

HB

302

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

SECTIONAL ANALYSIS

CSHB 302(JUD) - MALPRACTICE INSURANCE FOR PROFESSIONALS

CSHB 302 (JUD) requires a person who is in an occupation or profession regulated by the state under Title 8 to have malpractice insurance if:

- (1) judgment has been entered against the person for civil damages;
- (2) the damages resulted from an act or omission arising out of the person's occupation or profession; and
- (3) the judgment has not been satisfied or the parties to the judgment have not entered into a settlement agreement.

The Division of Occupational Licensing shall suspend the license of a person who fails within 45 days to provide:

- (1) a copy of the judgment and proof of required insurance; or
- (2) a copy of the satisfaction or settlement of the judgment.

The license is suspended until proof of insurance, satisfaction of the judgment, or settlement is provided.

The division shall adopt regulations establishing minimum insurance requirements for each regulated occupation.

A court entering a malpractice judgment against a person in a regulated occupation must forward a copy of the judgment to the division.

An insurer who provides malpractice insurance coverage to a licensed professional shall provide notice to the division if the policy is cancelled or not renewed.

The insurance requirement does not apply to a person who:

- (1) is required to have insurance or to provide a bond as a condition of licensing;
- (2) is no longer employed in the occupation or profession; or
- (3) is licensed in a profession or occupation that is unrelated to the profession or occupation out of which the judgment arose.





Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 540 L Street, Suite 104 • Anchorage
(907) 258-4040

HB 302 - MALPRACTICE INSURANCE FOR PROFESSIONALS

The idea behind HB 302 -- requiring professional malpractice insurance under certain circumstances -- is laudable. However we have a couple of concerns with the present form of the bill and would encourage the committee to consider some of these shortcomings.

HB 302 requires professionals to obtain malpractice insurance **only** if a judgment has been entered against them and that judgment has not been satisfied. That means an offending professional must commit negligence, get caught at it, have a case prosecuted to judgment and then not satisfy the judgment before HB 302 even applies. This exception raises a couple of problems.

First, this is a "one-free" bite kind of a bill. You not only have to be a professional who has injured someone, but you have to be taken to judgment and have failed to satisfy that judgment. The economics of taking a professional to judgment who is uninsured are abysmal. If the professional is judgment proof to begin with, claimants will not seek a judgment, as it is a waste of time and money. Once judgment is entered against a professional, there is no obligation under HB 302 to discharge the judgment. In other words, a professional can satisfy the law by simply securing requisite malpractice insurance for **future acts**, even though outstanding judgments exist against that individual. Although this exception was apparently designed to focus on the professional with a track record of negligence, it does not appear to apply to the professional who may have settled a series of negligence claims short of trial to avoid a negligence judgment.

Second, those of us who put ourselves forward as professionals; take peoples' problems into our hands; solicit public trust by our very presence and status within the community, have an obligation to insure against errors we may make in discharging our professional duties. A professional who holds himself or herself out to the public as competent in an area should back that representation with malpractice insurance, regardless of whether he or she has been the subject of a negligence judgment.

Despite these concerns, we urge passage of some legislation requiring mandatory liability insurance for professionals. The limits proposed in the present form of HB 302 are certainly better than nothing, but inadequate nonetheless.

LEBOEUF, LAMB, LEIBY & MACRAE

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May 22, 1991

BY FACSIMILE AND REGULAR MAIL

Representative Dave Donley
Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Re: Alaska House Bill 302

Dear Representative Donley:

Our firm is privileged to serve as United States General Counsel to Underwriter's at Lloyd's, London and to also represent a number of other alien insurers principally licensed in the London market. Our clients are eligible to write surplus lines insurance on Alaska risks and have long been active participants in your state's surplus lines marketplace.

In its original form, the captioned bill would have limited the procurement of malpractice coverage to the licensed market. We were surprised and somewhat alarmed by this proposal, particularly since malpractice coverage is frequently the very type of hard to place risk which most requires access to the non-admitted market through the surplus lines law. Thus, this bill, as proposed, could have created an artificial capacity shortage for malpractice coverage as well as severing well established mutually beneficial relationships between Alaska residents requiring malpractice coverage and surplus lines insurers.

Representative Dave Donley

May 22, 1991

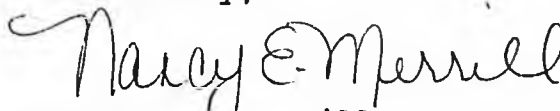
Page 2

Fortunately, this bill was subsequently amended in the House Labor & Commerce Committee and currently reads that the concerned coverage may be procured from "an insurer eligible to do business in Alaska." We have been advised by a Committee Aid to the Labor and Commerce Committee that the intent of the amendment is to clarify that malpractice coverage may be procured from the surplus lines market as provided for in the Alaska surplus lines law.

While we are grateful for this recognition that malpractice coverage may still be procured from surplus lines insurers in an appropriate case, we remain concerned that the true intent of this bill, even as amended, may not be sufficiently clear from the language of the bill to avoid undesirable misunderstanding. In the interest of clarity, we respectfully request that you consider removing the words "insurer eligible" from line seven of the bill and insert instead the following: "an insurer authorized to do business in this state or an eligible surplus lines insurer." We believe this amendment would effectively prevent any possible future misunderstandings.

Thank you for your consideration of this matter. If you have any questions or desire additional information, please do not hesitate to contact us.

Sincerely,



Nancy E. Merrill
Admission Pending

NEM/tc

1992 LEGISLATIVE SESSION

Revision Date: 02/12/92 Department Affected: Commerce & Economic Development
 Title: Relating to malpractice insurance for certain BRU: Occupational Licensing
persons who are in a regulated occupation or profession Component: Administration
 Sponsor: House Labor & Commerce
 Requestor: House Judiciary COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.8	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	58.0	52.2	52.2	52.2	52.2	52.2

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	58.0	52.2	52.2	52.2	52.2	52.2
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	58.0	52.2	52.2	52.2	52.2	52.2

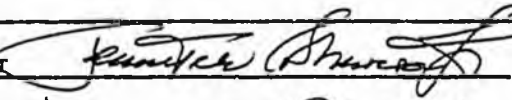
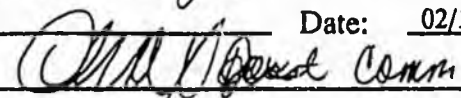
POSITIONS:

FULL-TIME	1.0	1.0	1.0	1.0	1.0	1.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

The bill establishes a malpractice insurance requirement for licensees, if judgement has been entered against the licensee for civil damages resulting from an act or omission arising out of the person's occupation or profession.

Prepared By: Jennifer Strickler  Phone: 465-2144
 Division: Occupational Licensing Date: 02/12/92
 Approved by Commissioner: Glenn A. Olds 
 Agency: Commerce & Economic Development Date: 2-12-92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS - CSHB 302 (L&C)

CSHB 302(L&C) requires the division to adopt regulations establishing the minimum malpractice insurance requirements for each regulated occupation or comply with the requirement that a copy of the judgment and proof of the malpractice insurance, or a copy of the satisfaction or settlement of the judgement be submitted to the division within 45 days after the judgment is entered.

The division currently licenses 33 occupations and professions in over a hundred separate licensing categories. Since the bill requires the division to establish minimum malpractice requirements for each regulated occupation or profession, the division anticipates that a great amount of staff time and effort will be needed to coordinate with the division of risk management, the insurance companies, and each occupation or profession in establishing minimum malpractice insurance requirements for each licensing category, by regulations. This fiscal note therefore addresses the funding needed to carry out the provisions of the bill.

Personal Services \$ 41.2

- 1 - Regulations Specialist I, Range 13A, GGU
12 months

This position will be responsible to coordinate the efforts in establishing the minimum malpractice insurance requirements for each of the 33 occupations and professions, for each licensing category.

Travel 5.0

This funding will provide transportation for the Regulations Specialist to coordinate with insurance companies, licensees, and to hold the necessary public hearings on the proposed regulations throughout the State.

Contractual Services 5.0

This funding will cover printing and advertising of the regulations project, communications expenses, and hearing expenses for suspension of a license in accordance with Section 08.02.040(b).

Supplies 1.0

This funding will provide daily operating supplies for the Regulations Specialist position.

Equipment (one-time costs) 5.8

This funding will provide one-time equipment costs for the Regulations Specialist position.

TOTAL: \$ 58.0

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 14, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 2.12.92

The JUDICIARY Committee considered:

HB 302

HOUSE BILL NO. 302

REQUIRE PROFESSIONAL LIABILITY INSURANCE

"An Act relating to malpractice insurance for certain persons who are in a regulated occupation or profession."

RECOMMENDATIONS:

be replaced with CS HB 302 (JUD) the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Commerce + Econ Development fiscal note(s) _____

zero fiscal note _____ zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Dave Donley</i>	X	<i>Mike Miller</i>		✓	
<i>J. Ellis</i>	X	<i>X. J. Rosenberg</i>		✓	
<i>Kevin Paul V. Parnell</i>	✓				
<i>Mark Huskey</i>	X				
<i>Terry Martin</i>	X				

Dave Donley
CHAIRMAN'S SIGNATURE

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

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An insurer who provides malpractice insurance coverage to a licensed professional shall provide notice to the division if the policy is cancelled or not renewed.

The insurance requirement does not apply to a person who:

- (1) is required to have insurance or to provide a bond as a condition of licensing;
- (2) is no longer employed in the occupation or profession; or
- (3) is licensed in a profession or occupation that is unrelated to the profession or occupation out of which the judgment arose.

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



• 122C

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 302

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: An Act relating to malpractice insurance for certain persons... BRU: Occupational Licensing
 Component: Administration
 Sponsor: House Judiciary
 Requestor: House Labor & Commerce COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	41.2	41.2	41.2	41.2	41.2	41.2
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	5.8					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	58.0	52.2	52.2	52.2	52.2	52.2

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	58.0	52.2	52.2	52.2	52.2	52.2
FEDERAL FUNDS						
OTHER						
TOTAL	58.0	52.2	52.2	52.2	52.2	52.2

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

The bill establishes a malpractice insurance requirement for licensees, if judgment has been entered against the licensee for civil damages resulting from an act or omission arising out of the person's occupation or profession. (Continued on attached.)

Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: May 6, 1991
 Approved by Commissioner: Glenn A. Olds
 Agency: Commerce and Economic Development Date: 5-7-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS - HB 302

HB 302 requires the division to adopt regulations establishing the minimum malpractice insurance requirements for each regulated occupation or profession; and to suspend a license for one year if a licensee fails to comply with the requirement that a copy of the judgment and proof of the malpractice insurance, or a copy of the satisfaction or settlement of the judgement be submitted to the division within 45 days after the judgment is entered.

The division currently licenses 31 occupations and professions in over a hundred separate licensing categories. Since the bill requires the division to establish minimum malpractice requirements for each regulated occupation or profession, the division anticipates that a great amount of staff time and effort will be needed to coordinate with the division of risk management, the insurance companies, and each occupation or profession in establishing minimum malpractice insurance requirements for each licensing category, by regulations. This fiscal note therefore addresses the funding needed to carry out the provisions of the bill.

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Contractual Services

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Supplies

1.0

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Equipment (one-time costs)

5.8

This funding will provide one-time equipment costs for the Regulations Specialist position.

TOTAL:

\$ 58.0

FISCAL NOTE

No. 1

Bill Version: CSHB 302(L&C)

(H) Publish Date: 5/14/91

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Dev.

Title: An Act relating to malpractice insurance for certain persons.... BRU: Occupational Licensing

Sponsor: House Judiciary Component: Administration

Requestor: House Labor & Commerce COMPONENT SERIAL NO.

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Prepared By: Jennifer Strickler, Admin. Officer Phone: 465-2144

Division: Occupational Licensing Date: May 6, 1991

Approved by Commissioner: Glenn A. Olds

Agency: Commerce and Economic Development Date: 5-9-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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