) is repealed and re-enacted to read:

10 (1) four physicians licensed in the state and engaged in
11 private practice in the state; no more than two of the physicians shall
12 practice or live in a municipality having a population of more than
13 100,000;

14 * Sec. 2. AS 21.88.050(a)(1) is amended to read:

15 (1) in the form approved by the director, issue to all
16 physicians and hospitals who pay the premiums for it a contract or con-
17 tracts indemnifying physicians and hospitals and their employees who are
18 health care providers against loss by reason of liability for covered
19 claims for an act or omission in the delivery of professional health
20 care in this state [PROFESSIONAL SERVICES RENDERED IN THE STATE ON AN
21 OCCURRENCE BASIS], and agreeing to tender on behalf of the physicians
22 and hospitals and their employees who are health care providers a defense
23 to [IN] a covered claim in a proceeding brought under AS 09.55.530 -
24 09.55.560; the limit of liability issued to physicians shall be \$200,000
25 per occurrence and \$600,000 aggregate liability per year, and the limit
26 of liability provided in contracts issued to hospitals shall be \$200,000
27 per occurrence and an annual aggregate liability of \$1,000,000 plus an
28 additional \$20,000 per bed for each bed over 50 [SHALL BE NO LESS THAN
29 THE MINIMUM LIABILITY COVERAGE REQUIREMENTS TO BE MAINTAINED UNDER

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1 AS 08.64.215 AND AS 18.20.045]; the contract shall cover the defense
2 against but need not indemnify a covered claim for punitive damages;
3 at the option of the physician or hospital and for an additional pre-
4 mium the contract may cover claims against the physician or hospital
5 that arise out of professional services performed by the physician or
6 hospital for any period after December 31, 1974 except that coverage
7 will not be provided for a claim already filed or of which the physician
8 or hospital had or reasonably should have had notice at the time the
9 retroactive insurance was purchased;

10 * Sec. 3. AS 21.88.050(a) is amended by adding a new paragraph to read:

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

18 * Sec. 4. AS 21.88.050(b)(2) is repealed and re-enacted to read:

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

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

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

1 year.

2 * Sec. 6. AS 21.88.080(4), (5) and (14) are amended to read:

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

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

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

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

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

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

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

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

24 (1) the company possesses a valid certificate of authority to
25 transact business in the state; in evaluating the capital and surplus of
26 the company for qualification for a certificate of authority, the value
27 of the assets and liabilities transferred by the corporation may not be
28 considered;

29 (2) the company pays to the corporation the full value of any

1 surplus in the corporation not represented by any unrepaid proceeds of
2 loans by the loan fund to the corporation;

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

7 (4) the company executes modifications of loan agreements
8 with the loan fund by which the company agrees

9 (A) to assume the obligations;

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

15 (C) that the provision for repayment provided in sec.
16 210(b)(1) of this chapter shall be modified to provide for annual
17 installments of at least 25 per cent of the excess of premium and
18 investment income collected over the total of claims, reserves and
19 expenses on the medical malpractice book of business or 25 per cent
20 of the excess of premiums and investment income collected over the
21 total of claims, reserves and expenses on the corporation's total
22 book of business, whichever is greater.

23 (b) If the company to which the assets and liabilities of the
24 corporation are transferred in the manner provided in (a) of this section
25 is an Alaska domestic stock company and continues to write premiums in
26 excess of the levels provided in sec. 50(a)(8) of this chapter, it
27 shall enjoy the benefit of the following provisions:

28 (1) the company is entitled to carry forward and offset
29 against its premium tax obligation the amount by which the aggregate

1 claims paid on reinsurance assumed under (a)(3) of this section exceeds
2 aggregate reserves on the same business; and

3 (2) the obligation to repay to the loan fund loans assumed
4 by the company at the time of transfer of the assets and liabilities
5 of the corporation need not be shown as a liability on the books of the
6 corporation.

7 * Sec. 9. AS 21.88.210(b)(1) is amended to read:

8 (1) to provide surplus in respect to policyholders which may
9 not exceed a total of \$3,000,000 outstanding at any time; these obliga-
10 tions shall be subordinated to all other obligations of the corporation;
11 loans made under this paragraph shall be repaid to the fund in annual
12 installments of at least 25 per cent of the excess of premiums collected
13 over the total of claims, reserves, expenses, and assessments made by
14 the association, if any; interest shall be paid on the outstanding
15 balance at a rate equal to one [FOUR] percentage point [POINTS] above
16 the annual rate charged member banks for advances by the 12th Federal
17 Reserve District;

18 * Sec. 10. AS 21.88.900 is amended by adding new paragraphs to read:

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

22 (17) "covered claim" means a claim by an injured patient re-
23 ported to the corporation during the period of continuous coverage by
24 the corporation of the insured health care provider for an act or omis-
25 sion in the delivery of health care services during the same period of
26 continuous coverage.

27 * Sec. 11. AS 09.10.070 is amended by adding new subsections to read:

28 (b) Except as provided in (c) of this section, no person may
29 bring a malpractice action based on negligence or wilful misconduct of

1 a health care provider unless commenced within two years of the act or
2 omission. However, if the plaintiff first had knowledge of the act or
3 omission complained of on a date within one year of the expiration of
4 the period of the limitation, the time period during which an action
5 may be brought is extended one year from that date, but in no event may
6 an action be commenced later than three years from the date of the
7 act or omission complained of.

8 (c) If the act or omission complained of occurred before the
9 plaintiff attains the age of six years, an action brought under (b) of
10 this section may be commenced at any time before the plaintiff attains
11 the age of eight years, but may not be commenced after that date.

12 * Sec. 12. The following are repealed: AS 08.20.115; AS 08.32.015; AS
13 08.36.115; AS 08.64.215; AS 08.68.165; AS 08.71.085; AS 08.72.115; AS 08.80.-
14 115; AS 08.86.125; AS 18.20.045; AS 21.18.090(5) and (6); AS 21.88.050(a)(2),
15 (3) and (7), 21.88.080(1), 21.88.110 - 21.88.180, and 21.88.900(1).

16 * Sec. 13. AS 21.88.210(b)(2) and (d) are repealed.

17 * Sec. 14. Sections 1 - 12 of this Act take effect July 1, 1977. Section
18 13 of this Act takes effect immediately upon the adoption of a bill appro-
19 priating the sum of \$1,500,000 to the medical malpractice liability revolving
20 loan fund established in AS 21.88.210(a).

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