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Offered: 5/26/77  
Referred: Rules

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 326 (Finance)

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 the  
20 effective date of this Act neither be allowed to cancel the coverage procured  
21 nor evade the requirement of payment of premiums for that coverage; and (3)  
22 persons who did not procure retroactive coverage from the Medical Indemnity  
23 Corporation of Alaska by January 1, 1977 are not entitled to, nor may the  
24 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 AS 21.88.030(a)(1) is repealed and re-enacted to read: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 in  
4 any action by reason of his actions or inactions as a governor, officer,  
5 or employee of the corporation, or by reason of the actions or inactions  
6 of the corporation, its board of governors, officers or employees unless  
7 the person acts with actual knowledge that he was acting outside the  
8 scope of his authority, or at the time was acting for a purpose which he  
9 knew was not in the best interests of the corporation, or with respect  
10 to any criminal action he had actual knowledge or should have known his  
11 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 de-  
21 fense to [IN] a covered claim in a proceeding brought under AS 09.55.-  
22 530 - 09.55.560; the limit of liability issued to physicians shall be  
23 \$200,000 per occurrence and \$600,000 aggregate liability per year, and  
24 the limit of liability provided in contracts issued to hospitals shall  
25 be \$200,000 per occurrence and an annual aggregate liability of  
26 \$1,000,000 plus an additional \$20,000 per bed for each bed over 50  
27 [SHALL BE NO LESS THAN THE MINIMUM LIABILITY COVERAGE REQUIREMENTS TO BE  
28 MAINTAINED UNDER AS 08.64.215 AND AS 18.20.045]; the contract shall  
29 cover the defense against but need not indemnify a covered claim for

1 punitive damages; at the option of the physician or hospital and for an  
2 additional premium the contract may cover claims against the physician  
3 or hospital that arise out of professional services performed by the  
4 physician or hospital for any period after December 31, 1974 if the  
5 coverage is issued before January 1, 1977 except that coverage will not  
6 be provided for a claim already filed or of which the physician or  
7 hospital had or reasonably should have had notice at the time the retro-  
8 active insurance was 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 sec-  
5 tion continues to write premiums in excess of the levels provided in  
6 sec. 50(a)(8) of this chapter, it shall enjoy the benefit of the follow-  
7 ing 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 cor-  
15 poration.

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 policy  
5 periods which is uninterrupted by cancellation or failure to renew for  
6 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), 21.88.-  
29 080(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,  
2 1976.

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

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

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