

S B

351

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 5-4-88 1:30p.m.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 4/26/88

FURTHER REFERRALS:

(HESS waived 4/26)

DATE: May 4, 1988

The Judiciary Committee has considered SB 351

"An Act relating to arbitration of medical malpractice claims."

**COMMENTS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 2/22/88
- zero with analysis

**SIGNING DO PASS:**

*[Handwritten signatures]*

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**SIGNING OTHER RECOMMENDATIONS:**

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*[Handwritten signature]*

\_\_\_\_\_

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to arbitration  
of medical malpractice claims."  
Sponsor: Senator Sturgulewski  
Requestor: Senate HESS

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

*Richard I. Peeues*

Prepared by: Richard I. Peeues, Director  
Division: Administrative Services Division

Phone: 465-3672  
Date: February 15, 1988

Approved by Commissioner: Richard I. Peeues  
Grace Berg Schaible, Atty. Gen.  
Agency: Department of Law

Date: February 15, 1988

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 351

This bill amends AS 09.55.535(e) by providing that the requirement of subsection (e), that a voluntary agreement to arbitrate must be reexecuted each time a person is admitted to a hospital, applies only to agreements between a patient and a hospital. The voluntary arbitration statute otherwise applies to any health care provider. Because this bill deals with patients and hospitals, it will not have a fiscal impact on the Department of Law.

# Alaska State Legislature



SENATOR  
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee  
Vice-Chairman, Senate Judiciary Committee  
Member, Senate Resources Committee

3903 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

While in Juneau  
P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

M E M O R A N D U M

Senate

27 April 1988

TO: Representative John Sund  
FROM: Senator Arliss Sturgulewski *AS*  
RE: Senate Bill 351

I would appreciate your scheduling Senate Bill 351 - "An Act relating to arbitration of medical malpractice claims" for a hearing before the House Judiciary Committee. This legislation is designed to make it more clear that of the arbitration agreements that patients sign with doctors and with hospitals, only the agreement signed with a hospital needs to be re-executed each time a patient enters a hospital.

Hospitals wish to have this clarified so that they are not obliged to perform the paperwork necessary to re-execute an agreement between a patient and a doctor when a patient enters the hospital.

I am attaching a sample of the documents used for arbitration agreements, a copy of the current statute governing medical arbitration, and a letter of support for this bill from the Health Association of Alaska. I am also attaching a letter from Janet K. Temple, a Soldotna attorney who made the original bill request, outlining the concerns of some physicians in the Soldotna area.

Jay Livey, Legislative Liaison for the Department of Health & Social Services says this bill is not applicable to that department. There is a zero fiscal note from the Department of Law attached.

Please call me or Melissa Fouse of my staff at 465-3818 if you have any questions.

JANET K. TEMPEL  
Attorney at Law  
P.O. Box 2073  
Soldotna, Alaska 99669  
Telephone (907) 262-4604

January 27, 1988

Senator Arliss Sturgulewski  
2957 Sheldon Jackson  
Anchorage, Alaska 99508

Dear Senator Sturgulewski:

On behalf of Marcus C. Deede, M.D., I previously requested that AS 09.55.535(e) be amended so as to clarify that this particular provision applied only to an arbitration agreement between a patient and a hospital, and not to an agreement between a patient and a physician.

There are at least two physicians in the Soldotna area who have been routinely using patient/physician arbitration agreements for a considerable period of time. Routinely, the patients sign the agreements at the doctor's offices during their initial visits. The agreements are then in effect until revoked by the patients, under the guidelines set out in the statute.

As long as the patients are not hospitalized, there would be no controversy concerning the interpretation of AS 09.55.535(e). However, if patients are hospitalized, the statute as written is unclear whether the requirement to re-execute an arbitration agreement is solely applied to patient/hospital agreements (which seems to be the intent) or whether it also applies to patient/physician agreements.

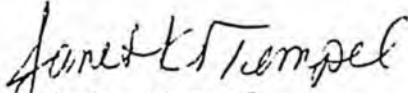
Since most people are rarely hospitalized, it is logical and desirable to require a new patient/hospital agreement on each admittance, if the hospital is using the agreements. A previously signed agreement between a patient and a physician, however, contemplates that all future care provided by the physician, including hospitalizations, would be governed by the existing agreement. Having to present a new agreement on each hospitalization, therefore, is not only confusing to the patient, but generates unnecessary paperwork and expense, and requires administrative personnel from the doctor's office (or the hospital) to take additional time to re-explain the agreement and obtain new signatures.

Senator Arliss Sturgulewski  
January 27, 1988  
Page Two

As I indicated to you in a prior letter dated May 5, 1987, it appears that MICA, as well as the Attorney General's Office is of the understanding that the legislative intent was to have subsection (e) apply only to patient/hospital agreements, and not to patient/physician agreements. (Copy enclosed for your information.) Based on this, the local physicians have not been having their patients with existing arbitration agreements execute new agreements on admission to the hospital. The local physicians are concerned, however, that the existing language in subsection (e) leaves a loophole if a patient later attempts to void the agreement.

I hope this letter will be of assistance to you. Please let me know if I can assist further. Thank you for your consideration and assistance in this matter.

Yours truly,



Janet K. Tempel  
Attorney at Law

JKT/rmc

cc: Marcus C. Deede, M.D.

Michael Lockwood, Administrator  
Central Peninsula General Hospital

**\*\*PLEASE READ THIS DOCUMENT CAREFULLY\*\***

**ARBITRATION AGREEMENT  
FOR  
PHYSICIANS AND PATIENTS**

1. EXECUTION OF THIS AGREEMENT IS NOT A PREREQUISITE FOR YOU, THE PATIENT, TO RECEIVE MEDICAL CARE OR TREATMENT.

2. The attending physician will provide medical care and services to the patient to the best of his skill or knowledge which medical care in the light of circumstances is possible and practical. The patient will cooperate fully with the attending physician by obtaining such medications as are prescribed, by following the instructions or the attending physician, by adhering to such treatment regimen or course of action as may be set forth and by paying all fees and charges in full as billed or as provided by prior special arrangement.

3. In the event that any malpractice claim or other dispute, controversy or issue may arise out of the rendition of care or treatment by the undersigned physician, during the period that this Agreement is in force, it is hereby agreed that such will be submitted to an arbitration board selected and governed by rules as hereinafter provided.

4. This arbitration agreement may be revoked by the person receiving the rendition of care or treatment within thirty (30) days after the execution of this Agreement by notifying the undersigned physician in writing. The thirty (30) day period of revocation is extended by any period that you are physically unable to execute a revocation. The physician is not entitled to revoke this Agreement.

5. The arbitration board shall consist of three arbitrators: one designated by the physician; one designated by the party claiming malpractice by the physician; one to be selected by mutual agreement between the physician and the party claiming malpractice. If mutual agreement on the third arbitrator cannot be reached, the Superior Court in the district in which the doctor is a resident, pursuant to A.S. 09.55.535(f), shall provide a choice of three or more persons who might serve. The party claiming malpractice and the physician may each alternatively strike one or more names until one remains, thereby providing a basis for final selection by the court. The third arbitrator selected pursuant to this procedure shall serve as the chairman of the arbitration board.

6. The provisions of the Uniform Arbitration Act as contained in A.S. 09.43.010 -.180, and A.S. 09.55.535, shall apply to arbitration pursuant to this agreement, if not in conflict with specific provisions of this agreement. The arbitration board shall render its decision in accordance with the laws and legal precedence of the State of Alaska. Discovery shall be afforded to the parties pursuant to the Alaska Rules of Civil Procedure and the hearing shall be conducted according to the Rules of Evidence as they are applied by the courts of Alaska. A.S. 09.55.540 -.548 and .554 -.560 and A.S. 09.65.090 shall apply to the arbitration procedure in addition to the other laws, legal precedence, Rules of Civil Procedure and Rules of Evidence of the State of Alaska.

7. The undersigned parties hereby acknowledge that they have read the foregoing arbitration agreement and understand the provisions contained therein.

8. This agreement is to remain in full force for all disputes, controversies, issues, or claims by the undersigned parties relating to care or treatment for the foregoing:

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9. Wherever used, the term "physician" includes the physician and all employees, agents and associates of the physi-

This agreement terminates when the above-described care and treatment has been completed or on the \_\_\_ day of \_\_\_\_\_ 19\_\_\_, whichever occurs first.

DATED this \_\_\_ day of \_\_\_\_\_, 19\_\_\_.

\_\_\_\_\_  
PATIENT

\_\_\_\_\_  
PHYSICIAN

This form is hereby approved by the Office of the Attorney General for the State of Alaska.

DATED this 29 day of March, 1978.

OFFICE OF THE ATTORNEY GENERAL

By Robert M. Marshall

**\*\*PLEASE READ THIS DOCUMENT CAREFULLY\*\***

**ARBITRATION AGREEMENT  
FOR  
HOSPITALS OR CLINICS AND PATIENTS**

1. EXECUTION OF THIS AGREEMENT IS NOT A PREREQUISITE FOR YOU, THE PATIENT, TO RECEIVE MEDICAL CARE OR TREATMENT. THIS AGREEMENT MUST BE RE-EXECUTED EACH TIME YOU ARE ADMITTED TO THE HOSPITAL.

2. The health care provider will provide medical care and services to the patient to the best of his skill and knowledge which medical care in the light of circumstances is possible and practical. The patient will cooperate fully with the health care provider by obtaining such medications as are prescribed, by following the instructions of the health care provider, by adhering to such treatment regimen or course of action as may be set forth and by paying all fees and charges in full as billed or as provided by prior special arrangement.

3. In the event that any malpractice claim or other dispute, controversy or issue may arise out of the rendition of care or treatment by the undersigned health care provider, during the period that this agreement is in force, it is hereby agreed that such will be submitted to an arbitration board selected and governed by rules as hereinafter provided.

4. This arbitration agreement may be revoked by the person receiving the rendition of care or treatment within thirty (30) days after the execution of this agreement by notifying the undersigned health care provider in writing. The thirty (30) day period of revocation is extended by any period that you are physically unable to execute a revocation. The health care provider is not entitled to revoke this agreement.

5. The arbitration board shall consist of three arbitrators: One designated by the health care provider; one designated by the party claiming malpractice by the health care provider; one to be selected by mutual agreement between the health care provider and the party claiming malpractice. If mutual agreement on the third arbitrator cannot be reached, the Superior Court in the district in which the health care provider is situated pursuant to A.S. 09.55.535(f), shall provide a choice of three or more persons who might serve. The party claiming malpractice and the health care provider may each alternatively strike one or more names until one remains, thereby providing a basis for final selection by the court. The third arbitrator selected pursuant to this procedure shall serve as the chairman of the arbitration board.

6. The provisions of the Uniform Arbitration Act as contained in A.S. 09.43.010 -.180, and A.S. 09.55.535, shall apply to arbitration pursuant to this agreement, if not in conflict with specific provisions of this agreement. The arbitration board shall render its decision in accordance with the laws and legal precedence of the State of Alaska. Discovery shall be afforded to the parties pursuant to the Alaska Rules of Civil Procedure and the hearing shall be conducted according to the Rules of Evidence as they are applied by the courts of Alaska. A.S. 09.55.540 -.548 and .554 -.560 and A.S. 09.65.090 shall apply to the arbitration procedure in addition to the other laws, legal precedence, Rules of Civil Procedure and Rules of Evidence of the State of Alaska.

7. The undersigned parties hereby acknowledge that they have read the foregoing arbitration agreement and understand the provisions contained therein.

8. This agreement is to remain in force for all disputes, controversies, issues, or claims by the undersigned parties relating to care or treatment for the following:

\_\_\_\_\_

\_\_\_\_\_

9. The term "health care provider" includes the hospital or clinic and all agents, employees, servants, officers and directors of the hospital or clinic and physicians employed by or associated with the hospital or clinic.

This agreement terminates when the above-described care or treatment has been completed or on the \_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, whichever occurs first.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
PATIENT

\_\_\_\_\_  
HEALTH CARE PROVIDER

This agreement is extended to apply to outpatient care for the treatment described in paragraph 8 of this agreement.

DATED this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
PATIENT

\_\_\_\_\_  
HEALTH CARE PROVIDER

This form is hereby approved by the Office of the Attorney General for the State of Alaska.

DATED this 29 day of March, 1978.

OFFICE OF THE ATTORNEY GENERAL

By [Signature]

health  
association  
of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790  
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board  
John Vowell  
Wrangell General Hospital

January 22, 1987

Chairman-Elect  
Jim Gingerich  
Fairbanks Memorial  
Hospital

Memo To:

Senator Arliss Sturgulewski

Immediate Past Chairman  
Mike Lockwood  
Central Peninsula  
General Hospital  
Soldotna

From:

Harlan R. Knudson *esk*  
Executive Director  
Health Association of Alaska

Secretary/Treasurer  
C. Keith Campbell  
Seward General Hospital

Subject:

Support - SB 351, Amending Arbitration Act

Delegate to the American  
Hospital Association  
Sister Barbara Haase  
Ketchikan General Hospital

The Health Association of Alaska has reviewed and  
supports SB 351, amending the arbitration act to require that  
the arbitration agreement between the patient and the hospital  
be re-executed at each admission.

Alternate Delegate to the  
American Hospital Assoc.  
Ed Zeine  
Cordova Community  
Hospital

# # #

Delegate to the American  
Health Care Association  
Tom Boling  
Our Lady of Compassion  
Care Center  
Anchorage

Alternate Delegate to the  
American Health Care  
Association  
Ronald Olthoff  
Denali Center  
Fairbanks

Delegate to the Healthcare  
Forum  
Ed Matewski  
Sitka Community Hospital

Delegate to the National  
Congress of Hospital  
Governing Boards  
Jan Treltner  
Seward General Hospital

Government Institutions  
Representative  
Frank Sutton  
Mt. Edgumbe Hospital  
Sitka

Outpatient Facilities  
Representative  
Avis Hayden  
Alaska Treatment Center  
Anchorage

Executive Director  
Harlan R. Knudson

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to arbitration  
of medical malpractice claims."  
Sponsor: Senator Sturgulewski  
Requestor: Senate HESS

Agency Affected: Department of Law  
BRU: Legal Services  
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672  
Division: Administrative Services Division Date: February 15, 1988  
Approved by Commissioner: Richard I. Peques  
Grace Berg Schible, Atty. Gen. Date: February 15, 1988  
Agency: Department of Law

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 351

This bill amends AS 09.55.535(e) by providing that the requirement of subsection (e), that a voluntary agreement to arbitrate must be reexecuted each time a person is admitted to a hospital, applies only to agreements between a patient and a hospital. The voluntary arbitration statute otherwise applies to any health care provider. Because this bill deals with patients and hospitals, it will not have a fiscal impact on the Department of Law.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 3/11/88

FURTHER REFERRALS:

HESS  
Judiciary

DATE: \_\_\_\_\_

The Labor & Commerce Committee has considered SB 351

"An Act relating to arbitration of medical malpractice claims."

## RECOMMENDS:

- replace with \_\_\_\_\_  the same title  
 attached amendment(s)  a new title  
 do pass  
 do not pass  
 no recommendation  
 individual recommendations  
 additional referral to the \_\_\_\_\_ Committee

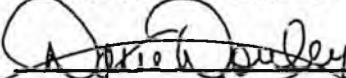
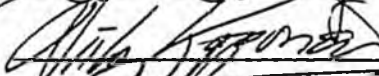
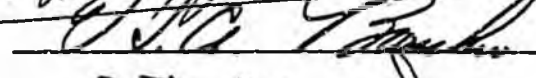
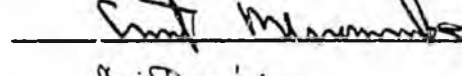
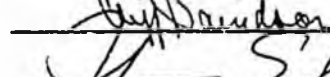
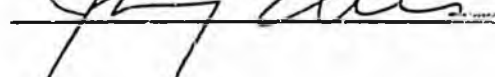
ADOPTS:  \_\_\_\_\_ letter of intent

## ATTACHES NEW FISCAL NOTE(S):


- fiscal impact  same as previous fiscal note published \_\_\_\_\_  
 zero fiscal note  same as previous zero fiscal note published 2/22/88  
 zero with analysis

## SIGNING DO PASS:

## SIGNING OTHER RECOMMENDATIONS:

  
  
  
  
  
  
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Chairman's signature