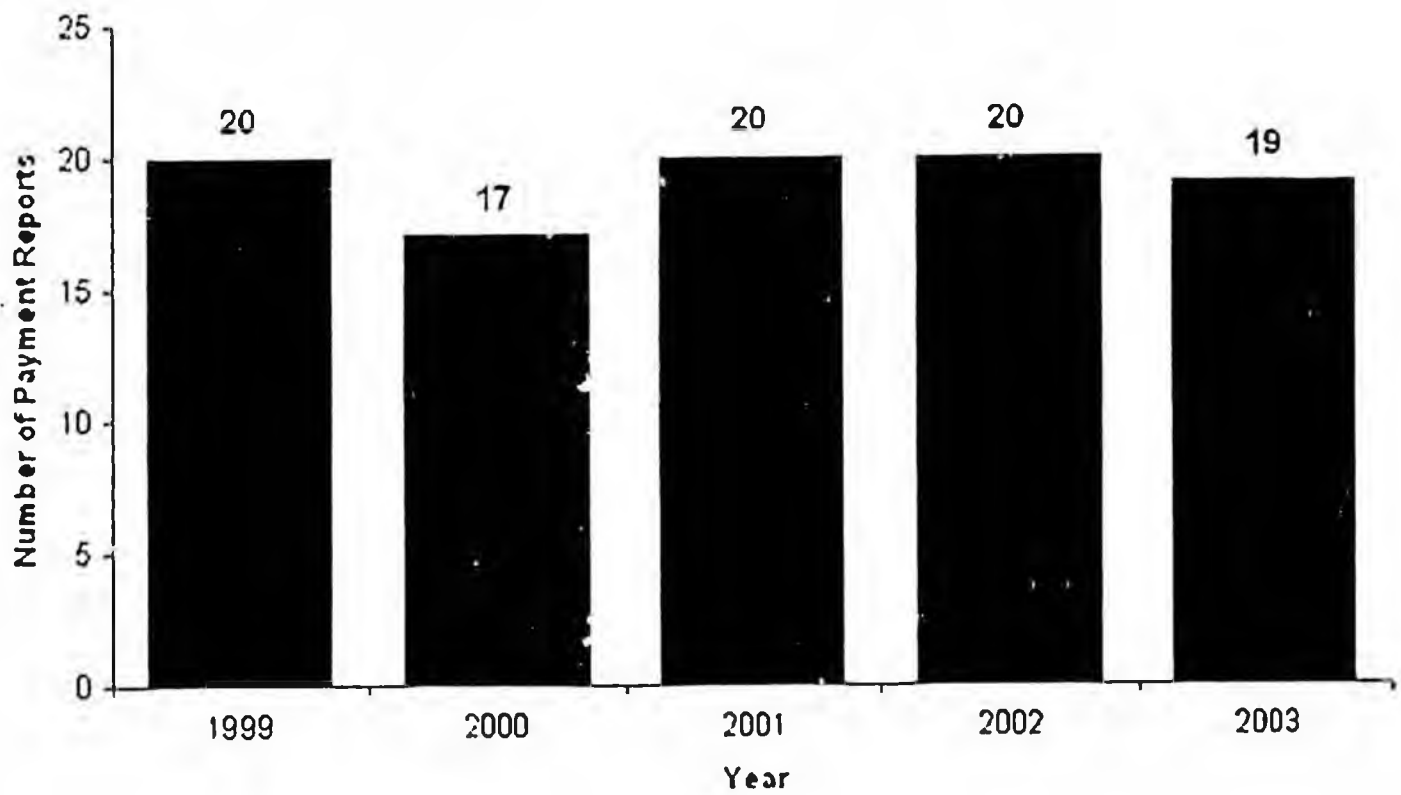


ALASKA LEGISLATURE

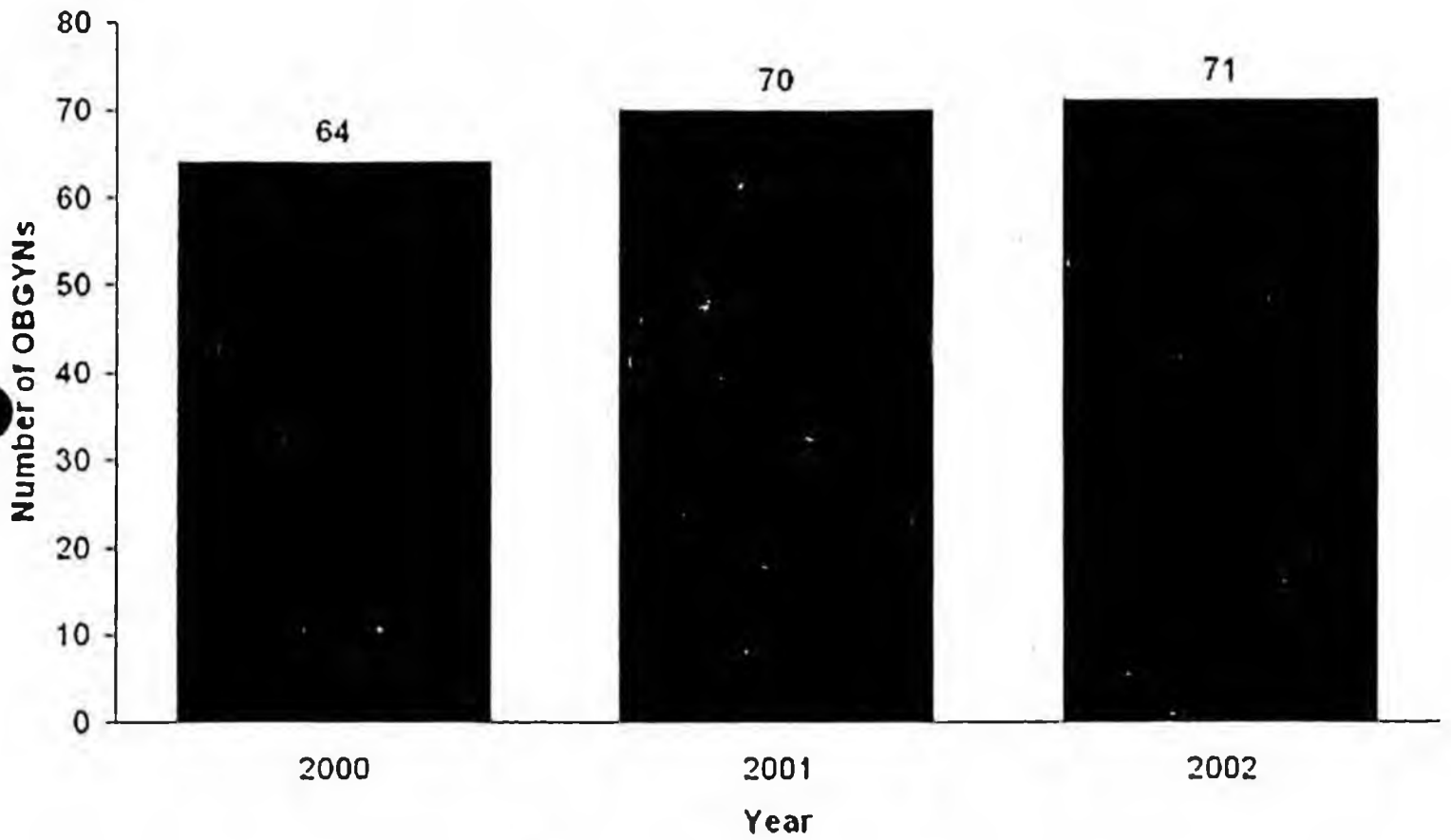
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## Number of Alaska Medical Malpractice Payments Reported to the National Practitioner Data Bank



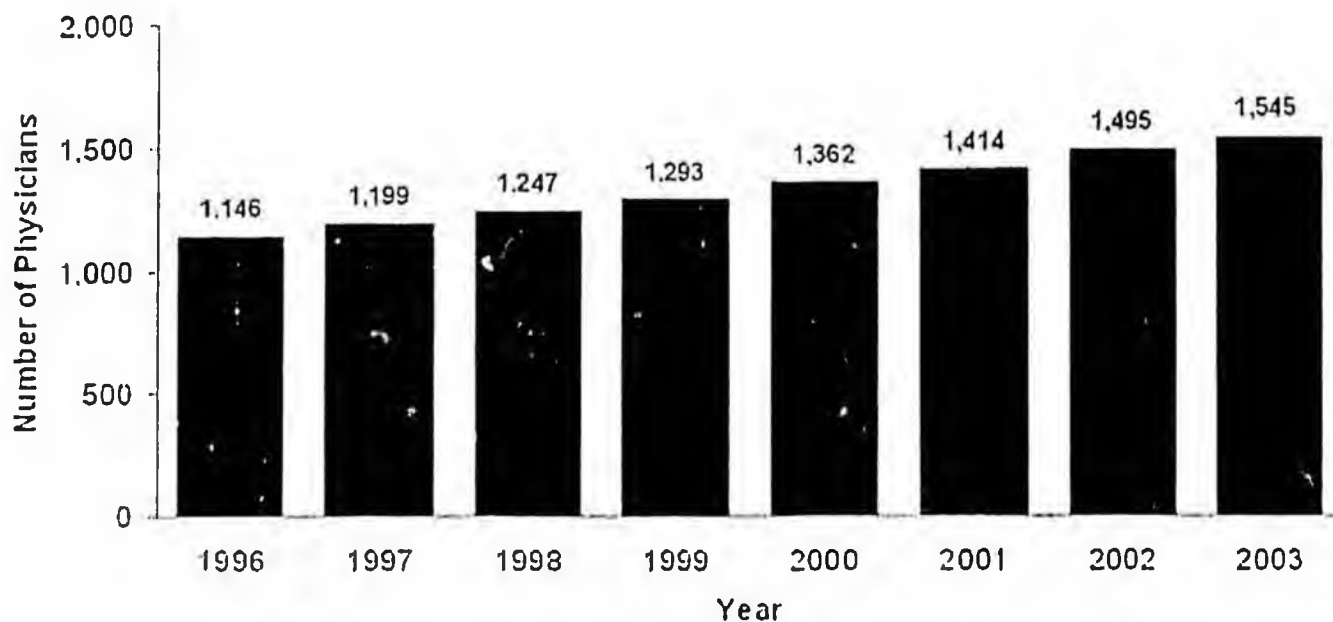
Source: National Practitioner Data Bank Annual Report 2003

## Number of OBGYNs in Alaska



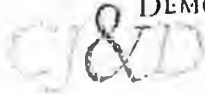
Source: American Medical Association, "Physician Characteristics and Distribution in the U.S." (2003-2004 edition)

### Number of Physicians In Alaska: 1996 to 2003



Source: Physician Characteristics and Distribution in the U.S., Various Editions, American Medical Association

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## MYTHBUSTER!

### Medical Malpractice Mismanagement – Why Some Major Insurers Have Pulled Out of the Market

It's a common theme: insurance companies are abandoning policyholders, leaving states or pulling out of the market altogether because jury verdicts are too high and are costing insurers too much money. The solution, they say, is to limit what judges and juries are allowed to give injured patients.

Yet insurance insiders know that jury verdicts aren't to blame. Rather, the collapse of many medical insurance companies has been directly brought on by the mismanaged underwriting practices of the industry as a whole.

As one insider recently put it, "The [medical malpractice insurance] market is in chaos.... Throughout the 1990s ... insurers were ... driven by a desire to accumulate large amounts of capital with which to turn into investment income. Regardless of the level of ... tort reform, the fact remains that if insurance policies are consistently underpriced, the insurer will lose money."<sup>1</sup> Or as the head of a leading medical malpractice insurer put it, "I don't like to hear insurance-company executives say it's the tort [injury-law] system – it's self-inflicted."<sup>2</sup>

The mismanaged underwriting practices of the following companies, which have left thousands of policyholders high and dry, have wreaked havoc on the nation's health care professionals:

#### ST. PAUL

In 2001, one of the country's largest medical malpractice insurance companies, St. Paul, pulled out of the medical malpractice insurance market, creating significant supply and demand problems in states like Nevada and West Virginia.

According to a June 24, 2002 *Wall Street Journal* front-page investigative article, St. Paul, with 20% share of the national market, pulled out after mismanaging its underwriting and reserves.<sup>3</sup> In the 1980s, the company set aside too much money for malpractice claims. So, using a tricky accounting method, in the 1990s the company "released" \$1.1 billion in reserves, which flowed through its income statements and appeared like big profits. Seeing these profits, many new, smaller carriers came into the market. Everyone started slashing prices to attract customers. From 1995 to 2000, rates fell so low that they became inadequate to cover malpractice claims. Many companies collapsed as a result. St. Paul eventually pulled out, creating problems for doctors in many states.

Even after getting out of the medical malpractice business, St. Paul's problems continued to demonstrate that poor business practices, not medical malpractice insurance, have really been at the heart of the company's downfall. In May 2002, the company was placed on credit watch with negative implications,<sup>4</sup> and in July 2002, St. Paul had its ratings lowered again by Standard and Poor's due to its handling of asbestos and other environmental claims.<sup>5</sup>

In May 2002, the Nevada Attorney General's office filed an administrative complaint against St. Paul in connection with its decision to pull out of the medical malpractice market.<sup>6</sup> The complaint cites St. Paul for alleged unlawful business practices, unauthorized policy modifications, payment of commissions to unlicensed agents, unlawful policy cancellations and nonrenewals and failure to return unearned premium payments.

A group of Charleston surgeons have sued St. Paul for "grossly poor management" that led St. Paul to drop malpractice coverage.<sup>7</sup> The case is still pending.

### PHICO

In November 2001, Pennsylvania regulators filed a civil fraud suit against the Pennsylvania Hospital Insurance Co. (Phico), which filed for bankruptcy in December. The company's board was allegedly misled about the adequacy of Phico's premium rates and funds set aside to pay claims. According to the *Wall Street Journal*, "On the way to becoming the nation's seventh-largest malpractice insurer, the company had suffered mounting losses on policies for medical offices and nursing homes as far away as Miami."<sup>8</sup>

More specifically, the suit accuses Phico officials of "fundamentally unsound" financial practices.<sup>9</sup> Regulators claim that company officials and directors knew "the strategy of offering low prices in highly competitive and unfamiliar markets was fraught with risk" yet "pushed for still higher dividends as the premium volume increased."<sup>10</sup> The state also alleges that Phico's chairwoman and two other directors engaged in self-dealing when they pressed for dividends despite knowing that the company's surplus was "declining drastically and significant strengthening of loss reserves was required."<sup>11</sup>

A Pennsylvania court placed the company into liquidation in February 2002 after an insurance department investigation revealed that the extent of Phico's insolvency made rehabilitation "futile" - as of June 30, 2001, Phico had been under-reserved by more than \$250 million for losses and loss-adjustment expenses.<sup>12</sup>

### RELIANCE

In October 2001, a Pennsylvania court placed Reliance into liquidation "after concluding that it was insolvent by \$1.05 billion as of March 31 and would run out of cash to pay claims before the end of 2001."<sup>13</sup>

In June 2002, the Pennsylvania Insurance Commissioner filed suit against directors of the defunct Reliance Insurance Co., alleging breach of fiduciary duty and negligence. From 1998 through the first half of 2000, the company's directors allowed more than half a billion dollars in dividend and other payments to be distributed to holding companies of which Reliance directors were major shareholders. According to an August 2002 Insurance Information Institute *Insurance Issues*

*Update*, the Commissioner charged the executives with "draining cash from the company to support their 'lavish lifestyle.'" <sup>14</sup>

As reported by the Insurance Information Institute, "[a]ccording to the last publicly available financial data, filed in June 2001, Reliance's liabilities exceeded assets by about \$1.2 billion. Every state has been affected by the insolvency, but those most severely impacted are California, New York and Texas."<sup>15</sup>

#### FRONTIER INSURANCE CO.

In March 2001, the company stopped writing new and renewal business because of mismanaged underwriting and pricing of medical malpractice policies in the early and mid-1990s.<sup>16</sup> Frontier's CEO and president, Harry W. Rhulen said, "The problem really was we lacked the underwriting controls and infrastructure to properly do that type of business."<sup>17</sup>

According to *BestWire* (March 20, 2001),

Rhulen said the company started writing med-mal in New York, where the business did turn a profit. Medical malpractice in New York is different than any other states, because the insurance department sets the rates, Rhulen said. "We weren't competing based on rates, like in any other state," he said. The company believed medical malpractice was a profitable line because of the long-tail nature of the claims.

However, the company expanded the business to competitive medical malpractice states, such as Florida and Texas, where many companies were doing "cash-flow underwriting" – underpricing premiums with the expectation that lost revenue would be made up through investments. "That's where we really got ourselves in trouble," Rhulen said. "We didn't realize companies were intentionally writing at a very significant underwriting loss... we priced to that level, but reserved to our historic profitable levels (from New York business)."

In the early days, as much as 50% of the company's business was medical malpractice. That percentage was later dropped down to as low as 25%, but the losses from the medical malpractice business began to outweigh the rest of the company's business and dragged the bottom line into the red. "When you're writing \$100 million in premium at a 150 combined ratio, you're losing \$50 million a year. To make up that profitability... it's almost impossible," Rhulen said.<sup>18</sup>

In August 2001, Frontier entered voluntary rehabilitation, allowing the New York Insurance Department to take control of the insurer.<sup>19</sup> As of October 2002, the Department was still attempting to rehabilitate the company.<sup>20</sup>

#### MIXX

In May 2002, the seventh-largest medical malpractice insurer in the United States announced that it would shut down operations after losing \$200 million in a little more than a year, leaving 17,000 policyholders in 24 states without replacement coverage.<sup>21</sup> As explained by *Medical Economics* in September 2002, "MIXX achieved much of its out-of-state growth by offering low premiums to gain a share of what had become a highly competitive market. In a rush to sign up new policyholders, MIXX may also have taken on an unhealthy amount of high-risk business."<sup>22</sup>

And according to a June 2, 2002 *New York Times* investigative article, the company "performed well enough through much of the 1980's and early 90's. But by the end of the decade it was in trouble after it embarked on a rapid national expansion and went public at the height of the stock market boom."<sup>23</sup>

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## Notes

- <sup>1</sup> Charles Kolodkin, Gallagher Healthcare Insurance Services, "Medical Malpractice Insurance Trends? Chaos!" (September 2001), found at <http://www.irmi.com/expert/articles/kolodkin001.asp>.
- <sup>2</sup> Quotation of Donald J. Zuk, chief executive of Sepie Holdings Inc., a leading malpractice insurer in California, from Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.
- <sup>3</sup> Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.
- <sup>4</sup> "S&P downgrades The St Paul and subsidiaries," *Insurance Day*, July 18, 2002; Sheryl Jean, "St. Paul Cos.' rating falls," *Saint Paul Pioneer Press*, July 17, 2002.
- <sup>5</sup> *Ibid.*
- <sup>6</sup> "Late News," *Business Insurance*, June 3, 2002; "Nevada Complaint Blames St. Paul Cos. For Med-Mal Crisis," *BestWire*, May 31, 2002; Brendan Riley, "Nevada moves against St. Paul Cos. in docs' insurance crisis," *Associated Press*, May 30, 2002.
- <sup>7</sup> Mary Massingale, "Judge delays proceedings in surgeons' lawsuit against insurer," *Associated Press*, August 30, 2002; Lawrence Messina, "West Virginia Judge Refuses to Dismiss Malpractice Insurance Suit," *Charleston Gazette*, July 9, 2002; Lawrence Messina, "Charleston, W. Va. Surgeons Demand Refund from Insurer," *Charleston Gazette*, July 8, 2002; "Surgeons file brief seeking refund from insurer," *Associated Press*, July 8, 2002.
- <sup>8</sup> Christopher Oster and Rachel Zimmerman, "Insurers' Missteps Helped Provoke Malpractice 'Crisis,'" *Wall Street Journal*, June 24, 2002.
- <sup>9</sup> Lawrence Messina, "Medical insurer bankrupt," *Charleston Gazette*, December 20, 2001.
- <sup>10</sup> Tim Darragh, "Past business ties cloud regulators' tasks," *Morning Call*, April 21, 2002.
- <sup>11</sup> *Ibid.*
- <sup>12</sup> David Wenner, "Pennsylvania Medical Malpractice Insurer Declared Insolvent," *Patriot-News*, February 24, 2002; Lori Litchman, "Court Places Insurer Into Liquidation," *Pennsylvania Law Weekly*, February 11, 2002; "Pennsylvania's Phico Placed In Liquidation," *BestWire*, February 4, 2002.
- <sup>13</sup> Dudley Price, "Business failure will cost state a lot," *News and Observer*, June 4, 2002; Lori Litchman, "Court Places Insurer Into Liquidation," *Pennsylvania Law Weekly*, February 11, 2002.
- <sup>14</sup> Ruth Gastel (ed.), "Insolvencies/Guaranty Funds," *III Insurance Issues Update* (August 2002).
- <sup>15</sup> *Ibid.*
- <sup>16</sup> "Rhulen: Frontier Will No Longer Bear Risk, But Legacy Will Live On," *BestWire*, March 20, 2001.
- <sup>17</sup> *Ibid.*
- <sup>18</sup> *Ibid.*
- <sup>19</sup> "Frontier Enters Rehabilitation; Frontier Insurance Co.," *Best's Review*, October 1, 2001; "Updates," *Business Insurance*, September 3, 2001; Joseph P. Fried, "Albany Seizes Insurance Company; Seeking to Rescue It From Insolvency," *New York Times*, August 31, 2001.
- <sup>20</sup> "Court Orders Segregation of Amount Liquidated From Trust Fund," *New York Law Journal*, October 31, 2002.
- <sup>21</sup> Berkeley Rice, "How a malpractice insurer grew too big too fast," *Medical Economics*, September 23, 2002; Susan Warner, "Practicing Without A Net," *New York Times*, June 2, 2002; "Northeast Zone: MedMal Insurer Halting in N.J.," *Insurance Chronicle*, May 13, 2002; "MHX Reorganization Spotlights National Med-Mal Woes," *BestWire*, May 10, 2002.
- <sup>22</sup> Berkeley Rice, "How a malpractice insurer grew too big too fast," *Medical Economics*, September 23, 2002.
- <sup>23</sup> Susan Warner, "Practicing Without A Net," *New York Times*, June 2, 2002.

**Medical Malpractice  
Payout Trends 1991 – 2004:  
Evidence Shows Lawsuits  
Haven't Caused Doctors' Insurance Woes**



**Congress Watch  
April 2005**

## **Acknowledgments**

This report was written by Public Citizen's Congress Watch Civil Justice Research Director Chris Schmitt with editorial advice from Congress Watch Director Frank Clemente.

## **About Public Citizen**

Public Citizen is a 150,000-member non-profit organization based in Washington, D.C., representing consumer interests through lobbying, litigation, research and public education. Since its founding in 1971, Public Citizen has fought for consumer rights in the marketplace, safe and affordable health care, campaign finance reform, fair trade, clean and safe energy sources, and corporate and government accountability. Public Citizen has five divisions and is active in every public forum: Congress, the courts, governmental agencies and the media. Congress Watch is one of the five divisions.



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## Medical Malpractice Payout Trends 1991 – 2004: Evidence Shows Lawsuits Haven't Caused Doctors' Insurance Woes

As doctors descend on Washington April 20 to urge limits on damages their patients can recover for medical negligence, the latest national data on physician malpractice payments shows there is no evidence that the spike in some doctors' insurance rates is due to lawsuits and patients seeking compensation in the legal system. This can be seen in two major ways, based on a Public Citizen analysis of information from the federal government's National Practitioner Data Bank (NPDB):

- **Activity on the Decline:** Measures such as the number, and total value, of malpractice payouts to patients have been flat since 1991 and show a significant decline since 2001, when the so-called "crisis" of escalating insurance rates began. Yet doctors and their insurers continue to complain of a malpractice liability system out of control.
- **The System is Working:** The medical liability system is not one of "jackpot" justice, in which patients go to court and score big awards based on flimsy claims. Instead, evidence shows that the system is working as designed: Those with minor injuries receive little compensation, while the great bulk of malpractice awards are for cases involving major, debilitating injuries – or death. *This is the first year such information on the degree of patient harm is available from the NPDB, and it directly challenges the signature refrain of those seeking to limit recovery for damages.*

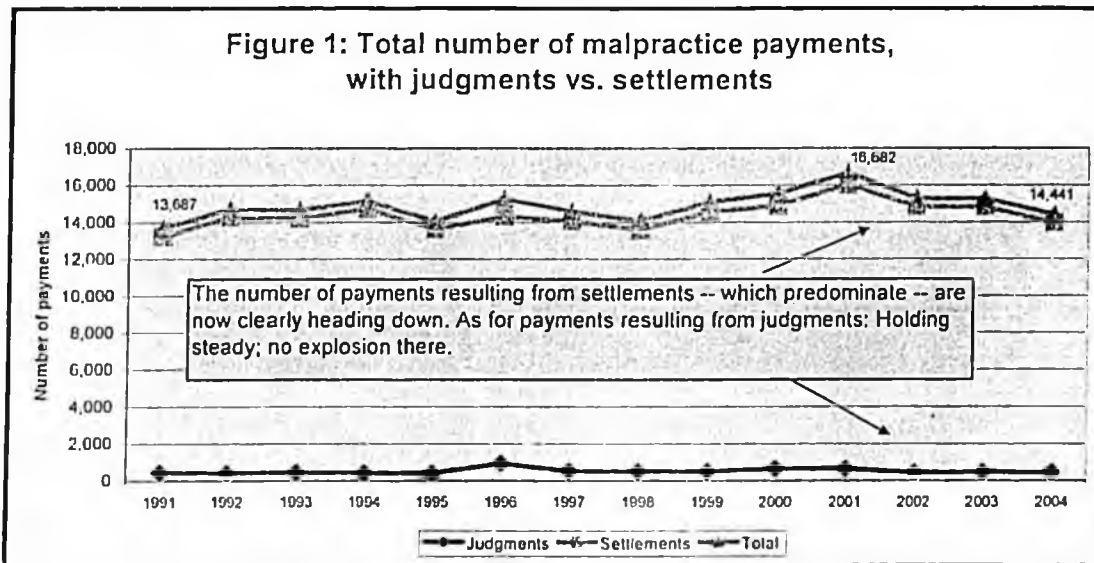
The latest NPDB information analyzed by Public Citizen also underscores that the real medical malpractice crisis today is inadequate patient safety, not lawsuits or the legal system. Rather than complain about malpractice liability, doctors should improve their own performance, and thus better protect their patients. One-third of malpractice cases that produced a malpractice payout in 2004<sup>1</sup> – 4,158 – involved patient deaths. Yet, as a landmark study by the Institute of Medicine in 1999 showed, an estimated 44,000 to 98,000 patient deaths occur each year following preventable medical errors in hospitals. Thus, stemming preventable errors there alone would conservatively prevent 10 times as many deaths as are now accounted for by malpractice cases.

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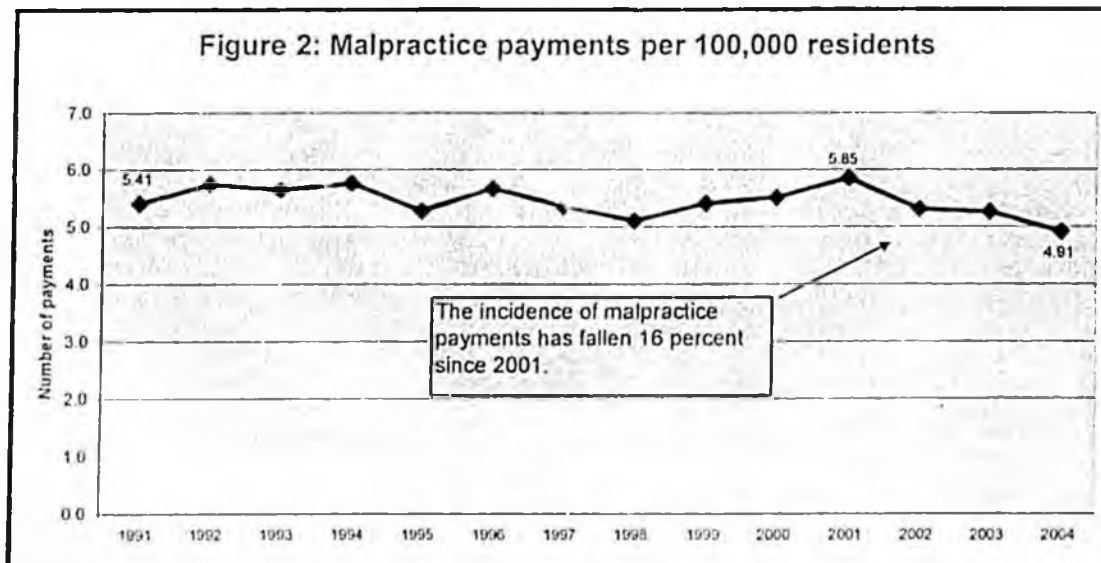
<sup>1</sup> This data for the period January 31 forward.

## Annual Number of Malpractice Payments Is Down

Doctors and insurers have been complaining about a growing liability crisis. But the number of malpractice payments paid on behalf of doctors – chiefly by their insurance companies – has fallen the last three years, from 16,682 in 2001 to 14,441 in 2004, a drop of 13.6 percent. The 2004 number is only 5.5 percent higher than the 13,687 payments recorded for 1991. (Figure 1)

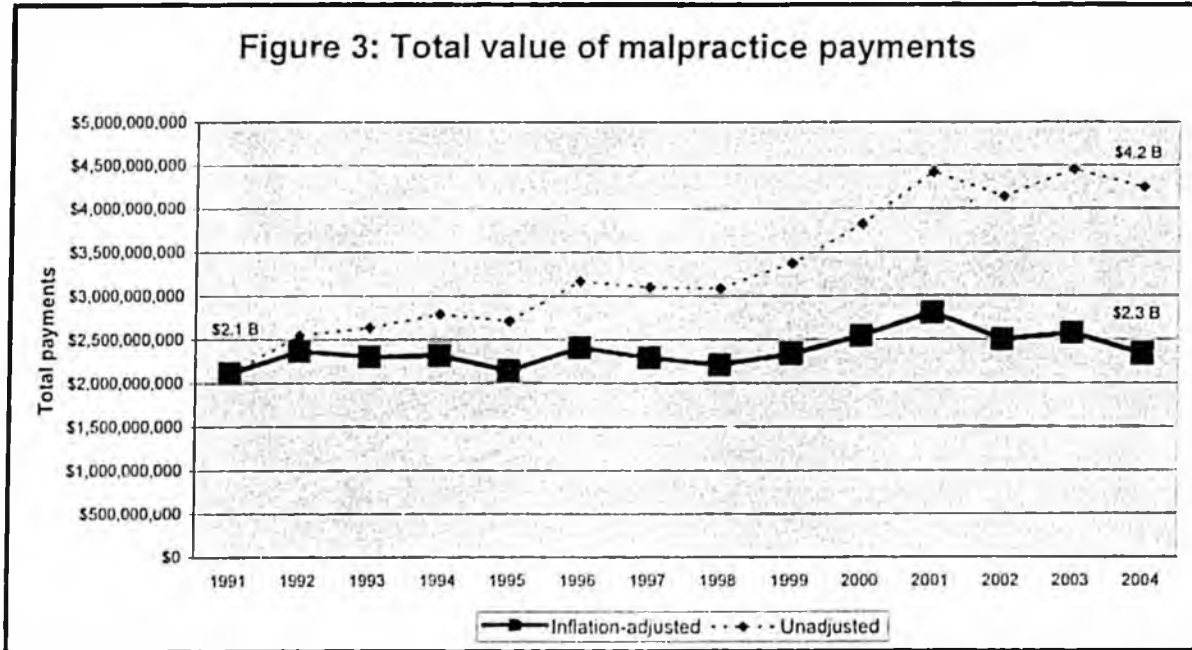


Adjusting for population growth, the number of payments per 100,000 people has fallen from 5.85 to 4.91 from 2001 to 2004, a decline of 16.1 percent. Since 1991, the number of payments per 100,000 population has dropped by 9.2 percent, from 5.41. (Figure 2)



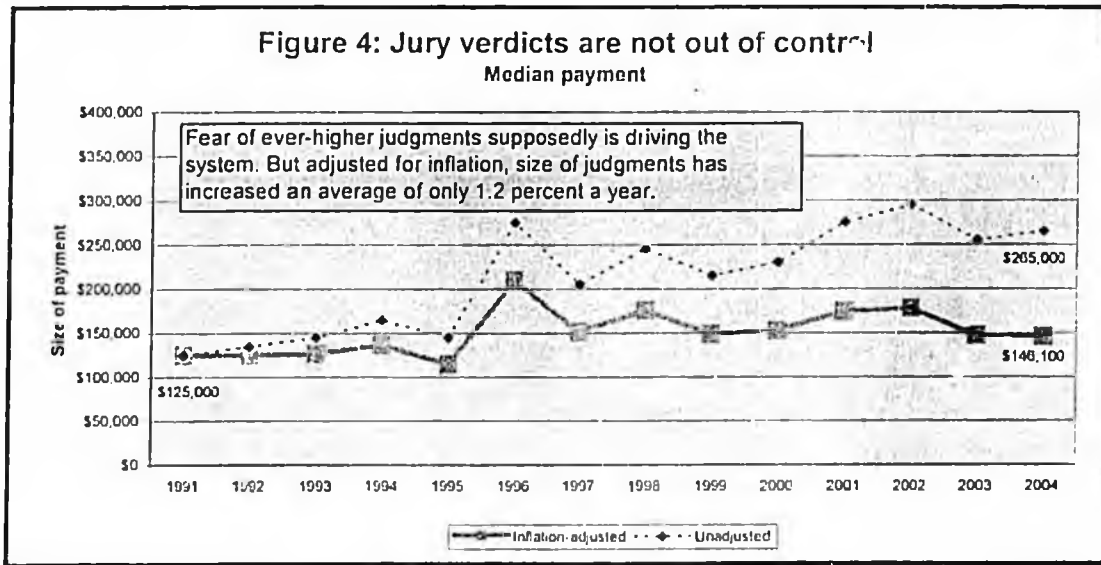
## Total Value of Malpractice Payments Is Flat Since 1991

Total malpractice payments appear to have jumped markedly, from \$2.1 billion in 1991 to \$4.2 billion in 2004. However, from 1991 to 2004, the inflation-adjusted amount has changed little, rising from \$2.1 billion to \$2.3 billion – an average annual increase of only 0.8 percent. (Figure 3)



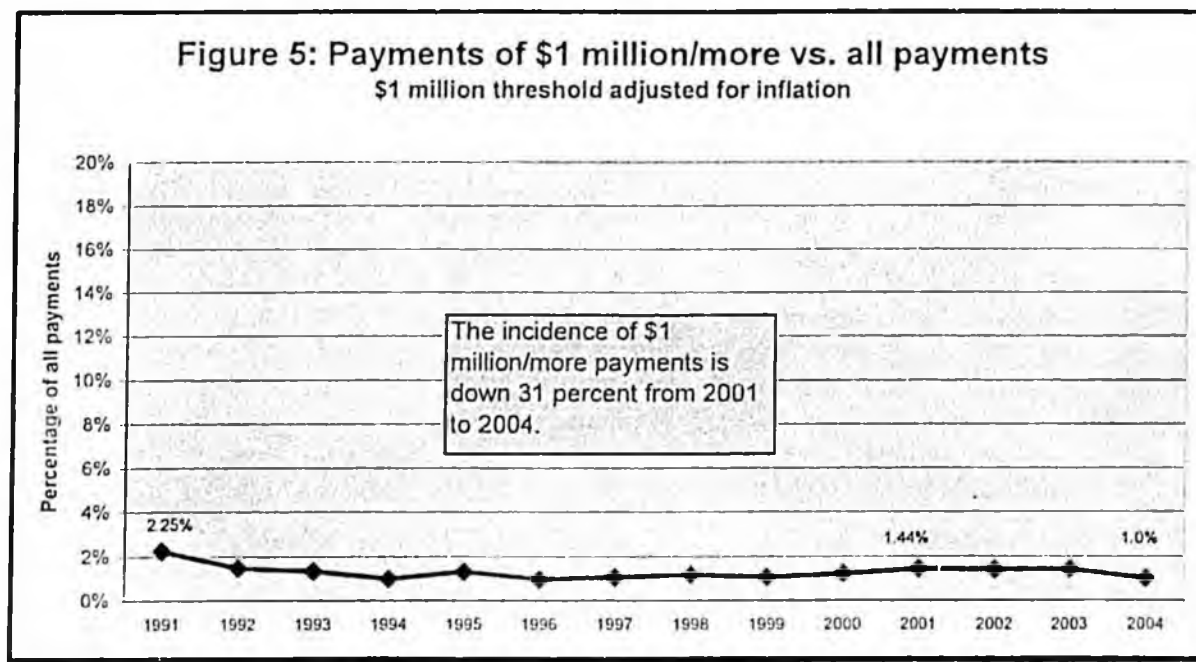
## Jury Verdicts Are Not Out Of Control

Opponents of the current system say fear of runaway jury verdicts is whipping the system, driving malpractice payments ever higher. The median size of payments from judgments appears to have soared, from \$125,000 in 1991 to \$265,000 in 2004. But adjusted for inflation, the median payment grew from \$125,000 in 1991 to \$146,100 in 2004 – an average annual increase of only 1.2 percent. (Figure 4)



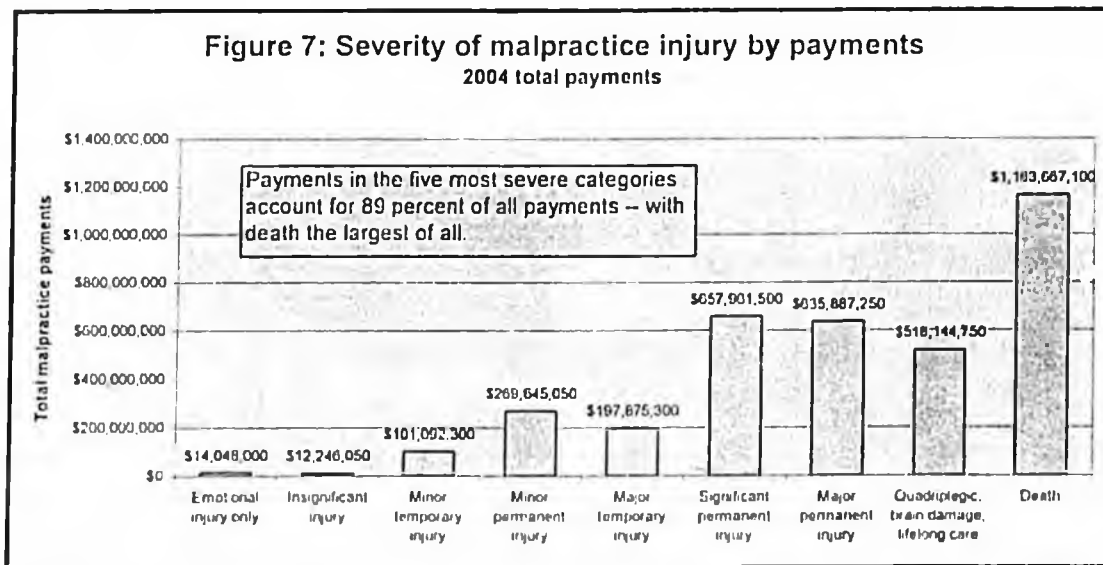
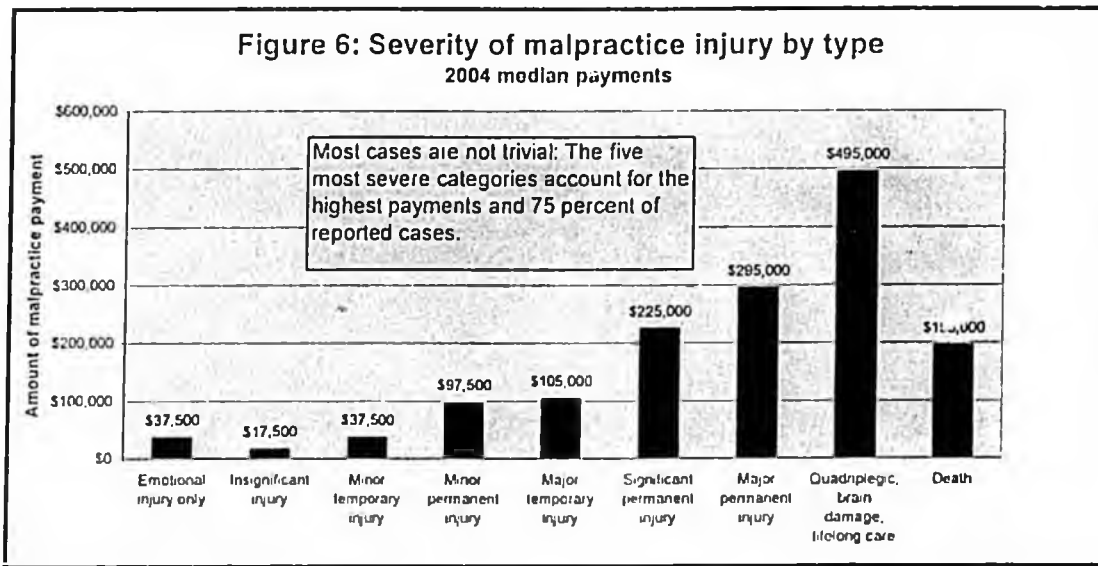
## There Has Been a 56 Percent Decline In Multi-Million-Dollar Payments

Those seeking to limit patients' ability to recover complain of a surge in multi-million-dollar payments. But the proportion of payments of \$1 million or more, adjusted for inflation, is down 56 percent from 1991 to 2004, from 2.25 percent of all payments to just 1 percent of all payments. Even during the so-called "crisis" from 2001 to 2004, the proportion of large payments declined 31 percent, from 1.44 percent of payments to 1.0 percent. (Figure 5)



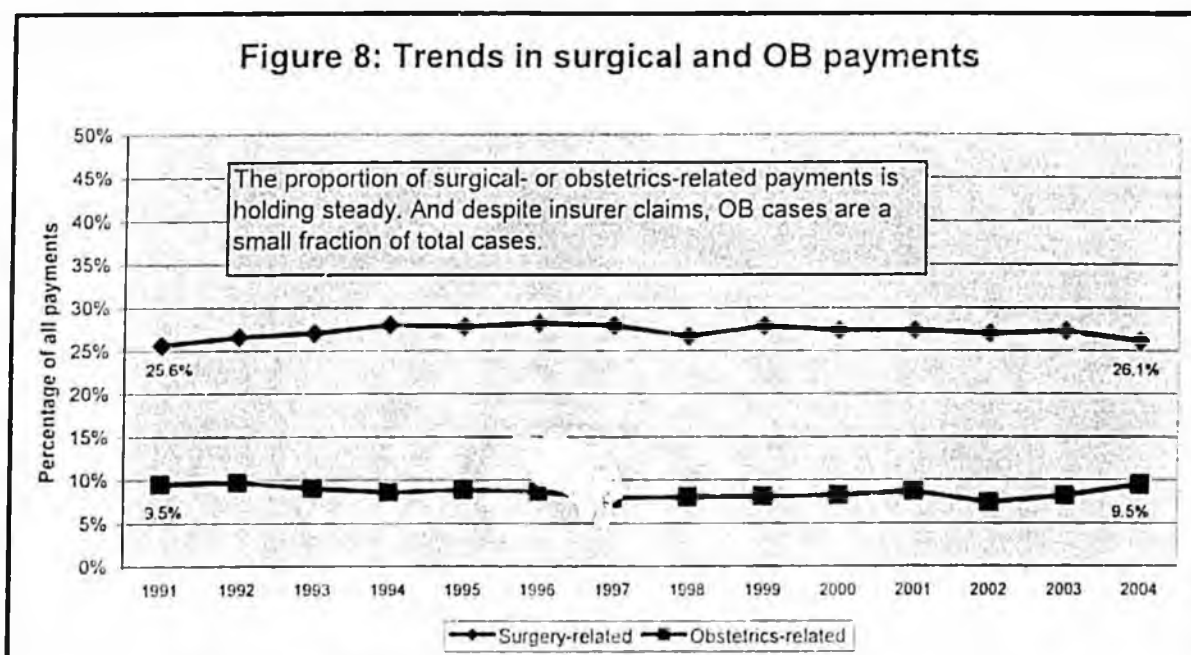
## The System Is Working – Malpractice Payments Match the Degree of Harm

Rather than providing windfalls to patients seeking compensation for minor problems, the medical negligence system is rational in its outcomes, new data reported to NPDB shows. Three-quarters of payments for 2004 involved major or significant injuries, or death, and these most severe cases account for 89 percent of the value of payments made. Minor injuries, by contrast, receive comparatively little. (Figure 6, Figure 7)



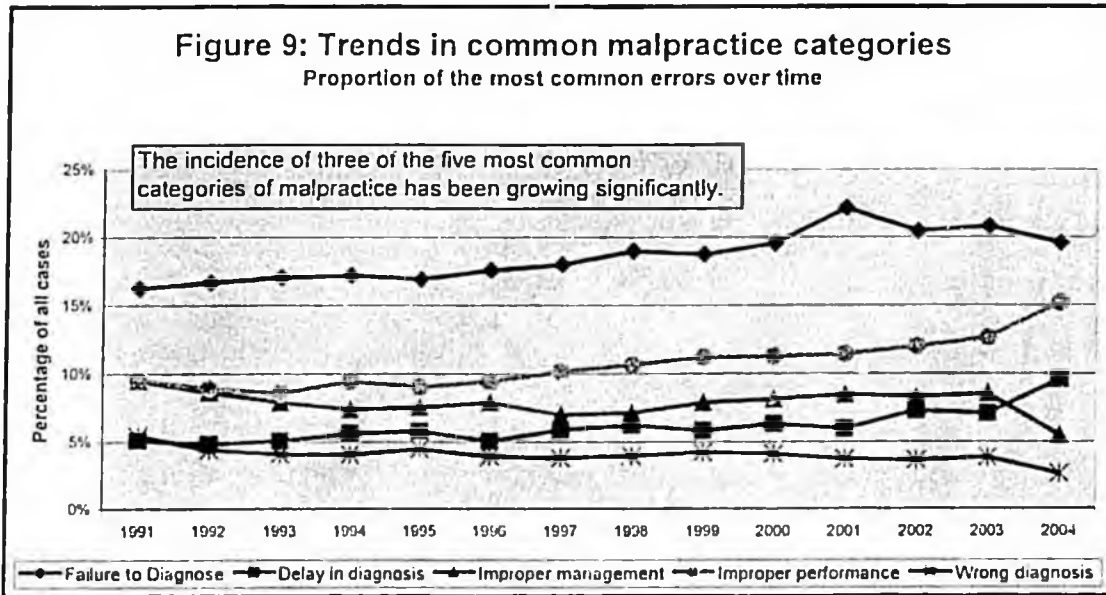
## The Proportion of Surgical and Obstetrics Payouts Has Not Increased Since 1991

Surgeons and obstetricians complain the loudest about big jumps in malpractice insurance rates. But the proportion of surgical and obstetrics payouts is virtually unchanged from 1991 to 2004. In 1991, 9.5 percent of all payouts were for obstetrics cases; in 2004, the figure was the same. Surgical cases accounted for 25.6 percent of payments in 1991, and 26.1 percent of payouts last year. (Figure 8) This suggests that if these doctors' premiums have jumped, the explanation does not lie in the number of malpractice payouts.

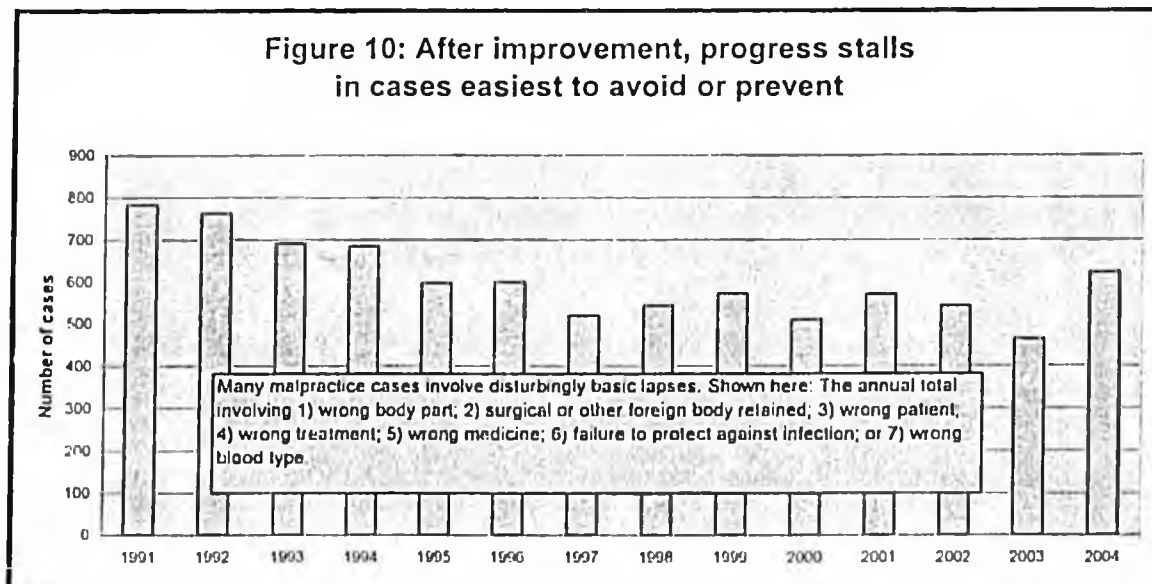


## Most Kinds of Common, Preventable Errors Have Increased Over Time

The proportion of several of the most common kinds of errors that produce malpractice payouts has increased significantly over time, while progress on cutting the number of errors that are easiest to avoid or prevent has stalled. "Failure to Diagnose" cases, for example, have grown from 16 percent of payouts in 1991 to 20 percent in 2004. "Improper Performance" cases have grown from 10 percent to 15 percent of payouts. (Figure 9)



The number of payments for such things as leaving a surgical instrument behind or operating on the wrong body part fell from 783 in 1991 to 520 in 1997, but has generally been flat since then, except for a disturbing increase in 2004 of 34 percent. (Figure 10)



## 5.5 Percent of Doctors Are Responsible for 57.3 Percent of Medical Malpractice Payouts

The insurance and medical communities argue that medical malpractice litigation constitutes a giant "lottery," in which lawsuits are random events unrelated to the care provided by a physician. If the tort system is a lottery, it is indeed rigged, because some doctors' numbers come up much more often than others. According to NPDB data, a small percentage of doctors has paid multiple claims, and it is these doctors who are responsible for much of the malpractice in America. By focusing attention on repeat offenders, overall patient safety can be dramatically improved.

- Just 5.5 percent of doctors have been responsible for 57.3 percent of all malpractice payouts to patients, according to NPDB data from September 1990 through 2004. Each of these doctors has made at least two payouts.
- Just 2.1 percent of doctors, each of whom has had three or more malpractice payouts, were responsible for 32.1 percent of all payouts.
- Only 1 percent of doctors, each of whom has had four or more malpractice payouts, were responsible for 19.6 percent of all payouts.
- Nearly 83 percent of doctors have never had a medical malpractice payout since the NPDB was created in 1990.

**Figure 11: Number and Amounts of Medical Malpractice Payouts To Patients Paid on Behalf of Doctors, 1990-2004**

Number of Payout Reports	Number of Doctors Who Made Payouts	Total Number of Payouts	Percent/Total Doctors (777,859)*	Percent of Total Number of Payouts	Total Amount of Payouts
All	132,952	210,680	17.1%	100.0%	\$46,900,858,250
1	90,062	90,055**	11.6%	42.7%	\$19,638,674,150
2 or more	42,890	120,625	5.5%	57.3%	\$27,262,184,100
3 or more	16,285	67,625	2.1%	32.1%	\$15,206,319,500
4 or more	7,462	41,287	1.0%	19.6%	\$9,252,913,450
5 or more	3,739	26,475	0.5%	12.6%	\$5,847,927,150

\* Based on number of physicians in 1998, the midpoint of the period studied, as reported by the American Medical Association.  
 \*\* Numbers in columns two and three of this row do not match because a very small number of payment reports in the NPDB do not include an amount.

## Doctors with Repeated Malpractice Payouts Suffer Few Consequences

State medical boards and health care providers have not done enough to rein in those doctors who repeatedly make medical errors and commit medical negligence. According to NPDB data, the National Practitioner Data Bank and Public Citizen's analysis of NPDB data, disciplinary actions such as license suspension or revocation have been infrequent for physicians with multiple malpractice payments.

- Only 8.3 percent of doctors who made two or more malpractice payouts were disciplined by their state board.
- Only 11.4 percent of doctors who made three or more malpractice payouts were disciplined by their state board.
- Only 14.6 percent of doctors who made four or more malpractice payouts were disciplined by their state board.
- Only 32.5 percent of doctors who made 10 or more malpractice payouts were disciplined by their state board.

**Figure 12: U.S. Doctors with Two or More Medical Malpractice Payouts Who Have Been Disciplined (Reportable Licensure Actions), 1990 – 2004**

Number of Payout Reports	Number of Doctors Who Made Payouts	Number of Doctors With One or More Reportable Licensure Actions	Percent of Doctors With One or More Reportable Licensure Actions
2 or more	42,890	3,561	8.3%
3 or more	16,285	1,861	11.4%
4 or more	7,462	1,092	14.6%
5 or more	3,739	656	17.8%
10 or more	434	141	32.5%

## Examples of Repeat Offender Doctors Who Have Gone Undisciplined

The extent to which doctors have multiple payouts to patients for medical malpractice claims and are not disciplined is illustrated by the following NPDB descriptions of 15 physicians licensed to practice medicine who have made between 4 and 30 malpractice payouts totaling more than \$8 million per doctor yet have not been disciplined by their state medical boards. The NPDB does not disclose to the public the identity of these physicians.

- Physician Number 26701 had at least 6 malpractice payouts between 1994 and 2002, twice for improper management of pregnancies, an improperly performed C-section, an improperly performed procedure, a retained foreign body during surgery and an unspecified obstetrics error. The damages add up to \$15,050,000.
- Physician Number 122202 had at least 4 malpractice payouts between 1998 and 2002, twice for failure to diagnose, a wrong diagnosis and an improperly managed surgery. The damages add up to \$12,890,000.
- Physician Number 24867 had at least 8 malpractice payouts between 1993 and 2002, four times for improperly performed surgeries, twice for unspecified monitoring errors and twice for unspecified surgical errors. The damages add up to \$12,712,000.
- Physician Number 183018 had at least 4 malpractice payouts between 2002 and 2003, twice for improperly performed surgeries, a wrong diagnosis and an unspecified surgical error. The damages add up to \$12,625,000.
- Physician Number 14052 had at least 14 malpractice payouts between 1991 and 2002, 12 times for delayed performance or improper management of obstetrics cases, once for wrong treatment or procedure and once for an unspecified obstetrics error. The damages add up to \$10,175,000.
- Physician Number 33059 had at least 30 malpractice payouts between 1993 and 2004, nine for failure to diagnose, five for unspecified errors, three for improper management of obstetrics cases, three for improper performance of surgery, two for retained foreign body during surgery, two for failure to treat, one for surgery on the wrong body part, one for failure to obtain consent for surgery, one for delay in treatment of fetal distress, one for failure to treat fetal distress, one for an improperly performed delivery and one for improper treatment. The damages add up to \$10,117,500.
- Physician Number 33184 had at least 12 malpractice payouts between 1991 and 2004, eight for improper management, improper choice of delivery method, delay in performance or failure to treat fetal distress in obstetrics cases, one for improper performance of surgery, one for failure to diagnose and two unspecified errors. The damages add up to \$10,035,000.

- Physician Number 493 had at least 6 malpractice payouts between 1992 and 2003, twice for improperly performed surgeries, twice for unspecified surgical errors, a failure to perform surgery and an unspecified treatment error. The damages add up to \$9,790,000.
- Physician Number 23965 had at least 6 malpractice payouts between 1992 and 2003, twice for wrong diagnoses, twice for unspecified treatment errors, an improper management of surgery and an improper performance of surgery. The damages add up to \$9,390,000.
- Physician Number 43947 had at least 21 malpractice payouts between 1992 and 2003, eight times for improperly performed surgeries, three times for unnecessary surgeries, twice for unspecified equipment errors, twice for surgeries on wrong body parts, a failure to obtain consent before surgery, a failure to obtain consent before blood work, a wrong treatment, an unspecified surgical error, a retained foreign body during surgery and an improper management of medication. The damages add up to \$8,722,500.
- Physician Number 21426 had at least 4 malpractice payouts between 1991 and 2003, twice for delays in diagnosis, a failure to diagnose and an unspecified obstetrics error. The damages add up to \$8,577,500.
- Physician Number 71555 had at least 4 malpractice payouts between 1995 and 2001, twice for failures to diagnose and twice for delays in surgical performance. The damages add up to \$8,435,000.
- Physician Number 1995 had at least 6 malpractice payouts between 1993 and 2002, once for a retained foreign body during surgery, improper performance of surgery, a delay in treatment, a delay in performance in an obstetrics case and twice for unspecified errors. The damages add up to \$8,363,750.
- Physician Number 127631 had at least 4 malpractice payouts between 1998 and 2003 for an improper delivery, a failure to treat fetal distress, improper management of an obstetrics case and a delay in diagnosis. The damages add up to \$8,285,000.
- Physician Number 35472 had at least 17 malpractice payouts between 1991 and 2004, 12 times for improper performance of surgery, twice for improper management of surgery, once for equipment problems during surgery, once for failure to obtain consent for surgery and once for an unspecified surgical error. The damages add up to \$8,237,500.

## Background on the NPDB

The NPDB contains, among other things, reports on malpractice payments made on behalf of doctors by malpractice payers. Chiefly, these payers are insurance companies, but they also include other entities, such as state-run insurance funds and self-insured health care providers. Those making malpractice payments are required to report them to the NPDB under provisions of the Health Care Quality Improvement Act of 1986. Information provided to the NPDB is confidential, but the NPDB makes available a public use file that removes personal identifying information. The NPDB also contains information on disciplinary actions taken against doctors. Within the health care industry, the NPDB's major purpose is to provide a repository of data that those employing doctors can query for background checks.

Please credit Public Citizen for information in this report as follows: Public Citizen's analysis of malpractice payments as reported in the National Practitioner Data Bank public use file, for the years 1990 to 2004.

For a copy of data underlying any portion of this report, contact Chris Schmitt at 202-454-5115.

Notes: 1) The index used for inflation adjustments in this report is the Medical Care Services series of the Consumer Price Index - All Urban Consumers, as reported by the U.S. Department of Labor Bureau of Labor Statistics. From 1991 to 2004, this index has increased at an average annual rate of 4.7 percent. 2) NPDB data is available for a portion of 1990 and for full years thereafter. Most information in this report covers annual periods from 1991 to 2004. Where annual comparisons are not being made, Public Citizen's analysis covers the entire period of the database, e.g. 1990 to 2004.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

April 21, 2005

**SUBJECT:** Drafting Issues Relating to HCS CSSB 67(JUD)  
(Work Order No. 24-LS0393\Y)

**TO:** Representative Lesil McGuire  
Attn: Vanessa Tondini

**FROM:** James P. Crawford   
Assistant Revisor

Senate Bill 67<sup>1</sup> passed from the House Judiciary Committee today with an amendment that added subsection (e). Probably as a result of the rushed nature of business that always occurs in the last two and a half weeks of the session, our office did not have a chance to review the text of this amendment before it was adopted. I believe that the adoption of amendment resulted in an oversight that I wanted to bring to your attention.

Subsection (d) of proposed AS 09.55.549 applies damage awards for a "single injury" or a "death." It limits awards to \$250,000.

Subsection (e) is an exception to subsection (d) that applies to damage awards for "wrongful death" and a "severe permanent physical impairment" that is seventy percent disabling. It increases the limit on awards to \$400,000.

I believe it may have been an error to have left "death" as a category of recovery in subsection (d). First, as a procedural matter, I think it's probably the case that any time a plaintiff would be suing to recover tort damages for a "death" that results from the provision of services by a health care provider, the plaintiff would be pursuing a "wrongful death" claim. Second, assuming a plaintiff could pursue either a "death"-based claim under subsection (d) or a "wrongful death"-based claim under subsection (e) at the plaintiff's option, I cannot see why a plaintiff would ever choose to proceed under subsection (d) with its lower limit on the potential size of the award. Thus, retaining "death" as an award category in subsection (d) seems to have been inadvertent.

Because the bill has passed out of the House Judiciary Committee, there is probably little that can be done until the bill is taken up in its next committee of referral. However, I wanted to bring these points to your attention in case you get questions about them.

JPC:imb  
05-141:imb

Enclosure

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<sup>1</sup> HCS CSSB 67(JUD), "an Act relating to claims for personal injury or wrongful death against health care providers."

- **Medical malpractice costs outpace overall tort costs**

Tillinghast Towers Perrin has released its "U.S. Tort Costs: 2004 Update" that reports a 5.4% increase in tort costs for 2003. Tort costs for that year totaled \$246 billion, or \$845 per person in the U.S. Medical malpractice costs continued to outpace overall U.S. tort costs, with an increase of 11.8% as compared to 9.2% for all other tort costs dating from the 1970s when medical malpractice costs were first separately tabulated.

- **Rising liability insurance cost reduce Access to Care**

Rising professional liability insurance costs have reduced the availability of health care services in rural Florida, according to a study in the Nov. 8, 2004, Archives of Internal Medicine (*Arch Intern Med.* 2004;164:2217-2222. See <http://archinte.ama-assn.org/cgi/content/full/164/20/2217>). Researchers surveyed 781 physicians practicing in rural areas of the state in 2003, and found more than half (52.6%) had decreased or eliminated health care services in the past year. The researchers found professional liability premiums rose an average of 93.5% in the state, and said difficulty finding or paying for the insurance was an important factor cited by those reducing or eliminating services or planning to leave the community in the next two years.

- **Increasing premiums threaten primary care**

A survey by the Medical Group Management Association found the average increase in the cost of medical liability insurance for a full-time equivalent physician in a medical group practice in 2003 ranged from 5.9 percent for neurological surgeons to as high as 49.2 percent for anesthesiologists, with many liability crisis states experiencing larger increases. The report indicates that many practices were forced to take cost-cutting measures such as reducing support staff, potentially reducing access to primary care. [www.mgma.com/press/2004cost.cfm](http://www.mgma.com/press/2004cost.cfm) attached.

- **Tort reform works, it's working in Texas**

A survey of member hospitals by the Texas Hospital Association found that the frequency of lawsuits and amount of premiums have fallen since the Texas legislature enacted a non-economic damage cap in 2003. Texas voters narrowly passed a constitutional amendment protecting the damage cap. The results of the survey are posted on the Texas Hospital Association Web site at [www.thaonline.com](http://www.thaonline.com) (see attached).

- **Americans say health care access is threatened by the liability crisis**

A poll released April 7, 2004 by the Health Coalition on Liability and Access reveals that Americans believe a growing crisis in health care liability is pushing health care costs up and forcing good doctors out of medical practice. By overwhelming margins, 82 percent of Americans say their ability to get the health care they need is threatened by excessive litigation. For more, visit [www.hcla.org/pressreleases/2004-HCLAPollRelease.pdf](http://www.hcla.org/pressreleases/2004-HCLAPollRelease.pdf)

- **Medical group practices report continued liability cost increases**

The average increase in the cost of professional liability insurance for a full-time-equivalent physician in a medical group practice in 2003 ranged from 49.2% for anesthesiologists to 5.9% for neurological surgeons, with many liability crisis states experiencing larger increases, according to the latest annual cost survey by the Medical Group Management Association. That follows average increases in 2002 ranging from 43.89% per physician in hospital-owned

multi-specialty practices to 7.63% per physician in internal medicine practices. For more on the 2004 cost survey, based on 2003 data, visit [www.mgma.com/press/2004cost.cfm](http://www.mgma.com/press/2004cost.cfm) (attached).

- **The Congressional Budget Office finds that studies validate Tort Reform**

In June 2004, the Congressional Budget Office issued a report in which it examined the effects of tort reform as measured by various researchers. "A number of those studies have found that state-level tort reforms have decreased the number of lawsuits filed, lowered the value of insurance claims and damage awards, and increased insurers' profitability as measured by payouts relative to premiums in the short run."

<http://www.cbc.gov/showdoc.cfm?index=5549&sequence=0> or  
<http://www.cbo.gov/ftpdoc.cfm?index=5549&type=1>).

- **Survey: OB-Gyns are being driven from practice by the medical liability crisis**

The American College of Obstetricians and Gynecologists surveyed its members in August 2002 and found that 59% of responding Ohio obstetricians had changed their practice because of the medical liability insurance crisis. Practice changes included retirement, relocation, decreased surgical procedures, decreased deliveries, and decreased amount of high risk obstetric care. ACOG estimated that 13,932 pregnant women in Ohio were not able to obtain care from an obstetrician. [www.acog.org/](http://www.acog.org/)

See also:

- [ACOG: Excessive Litigation Compromises the Delivery of Obstetric Care](#)
- [ACOG: Access to Women's Health Care: America's Medical Liability Crisis: Ob-Gyns Driven From Practice](#)

- **U.S. Agency for Healthcare Research and Quality finds that States with damage caps have more physicians**

Researchers at the U.S. Agency for Healthcare Research and Quality (AHRQ) found that states with caps on noneconomic damages experienced about 12 percent more physicians per capita than states without such a cap--states that adopted a cap averaged 135 physicians per 100,000 citizens per county while states without a cap averaged 120. Moreover, states with relatively high caps were less likely to experience an increase in physician supply than states with lower caps. The study is posted at [www.ahrq.gov/research/tortcaps/tortcaps.htm](http://www.ahrq.gov/research/tortcaps/tortcaps.htm) (Discussion section reprinted below).

#### **Insurance Information Institute Report**

Insurance Information Institute summarizes the problem and responses to the medical malpractice crisis in this report dated February 2004, available at [www.iii.org/media/monitors/insurance/medicalmal/](http://www.iii.org/media/monitors/insurance/medicalmal/). Reprinted below.

- **Damage caps reduce liability insurance premiums**

A report by Kenneth Thorpe, chairman of the health policy and management department at the Emory University Rollins School of Public Health, found that "premiums in states that cap awards are 17.1 percent lower than in states that don't cap."

(<http://content.healthaffairs.org/cgi/content/abstract/hlthaff.w4.20>: Abstract reprinted below).

- **Study Validates Cap on Non-Economic Damages as Effective**

The Pennsylvania Medical Society reported a study by Milliman USA, Inc. examined the impact of a \$250,000 cap on damages in Pennsylvania and found the cap would reduce losses and defense costs by 18 percent. (Report is reprinted below).

An earlier study by Milliman USA of the benefits of a cap on non-economic damages reported found that from 1990 until 2001 the average medical liability loss per physician was lower in states with caps.

- **GAO Report Finds Losses On Medical Malpractice Claims Are Driving Up Malpractice Premiums**

The General Accounting Office (GAO) released a report in June 2003, "Medical Malpractice: Multiple Factors Have Contributed to Increased Premiums" (GAO-03-702), which found that losses on medical malpractice claims are the primary driver of rate increases. Find the report at <http://www.gao.gov/new.items/d03702.pdf>. Section "What the GAO Found" is reprinted below). [www.gao.gov](http://www.gao.gov)

- **Limiting damage awards would save billions**

A study by the Employment Policy Foundation estimates that limiting damage awards in medical liability cases could save \$54.8 billion to \$97.5 billion annually, or 7.2 percent to 12.7 percent of the \$764.8 billion spent on hospital and physician services each year. The analysis found significant cost differences between states with non-economic damage award caps and states without limits. For more, go to <http://www.epf.org/pubs/newsletters/2003/ib20030619.pdf>.

- **HHS: Problems Associated With Medical Litigation Sparked by High Jury Awards**

The Department of Health and Human Services found that problems associated with medical litigation have significantly worsened in the past year, sparked by a rise in million dollar jury awards and settlements, particularly for non-economic damages. The report, "Addressing the New Health Care Crisis," is available at [www.hhs.gov/](http://www.hhs.gov/).

- **"Doctors Flee as Skyrocketing Malpractice Claims Drive Up Insurance Costs"**

A report of [TrialLawyersInc.com](http://TrialLawyersInc.com) with information about increasing malpractice costs and the nation's crisis states. The report is attached and can also be found at [www.triallawyersinc.com/html/part06.html](http://www.triallawyersinc.com/html/part06.html).

- **Rising Malpractice Premiums are affecting care in Cleveland and elsewhere**

The Center for Studying Health System Change (HSC) released the results of its study of 12 areas of the country and found, as a result of rapidly rising medical malpractice insurance premiums, physicians in some areas are referring more patients to emergency departments, refusing to provide on-call emergency department coverage, and declining elective referrals. Cleveland was one of the areas studied. The effects of higher premiums are diminished patient access to care and increased healthcare costs. Find the full report at [www.hschange.org/CONTENT/605/](http://www.hschange.org/CONTENT/605/). A Powerpoint presentation is also available.

- **Liability premiums have increased group practice costs**

Professional liability premiums contributed to increased operating costs for medical group practices in 2002, according to a new report by the Medical Group Management Association. Nationally, cardiologists reported an average 22 percent increase in professional liability cost in 2002, while OB/GYN practices reported a 67 percent increase in professional liability cost between 1998 and 2002. The report notes that many states experienced greater increases. Summary of report is attached below.

- **AHA Survey: Tort Reform Works**

Legal reforms have slowed the growth of medical liability insurance premiums where they have been enacted, but federal reform is still needed. That was the message in April as the AHA released a survey of 1,000 hospitals on the effects of the nation's liability crisis.

In states identified by the American Medical Association as "crisis" states, medical liability expenses have doubled for nearly half of hospitals, costing as much as \$11,435 per staffed bed compared with \$4,228 in non-crisis states. At a news conference releasing the survey, Gerry Miller, president and CEO of Crozer-Keystone Health System in Springfield, PA, said "something is substantively wrong when a system like Crozer-Keystone spends more on insurance than on all the medications we buy for the patients we care for." And Jeff Curtis, president and CEO of H.S.C. Medical Center in Malvern, AR, said his hospital "had no choice but to discontinue delivering babies" because local doctors could not afford to pay their premiums.

Because the crisis is affecting care now, and because many state reforms could take years to accomplish, the AHA is calling for Congress to enact federal reform like that in The HEALTH Act, passed by the House and pending in the Senate (S. 607).

Sec. 09.17.010. Noneconomic damages.

(a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, whichever is greater.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$1,000,000 or the person's life expectancy in years multiplied by \$25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.

(d) Multiple injuries sustained by one person as a result of a single incident shall be treated as a single injury for purposes of this section.

Sec. 09.55.560. Definitions.

In AS 09.55.530 - 09.55.560,

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist or speech-language pathologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician or physician assistant licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536;

(4) "professional negligence" means a negligent act or omission by a health care provider in rendering professional services;

(5) "professional services" means service provided by a health care provider that is within the scope of services for which the health care provider is licensed and that is not prohibited under the health care provider's license or by a facility in which the health care provider practices.

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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February 8, 2005

Honorable Con Bunde and  
Senate Labor and Commerce Committee  
Alaska State Senate  
State Capitol, Room 506  
Juneau, AK 99801

Re: SB 67 – Medical Liability Reform

Dear Senate Bunde and Senate Labor and Commerce Committee Members:

The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily interested in ensuring that Alaska's citizens have access to high quality health care. ASMA strongly supports SB 67, which provides for meaningful medical liability reform and urges you to support it as well.

SB 67 establishes a \$250,000 maximum for the unquantifiable damages known as non-economic damages. Non-economic damages are also known as "pain and suffering" damages. SB 67 does not limit the quantifiable economic damages such as lost wages, and post and future medical care costs. (SB 67 defines economic damages, which are not currently defined in Alaska statutes.)

ASMA asserts that enactment of SB 67 will provide for equitable and more predictable settlements in medical injury cases. The result will be a more stable professional liability insurance marketplace and, most importantly, will help us recruit physicians to help fill our chronic shortage of physicians.

The American Academy of Actuaries<sup>①</sup> has stated that medical liability reform establishing a \$250,000 limit is imperative in stabilizing the physician professional liability insurance marketplace. A recent study<sup>②</sup> of medical students found the legal environment and the availability of affordable liability insurance plays a major part in a graduate's decision as to where to set up practice.

Access to medical services is limited in much of the state. Alaska has one of the smallest numbers of physicians per capita in the country. An American Medical News story pertaining to the special Medical payment reform for Alaska noted our precarious situation: "Alaska has long ranked among the worst states in terms of physician supply. In 2002, the state had fewer than 1,350 doctors in private practice and another few hundred in the military or other government posts...orly six states had a lower doctor to patient ratio."<sup>③</sup> This data indicates that to reach the national average, Alaska would need about 500 more actively practicing physicians. This determination is future substantiated in Molly Southworth, MD, July 2004 Masters of Public Health Thesis, titled "Alaska's Physician Workforce: An Overview, a Summary of Training Background, and the Impact of the WWAMI Program".<sup>④</sup> Exacerbating the problem is the aged physician workforce. ASMA's database shows nearly 50% of our physician workforce over age 50. Dr. Southworth's Thesis<sup>⑤</sup> as well as Leslie Gallant of the State Medical Board<sup>⑥</sup> further validates that fact. The Providence Alaska Medical Center confirmed in its 2002 study that physicians in its service area were getting older and highlighted immediate acute shortages in psychiatrists, surgeons, and general internists, among

others.<sup>②</sup> In 2002, the total shortage identified in primarily the Anchorage bowl area totaled about 200. The Providence study was updated for 2005 and projected the physician workforce needs to 2009.<sup>③</sup> The Shortage in 2005 is still at around 200, with a projected shortage in 2009 of 261.

The recruitment challenge is the main reason medical liability reform is so important to Alaska. Unfortunately, the state does not have the capacity to "grow" its own physicians. Alaska has no medical school, and of the small number of students graduating annually from the WWAMI program, some do not return to practice. Likewise, the state's lone residency training program is small. Alaska is, and will continue to be a net imported of doctors. As such, we have to compete with other states facing physician shortages, a competition that is influenced significantly by the state's medical-legal practice environment.

ASMA asserts that SB 67 is a critical element in helping us improve our practice environment so as to help in physician recruitment. Well trained physicians in sufficient numbers are ASMA's greatest concern so that all Alaskans have access to high quality care when it is needed. Alaskans need and deserve local health care without having to be flown out of state for treatment.

ASMA urges you to support SB 67.

Sincerely,



By: Paul Worrell, MD President  
For: The Alaska State Medical Association

cc: Senator Ralph Seekins  
Senator Ben Stevens  
Senator Johnny Ellis  
Senator Bettye Davis

Footnotes:

- ① Issue Brief, American Academy of Actuaries, "Medical Malpractice Tort Reform: Lessons from the States", Fall, 1996, p. 4.
- ② "AMA Survey: Medical Students' Opinions of the Current Medical Liability Environment: American Medical Association Division of Market Research and Analysis, November 2003.
- ③ "Medicare Law Aims to Bring Alaska Physicians in from the Cold." AM News, 1/19/2004.
- ④ "Alaska's Physician Workforce: An Overview, A Summary of Training Backgrounds, and the Impact of the WWAMI Program", Molly B. Southworth, MD, 7/2004, Masters of Public Health thesis, pp 26-33.
- ⑤ See Southworth ④, pp 12-14.
- ⑥ "Shingle Shortage?", Anchorage Daily News, Ann Potempa, 9/3/2002
- ⑦ "Physician Workforce Analysis", Providence Health System Alaska, November 2002, pp 17-18.
- ⑧ "PAMC Physician Supply and Physician Need Estimate: Summary", Providence Alaska Medical Center, February 2005.

## ASHNHA Comments on SB 67

Mr. Chairman, members of the Committee. I am Rod Betit, President of the Alaska State Hospital & Nursing Home Association. ASHNHA's membership includes all but one of the 31 hospitals and nursing homes throughout the State.

### ASHNHA's members strongly support SB 67. Why?

SB 67 is about every Alaskan's ACCESS to physician care, now and in the future. We are facing a growing physician crisis that has hit some communities already, and will confront many more communities in the years ahead.

SB 67 is NOT about denying harmed patients access to responsible settlements for the injury they have suffered.

We are advocating a change in only one area of our medical liability laws, that part dealing with non-economic damages. SB 67 would not impact other provisions of Alaska law including:

- Provisions for economic damages and punitive damages
- Periodic payment of damages awarded
- Collateral benefits (offsetting against damages collected from other parties)
- Apportionment of damages (assigning percentage of fault among parties)

### The Growing Physician Crisis:

This crisis is due to several factors that combine to have a dampening impact on the number of physicians predicted to practice in Alaska in the next 10 to 20 years.

#### Factor #1 - Lack of Affordable Liability Coverage:

Think about this fact, there is **not even one for-profit insurer** willing to write medical liability policies in Alaska! The only insurance available is courtesy of two out-of-state physician owned enterprises that have agreed to extend their plan to Alaskan doctors.

However, these policies do have limits in coverage that cause physicians to make tough decisions about how much coverage they can afford, and as a result, how much of their professional trade they can afford to practice.

So even as our gross physician to population numbers suggest we are dramatically underrepresented by physicians, it is actually worse when you figure in the practice limits that those doctors who have insurance are increasingly forced to adopt.

You might ask, why doesn't a physician simply raise his fees to cover a 200% or 300% increase in premiums? Well it is not that simple of course.

Physicians can raise their fees but it produces very little new revenue because so much of their business is government programs (Medicare & Medicaid) which do not automatically respond to fee increases, and to bad debt or charity care (approximately 20% of Alaskans are uninsured at this time).

Is Alaska medical liability insurance expensive because we have less competent physicians in Alaska? NO – there is no evidence of that. The reality is that certain medical practices inherently carry more risk throughout the country and premiums reflect that.

Try to insure your 21 year old son to drive your Porsche and you will get an idea of how risk and premium cost work. The rate you are quoted would no doubt scare you off.

Would pricing most 21 year olds out of being able to drive a Porsche hurt the community? Probably not.

But losing doctors who do deliveries, surgery, radiology, cardiology, neurology, chemotherapy, emergency medicine and other higher risk specialties will do serious damage to the vitality of our health care system and our quality of life.

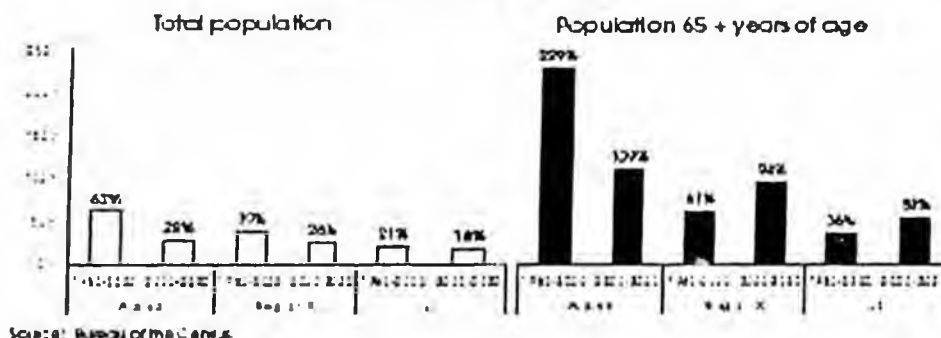
A good example of what happens when high premiums and scope of practice collide is a family practice physician in Soldotna who could not afford to handle prenatal care and delivery because of the added liability cost. This “practice shrinking” is happening in other communities and with other physician specialties. My members could give you more details.

**Factor #2 – Alaska’s Population Growth, Particularly Seniors, Will Far Exceed Physician Growth**  
 Consider these Facts:

- The total population of Alaska is projected to grow 28% by 2020. This is in addition to 62% growth between 1980 and 2000.
- The population over 65 is projected to grow 109% by 2020. This is in addition to 229% growth in this age group between 1980 and 2000. Note Table below.
- In 1998 Alaska ranked 47th in the number of hospital beds per 100,000 population and 49th in the number of nursing home beds for people 65 and older. Yet Alaska will be experiencing the greatest growth rate in the age group that most requires services in these complex environments dependent on a wide range of physician specialists.

**POPULATION PROFILE**

Projected percentage change in total population & population 65 + years of age, 1980-2000 & 2000-2020

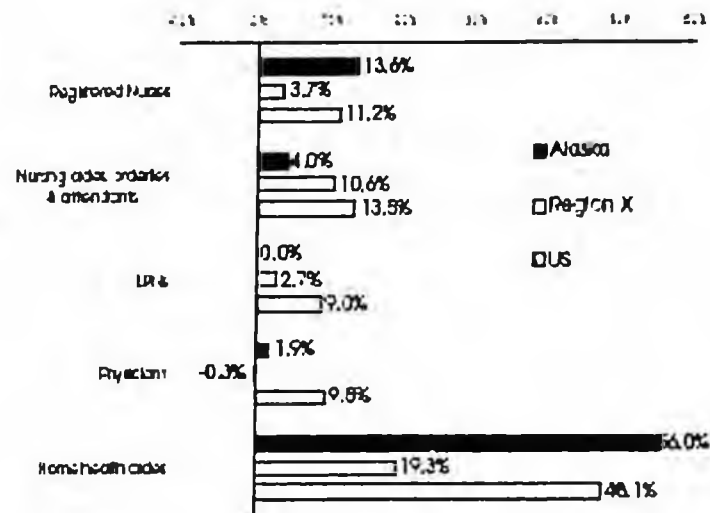


Source: Bureau of the Census

So, what do we expect in terms of physician/100,000 population in the years ahead? Here is what the federal government predicts for Alaska.

## HEALTH PROFESSIONS

Projected percentage change in employment per 100,000 population in the five most numerous health care occupations in the U.S., 1996-2006



Source: Bureau of Labor Statistics

Based on these numbers, Alaska's physician gap is not expected to close so we will stay at the bottom as far as physicians/100,000 population yet we will need more physicians per 100,000 in specialty areas because we will have the fastest growth in seniors of any where in the country.

### Conclusions:

- Alaska is already experiencing serious trouble retaining and attracting physicians, and the situation will get worse without your intervention to help stabilize the medical liability market.
- Growth in Alaska's population, particularly the elderly, will far outstrip growth in the number of physicians available to meet this need.
- The elderly consume at least 2/3rds of all public spending in Medicare and Medicaid because they have chronic conditions, serious prolonged illnesses that are expensive to treat, and rely on an average of 5 medications to address their medical problems.

□ Alaska will not only need many more physicians in the years ahead but we will need more physicians in specialty fields than any other state. This will not occur without addressing the medical liability insurance market in Alaska.

□ Alaska does not have a medical school or a large residency program so we are dependent on keeping our physicians in practice as long as possible and attracting new physicians from outside the State. We will have to rely on attracting physicians away from other states.

□ Just as a doctor has a professional responsibility to be there for his/her patients whether they can pay or not, we as a society have a social responsibility to create a reasonable business environment for them to do business in.

For these reasons ASHNHA encourages your support of SB 67.

We believe the narrow nature of this legislation addressing just the non-economic damages cap will go a long way to demonstrate that the State is committed to injured patients receiving fair compensation, but that we are also concerned about insuring a viable environment in which all Alaskans will be able to have timely access to a physician in the years ahead.

Mr. Chairman, I would be happy to respond to questions from the Committee.

**Contact Info:**

Rod Betit, President

Alaska State Hospital & Nursing Home Association

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907 586-3881

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**Fairbanks Memorial Hospital  
Medical Staff**

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March 1, 2005

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Re: Tort Reform Update:

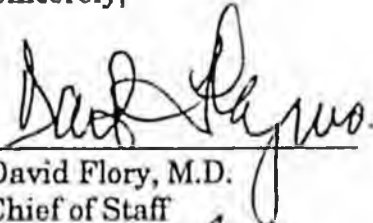
Dear Senator Seekins:

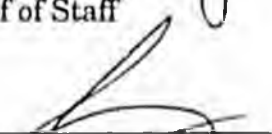
The leadership of the Medical Staff of Fairbanks Memorial Hospital and Denali Center are fully supportive of SB 67 – Tort Reform, and appreciate your introducing this bill.

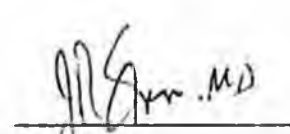
Alaska – and Fairbanks in particular – struggles to attract physicians to this state due to a number of compelling challenges. We believe lowering the non-economic damages cap to a maximum of \$250,000 and defining the term “economic” will help create a medical practice environment conducive to attracting skilled physicians. Because the medical liability crisis is affecting care in Alaska now, we are calling for your help with tort reform, to help create greater access to patient care for our patients. Attached to this list is a host of tort reform activities across the country that may be helpful as you study this issue.

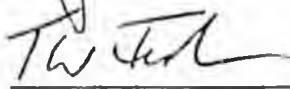
Thank you for your interest. Please call if you have any questions about our interest in the passage of this important measure.

Sincerely,

  
David Flory, M.D.  
Chief of Staff

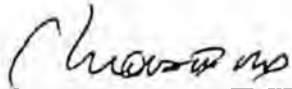
  
Art Strauss, M.D.  
Secretary/Treasurer

  
Jonathan Starr, M.D.  
Vice President

  
Timothy Teslow, M.D.  
Past President

**Fairbanks Memorial Hospital  
Medical Staff**

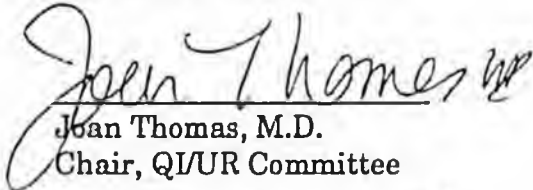
1650 Cowles Street  
Fairbanks, Alaska 99701  
907-458-5319



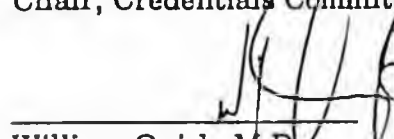
Carl Thomas III, M.D.,  
Chair, Bylaws Committee



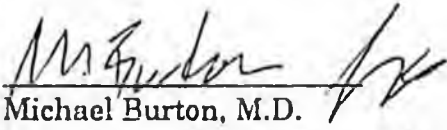
J. Michael Carroll, M.D.  
Chair, Credentials Committee



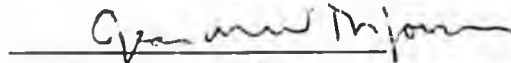
Joan Thomas, M.D.  
Chair, QI/UR Committee



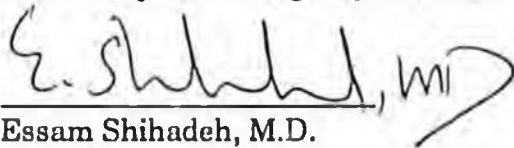
William Quirk, M.D.  
Chair, Dept. of Anesthesia



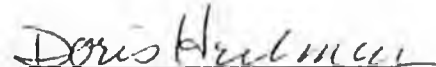
Michael Burton, M.D.  
Chair, Dept. of Emergency Medicine



Jean Tsigonis, M.D.  
Chair, Dept. of Family Practice



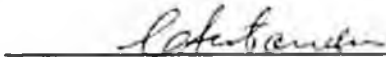
Essam Shihadeh, M.D.  
Chair, Internal Medicine



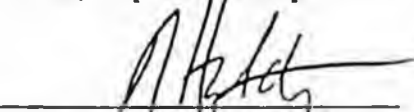
Doris Heilman, M.D.  
Chair, Dept. of Pediatrics



David Witham, M.D.  
Chair, Dept. of Orthopedic Surgery



Corneliu Antonescu, M.D.  
Chair, Dept. of Pediatrics



Richard Hutchison, M.D.  
Chair, Dept. of Surgery



## Richard L. Hutchison, M.D., F.A.C.S.

Plastic & Reconstructive Surgeon

1919 Lathrop Street • Suite 101 • Fairbanks, AK 99701-5956 • (907) 451-8775

Senator Ralph Seekins  
State Capitol, Room 125  
Juneau, AK 99801-1182

Dear Senator Seekins:

Thank you for introducing SB 67, "Alaska Medical Injury Compensation Reform Act of 2005".

I strongly support the passage of this bill.

The availability of affordable medical liability insurance is increasingly becoming a problem in the State of Alaska. If this trend continues, the quality and access to health care in our state will be harmed.

Passage of similar reform bills in other states have yielded direct benefit for the overall population and has allowed both primary care and specialty physicians to continue to practice efficient and effective medicine. The similar reform bills have not limited the ability of patients to seek legal redress when warranted.

Please work towards the passage of this bill. In both urban and rural areas, our state has a physician shortage. Passage of SB 67, in addition to allowing Alaskan physicians to continue to practice, will help in recruiting much needed new physicians.

Let me know if you have any questions or desire additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Hutchison". The signature is written in a cursive, flowing style.

Richard L. Hutchison, M.D., F.A.C.S.



Member of the American Society of Plastic & Reconstructive Surgeons  
Board Certified by the American Board of Plastic Surgery  
Fellow American College of Surgeons



ALASKA

**National Federation of Independent Business**

**Statement of Support for SB 67**

**Medical Liability Reform**

**February 9, 2005**

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

This legislation provides an award limit of \$250,000 for non-economic damages for personal injury claims against health care providers. NFIB/Alaska fully supports this legislation. It is important to emphasize that this in no way limits economic damages which include past and future losses for wages or employment opportunities and costs for past and future health care services and products. The limit is for non-monetary losses such as pain and suffering.

Alaska's current law sets a \$400,000 non-economic damage limit with higher awards available for serious injuries. This has effectively eliminated the hard cap since all injuries are argued to be serious.

Other states have seen positive results by limiting the amount awarded for pain and suffering. According to a study conducted by the RAND Corporation, a California-based research organization, the State of California's medical liability law which includes a \$250,000 cap on non-economic damages has reduced awards by an average of 30 percent. Their law also limits payment to plaintiffs' lawyers, which have dropped 60 percent.

NFIB and other business groups support medical liability reform across the nation because of the rising costs of health care and access to health care for their employees. The medical liability crisis is estimated to add between 5 and 9 percent to the overall health-care costs in the United States. The skyrocketing costs of medical liability insurance have caused a crisis in many states with the loss of doctors willing to do business in their state. Due to the uncertainty in Alaska's liability insurance market young physicians have better choices than Alaska and it is difficult to attract new doctors. As in some other states, Alaska needs to work to change that.

**Vote YES on Senate Bill 67**

Submitted by Thyges Shaub on behalf of NFIB/Alaska.

February 10, 2005

Senator Ralph Seekins

Re: **Support for Senate Bill 67**

Dear Senator Seekins;

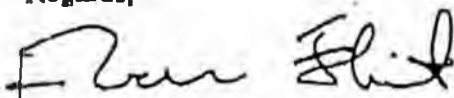
Thank you for your efforts to control the unending exponential increases in health insurance premiums. I know this step is not going to completely fix the problem, but it is a step.

I own a retail clothing and footwear store in Juneau. We have always provided health insurance benefits for our employees, but soon we will not be able to cover our employee's insurance needs if every year I receive a premium increase of on average 15%. We have had to increase deductibles and self-insure to make up the difference to employees if they have a big claim. This cannot continue forever, soon we'll run out of tricks.

I feel like we have been more than doing our part to control costs. Now it is time for the other parties involved to do their part. I understand completely both the economic and the non-economic side of this equation and it's effects on the worker and their family as my wife suffered a serious back injury many years ago while on the job. The current situation is out of control.

Good luck in your quest. Part of the problem is the people fighting the battle are "well heeled" enough to not have the problem of covering rising premiums be real enough for them, among other things...

Regards,



Ron Flint

President, The Nugget Alaskan Outfitter



Richard L. Hutchison, M.D., F.A.C.S.

Plastic & Reconstructive Surgeon

1919 Lathrop Street • Suite 101 • Fairbanks, AK 99701-5956 • (907) 451-8775

Senator Ralph Seekins  
State Capitol, Room 125  
Juneau, AK 99801-1182

Dear Senator Seekins:

Thank you for introducing SB 67, "Alaska Medical Injury Compensation Reform Act of 2005".

I strongly support the passage of this bill.

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Please work towards the passage of this bill. In both urban and rural areas, our state has a physician shortage. Passage of SB 67, in addition to allowing Alaskan physicians to continue to practice, will help in recruiting much needed new physicians.

Let me know if you have any questions or desire additional information.

Sincerely,

Richard L. Hutchison, M.D., F.A.C.S.





Denali Center  
Fairbanks Memorial Hospital  
*Banner Health System*

March 4, 2005

Senator Ralph Seekins  
State Capitol  
Room 125  
Juneau, AK 99801-1182

Dear Senator Seekins:

The issue of access to healthcare services continues to dominant discussions among the medical staff at Fairbanks Memorial Hospital and Denali Center (FMH/DC). At last night's FMH/DC General Medical Staff Meeting, the medical staff strongly endorsed support for the bill you have introduced, Senate Bill 67 – Tort Reform.

I have enclosed a resolution and signatures of numerous physician supporters. If you have any questions related to the Fairbanks' physician and FMH/DC's full support of this important information, please call.

Thank you for your help and your support in creating greater access to health services in Alaska through passage of SB 67.

Sincerely,

Mike Powers  
Administrator/CEO  
Fairbanks Memorial Hospital

Enclosure

cc: Senator Ben Stevens, Senate President  
Representative John Harris, House Speaker

## SB 67 Tort Resolution Signature Key

1	Linda	Garcia	M.D.		1066 Smallwood Trail	Fairbanks,	AK	99712
2	Tristan	Schultis	M.D.		541 9th Avenue	Fairbanks,	AK	99701
	Joan	Thomas	M.D.	Fairbanks Clinic	1919 Lathrop Street, Suite 100	Fairbanks,	AK	99701
	Shellye	Burrows	M.D.	Fairbanks Clinic	1919 Lathrop Street, Suite 100	Fairbanks,	AK	99701
5	James	Foelsch	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 220	Fairbanks,	AK	99701
6	Nigel	Wappett	M.D.		858 Lancaster Drive	Fairbanks,	AK	99712
7	David	Flory	M.D.	Fairbanks Memorial Hospital	1650 Cowles Street	Fairbanks,	AK	99701
8	Sigfried	Fink	PhD		688 Chena Ridge	Fairbanks,	AK	99709
9	J. Michael	Carroll	M.D.		649 Eton Blvd	Fairbanks,	AK	99709
10	Ronald	Martino	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 220	Fairbanks,	AK	99701
11	Randall	McGregor	M.D.	Fairbanks Memorial Hospital	1650 Cowles Street	Fairbanks,	AK	99701
12	Jonathan	Starr	M.D.	Chief Andrew Isaac Health Center	1408 19th Avenue	Fairbanks,	AK	99701
13	Marvin	Bergeson	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
14	Patrick	Ticman	M.D.	Fairbanks Clinic	1919 Lathrop Street, Suite 100	Fairbanks,	AK	99701
15	Michael	Swenson	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
16	Anne	Lilley	ANP		PO Box 82868	Fairbanks,	AK	99708
17	Enlow	Walker	M.D.	Fairbanks Clinic	1919 Lathrop Street, Suite 100	Fairbanks,	AK	99701
18	Clarice	Grandpre	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
19	Melinda	Evans	M.D.	Interior Community Health Clinic	1606 23rd Avenue	Fairbanks,	AK	99701
20	Janice	Onorato	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 220	Fairbanks,	AK	99701
21	William	Stoddard	M.D.		PO Box 10912	Fairbanks,	AK	99710
22	Thomas	Alfano	M.D.	Fairbanks Memorial Hospital	1650 Cowles Street	Fairbanks,	AK	99701
23	Steve	Mancill	M.D.		330 Old Steese Hwy, #314	Fairbanks,	AK	99701
24	Richard	Hutchison	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 101	Fairbanks,	AK	99701
25	Mary	MacFarlane	M.D.	Fairbanks Clinic	1919 Lathrop Street, Suite 100	Fairbanks,	AK	99701
26	William	Wennen	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Suite 101	Fairbanks,	AK	99701
27	John	Mayer	M.D.	Fairbanks Clinic	1919 Lathrop Street, Suite 100	Fairbanks,	AK	99701
28	Arlene	Kirschner	M.D.		1905 Cowles Street	Fairbanks,	AK	99701
	Stephen	Suley	D.D.S.	Medical Dental Arts Building	1919 Lathrop Street, Ste 107	Fairbanks,	AK	99701
	William	Montano	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 207	Fairbanks,	AK	99701
31	Timothy	Teslow	M.D.		2111 East Cowles Street	Fairbanks,	AK	99701
32	Danny Ray	Robinette	M.D.	Northern AK Medical/Surgical Assoc.	2111 East Cowles Street	Fairbanks,	AK	99701
33	Richard	Hess	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
34	Mary Beth	Gardner	CNMW	Interior Women's Health	1919 Lathrop Street, Suite 205	Fairbanks,	AK	99701
35	Ronald	Zamber	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 103	Fairbanks,	AK	99701
36	Doris	Heilman	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
37	Arva	Chiu	M.D.		2009 Cowles Street	Fairbanks,	AK	99701
38	David	Brenner	M.D.	Alaska Surgery & Urology	1305 21st Ave., Suite 101	Fairbanks,	AK	99701
39	Cathy	Brenner	M.D.	Alaska Surgery & Urology	1305 21st Ave., Suite 101	Fairbanks,	AK	99701
40	Jean	Tsionis	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
41	Robert	Taylor	M.D.		975 Bennett	Fairbanks,	AK	99712
42	Charles	Steiner	M.D.		2148 Nottingham	Fairbanks,	AK	99709
43	Donald	Ives	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
44	Richard	Hattan	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 120	Fairbanks,	AK	99701
45	Keir	Fowler	M.D.	Fairbanks Memorial Hospital	1650 Cowles Street	Fairbanks,	AK	99701
46	Kendrick	Blais	D.O.	Polar Wind Medical Center	1867 Airport Way, Suite 140-A	Fairbanks,	AK	99701
47	Bruce	Foolit	M.D.	Northern Hospital Associates	1335 Berea Ct.	Fairbanks,	AK	99709
48	Essam	Shiladeh	M.D.	Fairbanks Cancer Treatment Center	1640 Cowles Street, Ste 2	Fairbanks,	AK	99701
49	Jimmy	Tamal	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
50	Richard	Burger	M.D.		2009 Cowles Street	Fairbanks,	AK	99701
51	John	Joosse	M.D.		1411 19th Ave.	Fairbanks,	AK	99701
52	Steven	Rast	PA-C	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
53	Richard	Cobden	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
54	Jon	Lieberman	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
55	George	Vrablik	M.D.	Medical Dental Arts Building	1919 Lathrop Street, Ste 108	Fairbanks,	AK	99701
	Cary	Keller	M.D.		751 Old Richardson Hwy., Ste 200	Fairbanks,	AK	99701
57	Brian	Tansky	M.D.		PO Box 55288	North Pole,	AK	99705
58	Janice	Chen	M.D.		PO Box 81062	Fairbanks,	AK	99708
59	Mishelle	Nace	M.D.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
50	Clay	Triplehorn	D.O.	Tanana Valley Clinic	1001 Noble Street	Fairbanks,	AK	99701
31	Mark	Burton	M.D.		PO Box 80246	Fairbanks,	AK	99708

Brian Hove

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**From:** Paul Richards [paulr@alaska.net]  
**Sent:** Friday, February 11, 2005 10:35 AM  
**To:** timsullivan@gcl.net; Pat Carter; Brian Hove  
**Subject:** AL Statement support med mal non econ cap 01-27-05  
**Attachments:** header.htm



**PHARMACEUTICAL RESEARCH AND MANUFACTURER'S  
OF AMERICA (PhRMA)  
STATEMENT ON ALASKA SB 67  
January 27, 2005**

**Position: PhRMA supports the State of Alaska's SB 67 and urges Alaska legislators to adopt the proposed legislation.**

The Pharmaceutical Research and Manufacturers of America (PhRMA) supports state's efforts in civil justice and medical malpractice reform. Medical malpractice costs have increased an average of 11.8% per year, compared to an average annual increase of 9.2% per year for all other tort costs. In 2003, medical malpractice tort costs reached about \$27 billion which translates into \$91 per U.S. citizen. Tort costs, both civil and medical malpractice, can impact the research and development driven pharmaceutical industry. Therefore, most civil reform efforts are looked favorably upon by this industry.

**LIMITATION ON NON-ECONOMIC DAMAGES**

PhRMA supports limitations on non-economic damages awards. In medical malpractice actions, SB 67 would cap compensation for non-economic damages at \$250,000 regardless of the number of defendants or number of actions filed. Further, it limits the award of non-economic damages to \$250,000 in all actions subject to an arbitration agreement initially filed on or after the effective date of the Act.

For the reasons stated above, PhRMA urges you to vote in favor of SB 67.

## - A RESOLUTION -

*Expressing the sense of the Physicians of Fairbanks Memorial Hospital regarding the current situation in medical liability insurance and the need to stabilize medical malpractice costs*

**WHEREAS** Alaska faces a health care crisis – by some estimates, the state is short hundreds of doctors, nurses, and health care providers;

**WHEREAS** States with limited awards for pain and suffering have 12% more doctors than states that don't cap frivolous lawsuits;

**WHEREAS** Two of the four medical malpractice carriers have left Alaska in the last two years due to large losses in Alaska, Oregon, and California;

**WHEREAS** Alaska is a small enough market that medical malpractice companies do not have to do business up here if they can't at least break even;

**WHEREAS** Alaska is dependent on out-of-state companies since there are no Alaska based medical malpractice carriers;

**WHEREAS** Alaska ranks 46<sup>th</sup> in the number of doctors per capita;

**WHEREAS** Alaska has no medical school from which we can more easily attract doctors;

**WHEREAS** Alaska's physicians average age is 51 and many plan on retiring in the next 10 years;

**WHEREAS** Senate Bill 67 sets a "hard cap" of \$250,000 on non-economic damages;

**WHEREAS** Current law only contains a "soft cap" and non-economic damages could be as high as \$2,000,000;

**WHEREAS** A \$250,000 cap is the proposed Federal limit, the California limit under MICRA and the limit set in many other states

**NOW THEREFORE, BE IT RESOLVED THAT:** The undersigned Physicians of Fairbanks Memorial Hospital urge passage and adoption of Senate Bill 67 as a tool to increase access to care and to retain and attract qualified professionals in Alaska well into the future.

SIGNATURE

PRINTED NAME

ADDRESS

1) Linda L. Garcia MD	LINDA L. GARCIA	1066 Small Wood Trail Fairbanks AK 99712
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2) [Signature]	TRISTAN R. SCHULTZ MD	541 9th Ave Fairbanks, AK 997
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3) Jean Thomas MD	Joan Thomas MD	1919 Lathrop Suite 100
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4) Shelly Burrows MD	Shellye Burrows MD	1919 Lathrop #100
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5) [Signature]	JAMES FOELSOFT	1919 Lathrop #220
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6) [Signature]	NIGEL WAPPETT	858 LANCASTER DR FBKS 99712
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7) [Signature]	Dove Flew	
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8) [Signature]	Sig Fink	688 Chena Ridge FBKS 99709
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9) [Signature]	J. Michael Giroux	619 Eton Blvd FBKS, 99701
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10) Ronald A. Martin	Ronald A. Martin	1919 Lathrop.
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11) [Signature]	W. [Signature]	
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12) [Signature] MD	J R Starr	1408 14th Ave FAIRBANKS, AK 99701
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13) [Signature]	Marvin Bergeson	TVC
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<del>[Signature]</del>	<del>Carl J. Verrilli</del>	<del>211 [Signature]</del>
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14) [Signature]	P. TICMAN, MD	PC.
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15) [Signature]	Michael Svenson MD	TVC
-----------------	--------------------	-----

16) [Signature]	Do not include my name Andrew please	PO Box 82868 Fairbanks 99708
-----------------	---	------------------------------------

17) [Signature]	Arne Lilley	
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SIGNATURE	PRINTED NAME	ADDRESS
	EDWARD R. WALKER	1919 Lathrop
	Clarice Grandpre	TVC
	Melinda Elms	1CHC
	ONORATO	1919 Lathrop
	W. STODDARD	PO BOX 10912 # F3165 AIR 55710
	T. Albers	
	S MANCILL	
	RICKUS HUTCHISON	1919 Lathrop #101
	Mary MacFarlane	
	WM. W. WENNEN	1919 LATHROP #101
	JOHN MAYER	1919 LATHROP #100
	A. KIRSCHNER M.D.	1905 Cowles Ave
	S. Suthgen	1919 Lathrop
	M. T. ALBERS	MDA
	T. TESLOW	2111 E. Cowles
	DANNY THIBAUT	2111 East Cowles
	Richard Hess	1001 Noble St
	Mary Beth Gardner	1714 Lathrop Ste 205

SIGNATURE

PRINTED NAME

ADDRESS

2000 Marg  
 35) *[Signature]* 12 Zumber 1919 Lathrop

36) *[Signature]* D. Helman TVC

37) A. Chin A. Chin CA

38) *[Signature]* D. BREWER 1355 21st ave

39) C12 C. BREWER 1205 21ST AVE.

40) *[Signature]* Jean Tsionis 1001 Noble

41) *[Signature]* R. W. Taylor 975 Bennett

42) *[Signature]* Charles Steiner 2148 Nottingham  
 Fb 99709

43) *[Signature]* David Ives 1001 Noble  
 99701

44) *[Signature]* R HATTAN FMH

45) *[Signature]* KEIR FOWLER FMH

46) *[Signature]* Ken Blais 1867 Aunt us

47) *[Signature]* BRUCE FOOTIT 1335 BERRA CT  
 FAIRBANKS AK

48) *[Signature]* ESSAM SHUHDEH 1640 Cowles # 2

49) 7 2 Jim TAMMI 1001 Noble St  
 FB/CS/OK  
 99701

SIGNATURE

PRINTED NAME

ADDRESS

Richard Burg Richard Burger 2009 Cowles  
Fairbanks AK 99701

51) John Joosse John Joosse

52) STEVEN RAST PA-C TUC  
1001 Noble  
FAIRBANKS

53) P COBLEN 1001 NOBLE ST  
(TUC) FAIRBANKS AK

54) J. LITBERMAN TUC

55) George R. Vrabek G. VRABEK MDA  
1919 LATHROP ST.

56) Cary S Keller CARY S. KELLER 751 OLD RICHARDSON

57) Brian LAUSKY PO Box 7.P.  
5528 99705

58) JANICE CHEN PO BOX 81062  
FAIRBANKS AK 99712

59) Michelle Nace TUC  
1001 Noble  
FAIRBANKS, AK 99709

60) CHRY TRIPLEHORN, MD TUC  
1001 NOBLE ST  
FAIRBANKS, AK 99709.

61) Mark Berthel PO Box 90246  
FAIRBANKS AK 99708

**SB**

**69**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

APR 18 2005

SENATE FINANCE  
COMMITTEE

DATE: 2/4/05

FURTHER:

DATE TURNED  
IN TO OFFICE: 18 April 2005

Finance Committee considered

SENATE BILL NO. 69

SB 69 APPROP: GRANT TO ARCTIC POWER FOR ANWR

"An Act making special appropriations to promote the opening of the Arctic National Wildlife Refuge for oil and gas exploration and development; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 69 (FIN)
- adopt previous \_\_\_\_\_ CS CS forthcoming (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	<input checked="" type="checkbox"/>			
<i>[Signature]</i>				
COCHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>			
COCHAIR: <i>[Signature]</i>				

Adopted 4/18/05

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-LS0438\G  
Utermohle  
4/14/05

**CS FOR SENATE BILL NO. 69(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE FINANCE COMMITTEE**

Offered:

Referred:

Funding Information:	General Fund	\$1,300,000
	Other Funds	-0-
	Total	\$1,300,000

Sponsor(s): SENATE RESOURCES COMMITTEE

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act making a special appropriation for a grant to Arctic Power to promote the  
 2 opening of the Arctic National Wildlife Refuge for oil and gas exploration and  
 3 development; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 \* Section 1. GRANT TO ARCTIC POWER. The sum of \$1,300,000 is appropriated from  
 6 the general fund to the Department of Commerce, Community, and Economic Development  
 7 for payment as a grant under AS 37.05.316 to Arctic Power for education efforts to open the  
 8 coastal plain of the Arctic National Wildlife Refuge for oil and gas exploration and  
 9 development. The amount appropriated in this section includes \$50,000 for the participation  
 10 of the Native Village of Kaktovik and \$50,000 for the participation of the City of Kaktovik in  
 11 support of the education efforts undertaken by Arctic Power under this section.

12 \* Sec. 2. The appropriation made by this Act lapses June 30, 2009.

13 \* Sec. 3. This Act takes effect immediately under AS 1.10.070(c).



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 18 April 2005 TIME: 9:10 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please  
CS SB 69 (FIN) 24-LS0438 \ G  
Utermohle 4/14/05

no changes

Thx  
Mindy

# ALASKA STATE LEGISLATURE



Official Business

## SENATE RESOURCES COMMITTEE

Senator Tom Wagoner, Chair

State Capitol, Room 427

Juneau, AK 99801-1182

Phone: (907) 465-4907 Fax: (907) 465-4779

Senator Ralph Seekins, Vice-Chair

Senator Ben Stevens

Senator Kim Elton

Senator Fred Dyson

Senator Bert Stedman

Senator Gretchen Guess

---

### Sponsor Statement

#### SB 69 – Grant to Arctic Power for ANWR

SB 69 appropriates \$1.2 million in general funds to Arctic Power for its efforts to secure support for legislation opening ANWR to oil exploration.

The bill also includes a general fund appropriation of \$100,000 to the native village of Kaktovik for their community outreach effort to open ANWR.

Arctic Power is a private non-profit entity that has been coordinating the effort to open ANWR for over 12 years. State funding has previously been awarded to them for that effort. They have provided such things as Congressional member visitations to ANWR as well as providing travel for ANWR advocates to other states to advocate for opening the area.

The decrease in production from existing fields negatively impacts state revenues. By opening ANWR, we will be adding new fields to provide new revenues for our future generations.



## About Arctic Power

### **ANWR:**

**JOBS AND ENERGY  
FOR AMERICA**

### **ARCTIC POWER**

P. O. Box 100220  
Anchorage, AK 99510  
907.274.2697  
907.274.2706 FAX

203 Maryland Ave, NE  
Washington, DC 20002  
202.544.5363  
202.544.1121 FAX  
<http://www.anwr.org>

Formed in 1992, Arctic Power is a 501(c)6 non-profit organization advocating jobs and energy for Americans through development of the Arctic National Wildlife Refuge's (ANWR) resources. We seek congressional and presidential approval of legislation to allow responsible oil and gas exploration and production within ANWR's promising Coastal Plain.

Arctic Power is a grassroots coalition of citizens from Alaska and across the nation who hail from a full economic spectrum: miners, fishermen, loggers, tourism operators, retail and service businesses, transportation companies, labor unions, financial institutions, educational systems, the legal community, Alaska Native Corporations, elected officials and more. Many trade and business associations have joined our ranks through membership and participation on the Arctic Power board of directors. These include the Alaska Support Industry Alliance, Alaska State Chamber of Commerce, Alaska State Home Builders Assn., Alaska Forest Assn., Alaska Oil & Gas Assn., Alaska Miners Assn., Resource Development Council for Alaska, Alaska Trucking Assn., Alaska Outdoor Council, Associated General Contractors, Bristol Bay Driftnetters Assn., Anchorage Convention & Visitors Bureau, People for the USA and National Federation of Independent Businesses.

Arctic Power is governed by a board of directors representing all regions of the state...from Barrow to Kodiak. The board works closely with Alaska's U.S. congressional delegation, who have endorsed Arctic Power's purpose. Outreach efforts in Washington, D.C. are the product of cooperative efforts between Arctic Power, the State of Alaska and our congressional leaders. Arctic Power is based in Anchorage but maintains an office in Washington, D.C. when ANWR is being debated in Congress.



## ANWR - IMPORTANT DATES

<b>ANWR:</b> <hr/> <b>JOB AND ENERGY FOR AMERICA</b>	1002 1949	President Theodore Roosevelt established the National Wildlife Refuge System.
<b>ARCTIC POWER</b> P. O. Box 100220 Anchorage, AK 99510 907.274.2697 907.274.2706 FAX	1954	The National Park Service began a recreational survey in Alaska to identify areas with special natural values.  The National Park Service recommended that the undisturbed lands in the northeastern corner of Alaska be preserved for their wildlife, wilderness, recreation, scientific, and cultural values.
203 Maryland Ave, NE Washington, DC 20002 202.544.5363 202.544.1121 FAX <a href="http://www.anwr.org">http://www.anwr.org</a>	1957	The Department of the Interior announced plans to ask Congress to establish an 8,000 square-mile wildlife reserve in the area identified by the National Park Service study.
	Jan. 3, 1959	Alaska Statehood
	Dec. 6, 1960 (acres)	Arctic National Wildlife Range Created (8.9 million acres)
	1964	President Lyndon Johnson signed the Wilderness Act, establishing the National Wilderness Preservation System and policies for wilderness management.
	1969	The first manager was hired for ANWR.
	Dec. 18, 1971	Alaska Native Claims Settlement Act. The Act gave the Kaktovik Inupiat Corporation (KIC) surface rights to 69,000 acres along the arctic coast within the Range.
	June 20, 1977	Trans Alaska Pipeline Start-up
	Dec. 2, 1980	Alaska National Interest Lands Conservation Act (ANILCA). The Act expanded the Arctic Range to approximately 18 million acres, renamed it the Arctic National Wildlife Refuge, designated eight million acres as Wilderness, designated three rivers as Wild, and called for wildlife studies and an oil and gas assessment of 1.5 million acres of the ANWR Coastal Plain (the "10-02 Area"). Gwich'in opt out settling for Indian Reservation status and thus not subject to ANILCA revenue sharing of

	natural resources. Likewise they don't receive benefit of other native natural resource royalties.
1983	The Chandler Lake land exchange agreement conveyed subsurface ownership of Kaktovik Inupiat Corporation lands to the Arctic Slope Regional Corporation.
1983 cont. ...	Nearly one million acres were added to the south side of the Refuge when the State of Alaska decided not to retain control of lands it had selected under the Statehood Act.
Winter, 1983-84	Approx. 600 line miles of 2D geophysical data acquired in ANWR
Winter, 1984-85	Approx. 580 line miles of 2D geophysical data acquired in ANWR
Dec. 2, 1985	ANWR closed to any further geophysical surveys
Sept. 2, 1986	Secretary of Interior's Report to Congress, as required by Sec. 1002 of ANILCA
Feb., 1987	Draft Environmental Impact Statement for ANWR Exploration Published
Sept. 1987	Dept. Of Interior recommends to Congress to open the coastal plain.
1988	House Merchant Marine & Fisheries Committee approves an open ANWR Bill. Congress added 325,000 acres to the south side of the Refuge, bringing the total area managed by the Refuge to approximately 19.3 million acres and making ANWR the largest Refuge in the National Wildlife Refuge System.
early 1989	House Merchant Marine & Fisheries Committee again approves an ANWR Bill.
Mar. 24, 1989	Exxon Valdez aground in Prince William Sound.
Aug 2, 1990	Saddam Hussein invades Kuwait.
October 31, 1991	Congress debated National Energy Policy Act, Title 9 of which allowed for development of the Coastal Plain.  Senate Energy Committee approves Title 9.

Nov. 1991	Senate Roll-call vote on Sen. Wellstone amendment to cut off debate on ANWR, 50 to 44. (60 votes needed to defeat filibuster) National Energy Policy Act shelved.
October 1992 passed.	New National Energy Policy Act, without ANWR.
Nov. 1992	Mr. Clinton elected President
March 1995	ANWR resurrected as part of the Balanced Budget bill.
May 24, 1995	Senator Roth amendment to table ANWR from the Budget Resolution defeated 56 to 44 votes.
Sept. 1995	President Clinton tried to create a National Monument of ANWR under the Antiquities Act - this was prevented.
Sept. 19, 1995	Cong. Vento motion to strike ANWR from the Budget Reconciliation Bill in the House Resources Committee, defeated 27 to 14.
Oct., 1995	House vote on Budget Reconciliation plan including ANWR, passed 227 to 203 votes.
Oct. 25, 1995	Sen. Bumpers asset sale amendment (which would drop ANWR from the Reconciliation bill), defeated.
Oct. 26, 1995	Sen. Baucus anti-ANWR amendment defeated 51 to 48 votes.
Dec. 6, 1995	President Clinton vetoed the Balanced Budget Act which included a provision to open ANWR.
May, 1996	A new Budget Resolution was initiated by Congress.
May 24, 1996	Sen. Bumpers again tried an asset sale amendment on the floor of the Senate as a way of killing ANWR. The first amendment was modified and defeated 98 to 0, but a second attempt aimed directly at ANWR was defeated 52 to 46 votes.
1997	President William Clinton signed the "National Wildlife Refuge System Improvement Act." This Act provides specific guidance to the Refuge System, and establishes the mission of the National Wildlife Refuge System "to administer a national network of lands and waters for the conservation, management, and where appropriate,

restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

The U.S. Supreme Court affirmed that the barrier islands and the lagoons which they enclose, along the northeast coast of Alaska, are within the boundaries of the Arctic Refuge. The State of Alaska had hoped to claim ownership of these lagoons and to lease them for oil and gas exploration and development.

- May 1998 U.S. Geological Survey released the Arctic National Wildlife Refuge, 1002 Area, Petroleum Assessment, 1998 containing the highest estimates ever for the region. The agency's mid-range estimate of oil in place rose from 13.8 billion barrels to 20.7 billion barrels of oil.
- Jan. 2000 Representative Vento's Morris Udall ANWR Wilderness Bill has 165 co-sponsors; while Senator Roth's Senate version has 25 co-sponsors.
- March 31, 2000 Assumptions about ANWR revenues were included in the FY2001 budget resolution (S. Con. Res. 101) as reported by the Senate Budget Committee. An amendment to remove the language was tabled. However, conferees rejected the language.
- January 10, 2001 Clinton announced that ANWR would not be declared a national monument.
- May 24, 2001 Vermont Senator James Jeffords changes party affiliate from Republican to Independent. Democrats take over Senate majority.
- July 27, 2001 Representative Billy Tauzin (D-SD) introduces HR4 that included a provision to open ANWR.
- Aug. 1, 2001 HR4 passed in the House of Representatives.
- Dec. 5, 2001 Senator Tom Daschle introduces S.1766. Bill does not move.
- January 17, 2002 The Interior Department concluded that the proposed Arctic drilling plan would not violate American treaty obligations to protect polar bears.
- February 26, 2002 As the energy bill begins to wind its way through the Senate, the White House considered a "scaled-back"

version of the ANWR drilling plan, including only 500,000 of the original 1.5 million acres of the refuge's coastal plain.

- |                               |  |
|-------------------------------|--|
| Mar. 12, 2002                 | Senator Jeff Bingaman (D-NM) introduces S.517, The National Energy Policy Act.   |
| Apr. 25 2002                  | S.517 passes Senate 88-11. It did not contain ANWR.  |
| Nov 2002                      | Conference Committee fails to pass Comprehensive Energy Bill   |
| Dec 2002                      | Energy Bill is shelved.  |
| April 2003<br>House<br>passes | Amendment vote to take ANWR language out of the Energy Bill. The vote did not pass. House votes and its version of the Energy Bill (H.R.6) that included ANWR. Senate votes 52-48 to strip from a budget resolution language to lift the longtime ban on the development of oil in the ANWR. |
| July 2003                     | Senate passed the 2002 Senate Energy Bill excluding ANWR language.   |
| Sept 2003                     | Conference Committee convened and failed to reach agreement  |
| 2004                          | The House again passed a comprehensive energy bill that included authorization to open the Coastal Plain to exploration and development. No action occurred in the Senate.   |
| Jan 2005                      | Sen. Domenici reappointed Chairman of Senate Natural Resources Committee and in inaugural speech announces opening the Coastal Plain of AN   |

**SENATE COMMITTEE REPORT  
First Committee of Referral**

DATE: 1/21/05

FURTHER: Finance

Date of 5-Day Notice: 1/20/05  
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/2/05

Resources Committee considered SENATE BILL NO. 69

**SB 69 APPROP: GRANT TO ARCTIC POWER FOR ANWR**

"An Act making special appropriations to promote the opening of the Arctic National Wildlife Refuge for oil and gas exploration and development; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
	<i>Don Stewart</i>	✓			
	<i>D. S.</i>		✓		
	<i>Paula Debin</i>	✓			
	<i>Paul Olson</i>	✓			
CHAIR:	<i>Thomas Wagner</i>	✓			

**SB**

**70**

**SFIN**

**FILE**

SB 70

was referred to the  
Senate Finance  
Committee

Hearing(s) were held

The bill did not move  
from Committee

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

Attention: DARWIN

Of Senator Greens's office

RE: Amend #2 SB 70

Date: 1/11/06 Time: 8:40 am

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,  
Senate Finance Secretary  
Mindy #4935  
Robin #2618

Approved: \_\_\_\_\_

(please initial)

*Verbal  
OK 1/11/06*

Return ASAP

*Darwin? unsure  
FYI. Fix OK  
but, language  
presented  
differs  
from that  
of how  
your  
referenced  
language  
reads.  
Robin*

SENATE FINANCE  
COMMITTEE #2  
Amendment Number: #2  
Bill Number: SB 70  
Sponsor: Green Date: 1/10/06  
Logged In By: Mindy

SENATE FINANCE COMMITTEE

AMENDMENT No. 2

By Senator Green

To: FIN CS SENATE BILL No. 70

To: \_\_\_\_\_ SENATE BILL No. \_\_\_\_\_

Page 7, LINE 3 : <sup>SUBPARAGRAPH</sup> INSERT NEW ~~SUBSECTION (b)(3)~~  
TO INCLUDE THE SAME  
~~EXCEPTION~~ EXCEPTION AS  
PAGE 4, LINES 11-17,  
AND RE-STRUCTURE  
SUBSECTION AS 11.91.210 (b)  
ACCORDINGLY

SENATE FINANCE COMMITTEE

1/10/2006

COMMITTEE ACTION

Bill Number	SB 70		
Amendment	#2		
Motion			
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Stedman			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	<b>Pass</b>		

CS FOR SENATE BILL NO. 70(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to controlled substances and listed chemicals; relating to the crimes of  
2 manslaughter and misconduct involving a controlled substance as those crimes concern  
3 controlled substances; relating to the manufacture of methamphetamine and to the sale,  
4 possession, and delivery of certain substances and precursors used in the manufacture of  
5 methamphetamine; relating to listing certain anabolic steroids as controlled substances;  
6 relating to the listing of property that constitutes an illegal drug manufacturing site;  
7 amending Rule 41, Alaska Rules of Criminal Procedure; and providing for an effective  
8 date."

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

10 \* Section 1. AS 11.41.120(a) is amended to read:

11 (a) A person commits the crime of manslaughter if the person

12 (1) intentionally, knowingly, or recklessly causes the death of another

1 person under circumstances not amounting to murder in the first or second degree;  
2 [OR]

3 (2) intentionally aids another person to commit suicide; or

4 (3) knowingly manufactures or delivers a controlled substance in  
5 violation of AS 11.71.010 - 11.71.030 or 11.71.040(a)(1) for schedule IVA  
6 controlled substances, and a person dies as a direct result of ingestion of the  
7 controlled substance; the death is a result that does not require a culpable mental  
8 state; in this paragraph, "ingestion" means voluntarily or involuntarily taking a  
9 substance into the body in any manner.

10 \* Sec. 2. AS 11.71.020(a) is amended to read:

11 (a) Except as authorized in AS 17.30, a person commits the crime of  
12 misconduct involving a controlled substance in the second degree if the person

13 (1) manufactures or delivers any amount of a schedule IA controlled  
14 substance or possesses any amount of a schedule IA controlled substance with intent  
15 to manufacture or deliver;

16 (2) manufactures any material, compound, mixture, or preparation that  
17 contains

18 (A) methamphetamine, or its salts, isomers, or salts of isomers;

19 or

20 (B) an immediate precursor of methamphetamine, or its salts,  
21 isomers, or salts of isomers;

22 (3) possesses an immediate precursor of methamphetamine, or the  
23 salts, isomers, or salts of isomers of the immediate precursor of methamphetamine,  
24 with the intent to manufacture any material, compound, mixture, or preparation that  
25 contains methamphetamine, or its salts, isomers, or salts of isomers; [OR]

26 (4) possesses a listed chemical with intent to manufacture any material,  
27 compound, mixture, or preparation that contains

28 (A) methamphetamine, or its salts, isomers, or salts of isomers;

29 or

30 (B) an immediate precursor of methamphetamine, or its salts,  
31 isomers, or salts of isomers;

1                   (5) possesses methamphetamine in an organic solution with intent  
2 to extract from it methamphetamine or its salts, isomers, or salts of isomers; or

3                   (6) under circumstances not proscribed under AS 11.71.010(a)(2),  
4 delivers

5                   (A) an immediate precursor of methamphetamine, or the  
6 salts, isomers, or salts of isomers of the immediate precursor of  
7 methamphetamine, to another person with reckless disregard that the  
8 precursor will be used to manufacture any material, compound, mixture,  
9 or preparation that contains methamphetamine, or its salts, isomers, or  
10 salts of isomers; or

11                   (B) a listed chemical to another person with reckless  
12 disregard that the listed chemical will be used to manufacture any  
13 material, compound, mixture, or preparation that contains

14                   (i) methamphetamine, or its salts, isomers, or salts of  
15 isomers;

16                   (ii) an immediate precursor of methamphetamine, or  
17 its salts, isomers, or salts of isomers; or

18                   (iii) methamphetamine or its salts, isomers, or salts  
19 of isomers in an organic solution.

20 \* Sec. 3. AS 11.71.020 is amended by adding a new subsection to read:

21                   (d) In a prosecution under (a) of this section, possession of more than six  
22 grams of the listed chemicals ephedrine, pseudoephedrine, phenylpropanolamine, the  
23 salts, isomers, or salts of isomers of those chemicals is prima facie evidence that the  
24 person intended to use the listed chemicals to manufacture, to aid or abet another  
25 person to manufacture, or to deliver to another person who intends to manufacture  
26 methamphetamine, its immediate precursors, or the salts, isomers, or salts of isomers  
27 of methamphetamine or its immediate precursors. The prima facie evidence described  
28 in this subsection does not apply to a person who possesses

29                   (1) the listed chemicals ephedrine, pseudoephedrine,  
30 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals

31                   (A) and the listed chemical was dispensed to the person under a

1 valid prescription; or

2 (B) in the ordinary course of a legitimate business, or an  
3 employee of a legitimate business, as a

4 (i) retailer or as a wholesaler;

5 (ii) wholesale drug distributor licensed by the Board of  
6 Pharmacy;

7 (iii) manufacturer of drug products licensed by the  
8 Board of Pharmacy;

9 (iv) pharmacist licensed by the Board of Pharmacy; or

10 (v) health care professional licensed by the state; or

11 (2) less than 24 grams of ephedrine, pseudoephedrine,  
12 phenylpropanolamine, or the salts, isomers, or salts of isomers of those chemicals,  
13 kept in a locked storage area on the premises of a legitimate business or nonprofit  
14 organization operating a camp, lodge, school, day care center, treatment center, or  
15 other organized group activity, and the location or nature of the activity, or the age of  
16 the participants, makes it impractical for the participants in the activity to obtain  
17 medicinal products.

18 \* Sec. 4. AS 11.71.030(a) is amended to read:

19 (a) Except as authorized in AS 17.30, a person commits the crime of  
20 misconduct involving a controlled substance in the third degree if the person

21 (1) under circumstances not proscribed under AS 11.71.020(a)(2) - (6)  
22 [AS 11.71.020(a)(2) - (4)], manufactures or delivers any amount of a schedule IIA or  
23 IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled  
24 substance with intent to manufacture or deliver;

25 (2) delivers any amount of a schedule IVA, VA, or VIA controlled  
26 substance to a person under 19 years of age who is at least three years younger than  
27 the person delivering the substance; or

28 (3) possesses any amount of a schedule IA or IIA controlled substance

29 (A) with reckless disregard that the possession occurs

30 (i) on or within 500 feet of school grounds; or

31 (ii) at or within 500 feet of a recreation or youth center;

1 or

2 (B) on a school bus.

3 \* **Sec. 5.** AS 11.71.180 is amended by adding a new subsection to read:

4 (f) Schedule VA includes, unless specifically excepted or unless listed in  
5 another schedule, any material, compound, mixture, or preparation that contains any  
6 quantity of the following substances, including their salts, esters, isomers, and salts of  
7 esters and isomers if those salts, esters, or isomers promote muscle growth, whenever  
8 the existence of these salts, esters, and isomers is possible within the specific chemical  
9 designation: anabolic steroids. In this subsection, "anabolic steroids" means any drug  
10 or hormonal substance that is chemically and pharmacologically related to testosterone  
11 (other than estrogens, progestins, and corticosteroids) and that promotes muscle  
12 growth; "anabolic steroids" does not include an anabolic steroid that is expressly  
13 intended for administration through implants to cattle or other nonhuman species and  
14 that has been approved by the United States Secretary of Health and Human Services  
15 for that administration, unless a person prescribes, dispenses, or distributes that type of  
16 anabolic steroid for human use; "anabolic steroids" includes the following:

- 17 (1) boldenone;
- 18 (2) chlorotestosterone (4-chlorotestosterone);
- 19 (3) clostebol;
- 20 (4) dehydrochloromethyltestosterone;
- 21 (5) dihydrotestosterone (4-dihydrotestosterone);
- 22 (6) drostanolone;
- 23 (7) ethylestrenol;
- 24 (8) fluoxymesterone;
- 25 (9) formebolone (formebolone);
- 26 (10) mesterolone;
- 27 (11) methandienone;
- 28 (12) methandranone;
- 29 (13) methandriol;
- 30 (14) methandrostenolone;
- 31 (15) methenolone;

- 1 (16) methyltestosterone;
- 2 (17) mibolerone;
- 3 (18) nandrolone;
- 4 (19) norethandrolone;
- 5 (20) oxandrolone;
- 6 (21) oxymesterone;
- 7 (22) oxymetholone;
- 8 (23) stanolone;
- 9 (24) stanozolol;
- 10 (25) testolactone;
- 11 (26) testosterone;
- 12 (27) trenbolone.

13 \* Sec. 6. AS 11.71 is amended by adding a new section to article 2 to read:

14 **Sec. 11.71.210. Purchase or receipt of restricted amounts of certain listed**  
15 **chemicals.** (a) A person commits the crime of purchase or receipt of restricted  
16 amounts of certain listed chemicals if the person purchases or receives more than six  
17 grams of the following listed chemical, its salts, isomers, or salts of isomers within  
18 any 30-day period:

- 19 (1) ephedrine under AS 11.71.200(4);
- 20 (2) pseudoephedrine under AS 11.71.200(13);
- 21 (3) phenylpropanolamine under AS 11.71.200(11).

22 (b) This section does not apply to a person who lawfully purchases or receives

- 23 (1) more than six grams of a listed chemical identified in (a) of this

24 section

25 (A) that was dispensed to the person under a valid prescription;

26 or

27 (B) in the ordinary course of a legitimate business, or to an  
28 employee of a legitimate business, as a

29 (i) retailer or as a wholesaler;

30 (ii) wholesale drug distributor licensed by the Board of

31 Pharmacy;

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(iii) manufacturer of drug products licensed by the Board of Pharmacy;

(iv) pharmacist licensed by the Board of Pharmacy; or

(v) a health care professional licensed by the state; or

(2) more than six but less than 24 grams of a listed chemical identified in (a) of this section in the ordinary course of a legitimate business or nonprofit organization, or as an employee of a legitimate business or nonprofit organization, operating a camp, lodge, school, day care center, treatment center, or other organized group activity, and the location or nature of the activity, or the age of the participants, makes it impractical for the participants in the activity to obtain medicinal products.

(c) Purchase or receipt of restricted amounts of certain listed chemicals is a class C felony.

\* Sec. 7. AS 12.30.023 is amended by adding a new subsection to read:

(b) In addition to conditions the court may impose under (a) of this section and notwithstanding other provisions in this chapter, if the defendant is charged with manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant proves to the satisfaction of the court that the defendant's only role in the offense was as an aider or abettor and that the defendant did not stand to benefit financially from the manufacturing, the court shall require the posting of a minimum of \$250,000 cash bond if the defendant has previously been convicted in this or another jurisdiction of manufacturing, delivering, or possessing methamphetamine.

\* Sec. 8. AS 12.55.125(c) is amended to read:

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission

Amend #2

1 of the offense, or knowingly directed the conduct constituting the offense at a  
2 uniformed or otherwise clearly identified peace officer, fire fighter,  
3 correctional employee, emergency medical technician, paramedic, ambulance  
4 attendant, or other emergency responder who was engaged in the performance  
5 of official duties at the time of the offense, seven to 11 years;

6 (B) and the conviction is for manufacturing related to  
7 methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years,

8 if

9 (i) the manufacturing occurred in a building with  
10 reckless disregard that the building was used as a permanent or  
11 temporary home or place of lodging for one or more children  
12 under 18 years of age or the building was a place frequented by  
13 children; or

14 (ii) in the course of manufacturing or in preparation  
15 for manufacturing, the defendant obtained the assistance of one or  
16 more children under 18 years of age or one or more children were  
17 present;

18 (3) if the offense is a second felony conviction, 10 to 14 years;

19 (4) if the offense is a third felony conviction and the defendant is not  
20 subject to sentencing under (1) of this section, 15 to 20 years.

21 \* Sec. 9. AS 12.55.125(d) is amended to read:

22 (d) Except as provided in (i) of this section, a defendant convicted of a class B  
23 felony may be sentenced to a definite term of imprisonment of not more than 10 years,  
24 and shall be sentenced to a definite term within the following presumptive ranges,  
25 subject to adjustment as provided in AS 12.55.155 - 12.55.175:

26 (1) if the offense is a first felony conviction and does not involve  
27 circumstances described in (2) of this subsection, one to three years; a defendant  
28 sentenced under this paragraph may, if the court finds it appropriate, be granted a  
29 suspended imposition of sentence under AS 12.55.085 if, as a condition of probation  
30 under AS 12.55.086, the defendant is required to serve an active term of imprisonment  
31 within the range specified in this paragraph, unless the court finds that a mitigation

1 factor under AS 12.55.155 applies;

2 (2) if the offense is a first felony conviction,

3 (A) the defendant violated AS 11.41.130, and the victim was a  
4 child under 16 years of age, two to four years;

5 (B) two to four years if the conviction is for an attempt,  
6 solicitation, or conspiracy to manufacture related to methamphetamine  
7 under AS 11.31 and AS 11.71.020(a)(2)(A) or (B), and

8 (i) the attempted manufacturing occurred, or the  
9 solicited or conspired offense was to have occurred, in a building  
10 with reckless disregard that the building was used as a permanent  
11 or temporary home or place of lodging for one or more children  
12 under 18 years of age or the building was a place frequented by  
13 children; or

14 (ii) in the course of an attempt to manufacture, the  
15 defendant obtained the assistance of one or more children under 18  
16 years of age or one or more children were present;

17 (3) if the offense is a second felony conviction, four to seven years;

18 (4) if the offense is a third felony conviction, six to 10 years.

19 \* Sec. 10. AS 12.55.185 is amended by adding a new paragraph to read:

20 (19) "building," in addition to its usual meaning, includes any  
21 propelled vehicle or structure adopted for overnight accommodation of persons or for  
22 carrying on business; when a building consists of separate units, including apartment  
23 units, offices, or rented rooms, each unit is considered a part of the same building.

24 \* Sec. 11. AS 17.30 is amended by adding a new section to article 1 to read:

25 Sec. 17.30.090. Sale or dispensation of certain listed chemicals. (a) If a  
26 product or substance contains ephedrine, pseudoephedrine, or phenylpropanolamine,  
27 or their salts, isomers, or salts of isomers, or iodine or crystal iodine, a retailer or  
28 employee or agent of a retailer may not sell, deliver, dispense, distribute, or in any  
29 manner furnish the product or substance to a person unless the retailer or employee or  
30 agent of the retailer confirms the identity of the person by current and valid  
31 government-issued photo identification.

1 (b) If a product or substance contains ephedrine, pseudoephedrine, or  
2 phenylpropanolamine, or their salts, isomers, or salts of isomers, or iodine or crystal  
3 iodine, a retailer or employee or agent of a retailer may not offer to sell, deliver,  
4 dispense, distribute, or in any manner furnish the product or substance unless it is  
5 displayed behind a service counter so it is not accessible to the public or is kept in a  
6 secure cabinet or storage area not accessible to the public.

7 (c) A retailer or employee or agent of a retailer may not sell, deliver, dispense,  
8 distribute, or in any manner furnish a product or substance containing, ephedrine,  
9 pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers,  
10 or iodine or crystal iodine, to a person who is under 18 years of age.

11 (d) Nothing in this section limits the authority of a retailer or employee or  
12 agent of a retailer regulated by this section to report to a law enforcement agency or  
13 officer suspicious purchases of a chemical, product, or substance. A retailer or  
14 employee or agent of a retailer is not liable in a civil action for release of information  
15 to a law enforcement agency concerning matters related to this section.

16 (e) It is an affirmative defense to a prosecution under this section that the  
17 retailer

18 (1) exercised the degree of care of a reasonable employer to ensure  
19 compliance with (a) - (c) of this section; and

20 (2) determined that the employees and agents of the retailer had been  
21 notified of the requirements of this section by

22 (A) securing the employee's or agent's written acknowledgment  
23 of notification of those requirements; or

24 (B) making another appropriate determination.

25 (f) A person who knowingly violates (a), (b), or (c) of this section is guilty of  
26 a class A misdemeanor, punishable upon conviction only by a fine in an amount not to  
27 exceed \$10,000.

28 (g) In this section,

29 (1) "agent" has the meaning given in AS 11.71.900;

30 (2) "deliver" has the meaning given in AS 11.71.900;

31 (3) "dispense" has the meaning given in AS 11.71.900;

1 (4) "distribute" has the meaning given in AS 11.71.900;

2 (5) "knowingly" has the meaning given in AS 11.81.900(a);

3 (6) "retailer" means a person, whether in this state or outside the state,  
4 who deals with a product or substance described in (a) of this section, by selling,  
5 delivering, dispensing, distribution, or in any manner furnishing the product or  
6 substance to a person in this state who is the ultimate user or consumer of the product  
7 or substance; "retailer" does not include a practitioner as defined in AS 11.71.900, but  
8 does include a pharmacy.

9 \* Sec. 12. AS 46.03.500 is amended by adding a new subsection to read:

10 (f) The department shall maintain on its Internet website a list of all properties  
11 for which a notice has been issued under (a) of this section. For each of those  
12 properties, the list must contain the parcel identification number, legal description, and  
13 physical address and owner's name at the time the notice was issued.

14 \* Sec. 13. AS 46.03.550(b) is amended to read:

15 (b) The department shall maintain a list of properties for which the department  
16 has received notice under AS 46.03.500(c). When the department determines under (a)  
17 of this section that a property on the list is fit for use, the department shall note on the  
18 list maintained on its Internet website under AS 46.03.500(f), and on any other  
19 list or database it maintains related to illegal drug manufacturing sites, that the  
20 property is fit for use [REMOVE THE PROPERTY FROM THE LIST] and shall  
21 notify the owner of the property that the property is fit for use. The property shall  
22 remain on the lists or databases for five years after it is determined that the  
23 property is fit for use and shall be removed from the lists or databases within  
24 three months after the five year period has elapsed. On request, the department  
25 shall give a copy of the list maintained under this section to any person who requests  
26 the list.

27 \* Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 INDIRECT COURT RULE AMENDMENT. Section 7 of this Act has the effect of  
30 amending Rule 41, Alaska Rules of Criminal Procedure, by limiting the type and amount of  
31 bond that can be posted to secure the pretrial release of certain defendants charged with

1 manufacturing methamphetamine under AS 11.71.020(a)(2).

2 \* Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 APPLICABILITY. Sections 1 - 11 and 14 of this Act apply to offenses committed on  
5 or after the effective date of this Act.

6 \* Sec. 16. This Act takes effect July 1, 2006.

SENATE FINANCE  
COMMITTEE

Amendment Number: #3  
Bill Number: SB 70  
Sponsor: Hoffman Date: 1/11/06  
Logged In By: Mindy

24-GS1049\P.1  
Luckhaupt  
1/11/06

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR HOFFMAN

TO: CSSB 70(FIN), Draft Version "P"

- 1 Page 9, line 30, following "retailer":  
2       Insert "(1)"  
3  
4 Page 9, line 31, following "identification":  
5       Insert "; and  
6                       (2) records the sale, delivery, dispensation, distribution, or furnishing in  
7       a written log that is maintained and lists information as required by the Department of  
8       Public Safety by regulation; the written log maintained under this paragraph is  
9       confidential, and access to the log is limited to the Department of Public Safety and  
10      other law enforcement officers and agencies; a retailer is not liable in a civil action for  
11      release of information listed in the log unless the retailer intentionally released the  
12      information in violation of this paragraph"