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tially identical despite their differing language.¹⁰⁴ Washington courts also consistently have held that the Washington equal protection provision may be interpreted to provide greater individual rights than the federal guarantee.¹⁰⁵

1. Standard of Review

Washington courts reviewing legislation under the state constitution use the same three standards of review currently applied by the United States Supreme Court under the federal constitution.¹⁰⁶ However, Washington courts do not apply these standards in the same manner as the United States Supreme Court. Instead, Washington courts sometimes subject challenged legislation to higher standards of review than are applicable under the federal constitution.

For example, in *State v. Wood*¹⁰⁷ the Washington Supreme Court noted that the United States Supreme Court had not yet found gender-based classifications suspect and thus subject to strict scrutiny.¹⁰⁸ The Washington court held, however, that under the Washington equal protection guarantee gender was a suspect classification "requiring strict scrutiny to determine whether the State has demonstrated a compelling state interest to uphold such classification."¹⁰⁹ Again, in *Darrin v. Gould*¹¹⁰ the Washington Supreme Court acknowledged that the United States Supreme Court had found neither that gender-based classifications were suspect, nor that education was a fundamental right.¹¹¹ Nevertheless, the Washington court held that an education free from sexual discrimination was a fundamental right under the Washington Constitution.¹¹² *Wood*, *Darrin*, and other Washington

104. *State v. Perrigoue*, 81 Wash. 2d 640, 503 P.2d 1063 (1972). The federal provision requires that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1, cl. 4.

105. See, e.g., *Darrin v. Gould*, 85 Wash. 2d 859, 868, 540 P.2d 882, 888 (1975); *State v. Alfonso*, 41 Wash. App. 121, 126, 702 P.2d 1218, 1221 (1985).

106. See, e.g., *State v. Rice*, 98 Wash. 2d 384, 655 P.2d 1145 (1982) (strict scrutiny); *Griffin v. Department of Social & Health Servs.*, 91 Wash. 2d 616, 590 P.2d 816 (1979) (minimal scrutiny); *State v. Wood*, 89 Wash. 2d 97, 569 P.2d 1148 (1977) (strict scrutiny); *Hunter v. North Mason School Dist.*, 85 Wash. 2d 810, 539 P.2d 845 (1975) (intermediate scrutiny); *Washington Ass'n of Child Care Agencies v. Thompson*, 34 Wash. App. 225, 660 P.2d 1124 (1983) (minimal scrutiny).

107. 89 Wash. 2d 97, 569 P.2d 1148 (1977).

108. *Id.* at 100, 569 P.2d at 1150.

109. *Id.* The United States Supreme Court has held that gender-based classifications deserve intermediate, but not strict, scrutiny. E.g., *Craig v. Boren*, 429 U.S. 190, 197 (1976).

110. 85 Wash. 2d 859, 540 P.2d 882 (1975).

111. *Id.* at 865-66, 540 P.2d at 886-87.

112. *Id.* at 870, 540 P.2d at 888. The right to an education free from sexual discrimination is provided by the Washington Constitution. WASH. CONST. art. IX, § 1.

decisions, as well as case law in other states and considerations of public policy, strongly suggest that Washington courts should apply a higher standard of review to Washington's noneconomic damages cap.

a. *Washington Case Law*

Under Washington case law the right to be compensated for personal injuries is important enough that statutes burdening the right trigger intermediate scrutiny.¹¹³ In 1975 the Washington Supreme Court held in *Hunter v. North Mason School District*¹¹⁴ that

[t]he right to be indemnified¹¹⁵ for personal injuries is a substantial property right Statutory classifications which substantially burden such rights as to some individuals but not others are permissible under the equal protection clause of the Fourteenth Amendment only if they are "reasonable, not arbitrary, and . . . rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."¹¹⁶

Application of this intermediate standard should be extended to the right to the full recovery of noneconomic damages. A damages cap significantly affects the right to be indemnified. Indemnification is the restoration of the victim of a loss,¹¹⁷ and in Washington such restoration includes compensation for noneconomic loss.¹¹⁸ Washington's

113. See *Carter v. Fibreboard Corp.*, No. 87-2-03555-7, slip op. at 20 (Wash. Super. Ct. order on pre-trial motion Feb. 19, 1988). No reported Washington decisions have characterized the right to recover in tort as "fundamental" so as to trigger strict scrutiny in substantive due process or equal protection analysis.

114. 85 Wash. 2d 810, 539 P.2d 845 (1975).

115. The *Hunter* court seems to have meant "indemnified" to include the proper elements of negligence damages, which at the time of *Hunter* included noneconomic damages such as pain and suffering.

116. *Hunter*, 85 Wash. 2d at 814, 539 P.2d at 848 (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)) (additional citations omitted). The standard applied in *Hunter* is more intense than the rational basis test. See *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399, 407 (1976), cert. denied, 431 U.S. 914 (1977); *Carson v. Maurer*, 120 N.H. 925, 424 A.2d 825, 830-31 (1980); *Rose v. Doctors Hosp. Facilities*, 735 S.W.2d 244, 249 (Tex. Ct. App. 1987). But see *Johnson v. St. Vincent Hosp.*, 273 Ind. 374, 404 N.E.2d 585, 600 (1980). The *Johnson* court applied "the fair and substantial relationship test" to Indiana's damages cap in the apparent belief that it was invoking only minimal scrutiny. See 404 N.E.2d at 600-01.

The United States Supreme Court's decision in *Duke Power Co. v. Carolina Envtl. Study Group* three years after *Hunter* suggests that the *Hunter* court was incorrect to apply intermediate scrutiny under the federal constitution. See *Duke Power Co. v. Carolina Envtl. Study Group*, 438 U.S. 59 (1978). The *Hunter* court instead might safely have relied solely on the state equal protection clause. See *Sibley v. Board of Supervisors*, 477 So. 2d 1094, 1104-07 (La. 1985); *Carson*, 424 A.2d at 831.

117. See BLACK'S LAW DICTIONARY 692 (5th ed. 1979).

118. See *Shaw v. United States*, 741 F.2d 1202 (9th Cir. 1984). The court in *Shaw* noted that Washington law permitted recovery of damages for pain and suffering and other noneconomic damages, and that under Washington law such damages were compensatory. *Id.* at 1208.

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Washington's Noneconomic Damages Limit

limit in one case reduced the aggregate damages award by eighty-six percent.¹¹⁹ This is as significant an infringement on the right to indemnification as was the statute challenged in *Hunter*, which statute effectively eliminated the plaintiff's cause of action.¹²⁰

b. Case Law in Other States

In some cases, courts in other states have applied intermediate scrutiny to state due process and equal protection challenges of damages caps. While the rational basis test has been applied more often, the decisions to invoke intermediate scrutiny show greater sensitivity to the discriminatory effect of damages ceilings and the nature of the interests at stake. In one case, a court invoked intermediate scrutiny partly in reliance on the Washington Supreme Court's decision in *Hunter v. North Mason School District*.¹²¹

In *Carson v. Maurer*¹²² the New Hampshire court cited the Washington court's holding in *Hunter* that the right to recover for personal injuries is a substantial property right.¹²³ The *Carson* court found that characterization compelling, concluding that "the rights involved herein are sufficiently important to require that the restrictions imposed on those rights be subjected to a more rigorous judicial scrutiny than allowed under the rational basis test."¹²⁴ The court acknowledged that the United States Supreme Court had restricted application of intermediate scrutiny to cases involving classifications based on gender and illegitimacy, but announced that it was free to grant individuals greater protections under the state constitution.¹²⁵

119. See *Sofie v. Fibreboard Corp.*, No. 87-2-00407-6, slip op. at 2 (Wash. Super. Ct. Oct. 30, 1987).

120. The *Hunter* court invalidated a Washington statute that required persons with claims against certain governmental bodies to either file their claims with those bodies within 120 days of the date the claim arose or forfeit those claims. 85 Wash. 2d at 811 n.1, 539 P.2d at 846 n.1.

121. *Carson v. Maurer*, 120 N.H. 925, 424 A.2d 825 (1980) (citing *Hunter v. North Mason School Dist.*, 85 Wash. 2d 810, 539 P.2d 845 (1975)).

122. 120 N.H. 925, 424 A.2d 825 (1980).

123. 424 A.2d at 830.

124. *Id.* Some courts have relied on other grounds to review medical malpractice damages ceilings under intermediate scrutiny. In *Arneson v. Olson*, 270 N.W.2d 125, 133 (N.D. 1978), the North Dakota court relied on its earlier use of intermediate scrutiny of a statute that limited tort recoveries in *Johnson v. Hassett*, 217 N.W.2d 771 (N.D. 1974). The *Hassett* court had found that the United States Supreme Court's then-recent introduction of a new intermediate analysis closely approximated the test historically used by the North Dakota court. 217 N.W.2d at 775. In *Sibley v. Board of Supervisors*, 477 So. 2d 1094, 1107-08 (La. 1985), the Louisiana court found that a damages limit classified people based on their physical condition, a classification prohibited under the Louisiana Constitution.

125. 424 A.2d at 831.

In *Jones v. State Board of Medicine*¹²⁶ the Idaho Supreme Court held that intermediate scrutiny was applicable where "the discriminatory character of a challenged statutory classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute."¹²⁷ The discriminatory character of the Washington limit is apparent on its face. The limit facially discriminates against aged and noneconomically injured plaintiffs. While there may be a rational relationship between the classification and the declared purpose of the statute, the lack of a substantial relationship is indicated by the fact that a reduction in awards of noneconomic damages cannot force insurers to offer coverage at reasonable rates.

c. Public Policy Considerations

Public policy considerations also compel the use of an intermediate standard of review. First, courts should carefully scrutinize legislation that supports a special interest at the expense of a disadvantaged class. Second, severely injured victims whose noneconomic damages are limited might as a result receive less than full compensation even for their economic damages. Noneconomic damages often are that part of the plaintiff's award that pays the attorney's fee. A reduction in noneconomic damages may mean that the attorney's share of the total judgment must be paid from monies that were allocated by the court to economic damages, such as past and future medical expenses.

2. Application of Review

The discriminatory classifications that Washington's damages limit creates, rather than the statute's aggregate effect on those it regulates, render the statute unconstitutional under intermediate scrutiny. In other words, a court should hold that the statute violates the Washington Constitution's equal protection guarantee but not the substantive due process guarantee.

A statute satisfies the substantive due process requirement when it is substantially related¹²⁸ to the promotion of a legitimate governmental

126. 97 Idaho 859, 555 P.2d 399 (1976), cert. denied, 431 U.S. 914 (1977).

127. 555 P.2d at 411. The court invoked an intermediate standard of review in weighing an equal protection challenge to Idaho's damages limit, but seemed to invoke only a rational basis standard to consider a substantive due process challenge to the limit. See *id.* at 409-10. This comports with the United States Supreme Court's omission to apply intermediate scrutiny in the context of substantive due process.

128. "Substantially" means materially, importantly, or essentially. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2280 (1981).

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interest.¹²⁹ The stated object of the Tort Reform Act was to create a more equitable tort compensation system and increase the availability and affordability of liability insurance.¹³⁰ This appears to be a legitimate governmental interest.¹³¹

The statute probably is not substantially related to that interest. Although there is evidence that damages ceilings reduce damages awards,¹³² and while it may be rational to believe that a reduction in damages will lead to an eventual reduction in rates,¹³³ there is no apparent substantial relationship between a reduction in damages judgments and an increase in insurance availability and affordability. The mid-1980's insurance crisis was caused in part by bad insurance company management practices.¹³⁴ Further, insurance companies are not obliged to increase availability and decrease rates as their uncertainties and liabilities decrease. In view of these other influences on insurance availability and rates, the relationship between the statute's means and end seems rational but not substantial.

Yet even if there is not a substantial relationship between the statute and the legislature's purpose, courts are likely to discredit a substantive due process challenge for three reasons. First, courts may refuse to apply intermediate scrutiny to the challenge, even while applying such scrutiny to an equal protection challenge.¹³⁵ Second, courts may avoid substantive due process challenges if they can dispose of a case on equal protection grounds. Washington courts rarely in recent years have invalidated legislation on substantive due process grounds.¹³⁶ Third, Washington courts may defer to the decisions of courts in other

129. Recent Washington decisions appear not to have applied the substantial relationship test to a substantive due process challenge. The stated test is based on the test applied in *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920).

130. 1986 Wash. Laws ch. 305, § 100.

131. See *supra* text accompanying note 88.

132. Danzon, *The Effects of Tort Reforms on the Frequency and Severity of Medical Malpractice Claims*, 48 OHIO ST. L.J. 413, 416 (1987). Professor Danzon found that "[t]he average impact of statutes to limit all or part of the plaintiff's recovery has been to reduce average severity by twenty-three percent." *Id.*

133. See *supra* text accompanying notes 89-90.

134. See *supra* note 28 and accompanying text.

135. E.g., *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976), *cert. denied*, 431 U.S. 914 (1977). But see *supra* notes 60-61 and accompanying text. There appear to be no recent Washington decisions in which a court applied intermediate scrutiny to a statute challenged on substantive due process grounds.

136. See *Aetna Life Ins. v. Washington Life & Disability Guar.*, 83 Wash. 2d 523, 533-34, 520 P.2d 162, 169 (1974); *Seattle Times v. Tielsch*, 80 Wash. 2d 502, 512, 495 P.2d 1366, 1371 (1972) (Finley, J., dissenting).

states, which courts have consistently rejected substantive due process challenges to medical malpractice damages limits.¹³⁷

These considerations probably will influence a court not to find a substantive due process violation but will not interfere with the determination of the equal protection challenge. Under the equal protection guarantee of the state constitution, the statute should be stricken. The state equal protection test is whether the statute's classifications have a fair and substantial relation to the object of the legislation.¹³⁸ This test differs slightly from due process intermediate scrutiny. It examines whether the statute's discriminatory effect, rather than the statute's aggregate effect, bears a substantial relationship to the statute's purpose.

Courts that have used intermediate scrutiny to review medical malpractice damages limits either have found that the limits failed the substantial relationship test¹³⁹ or have remanded the cases to the trial courts for further factual determinations.¹⁴⁰ The North Dakota court in *Arneson v. Olson*¹⁴¹ applied intermediate scrutiny to that state's medical malpractice damages ceiling and found the ceiling violative of the state equal protection guarantee. The court found that the limit benefited physicians but denied adequate compensation to plaintiffs with proven meritorious claims and did nothing toward the elimination of nonmeritorious claims.¹⁴²

The New Hampshire Supreme Court in *Carson v. Maurer*,¹⁴³ in applying intermediate scrutiny to a medical malpractice damages cap challenged under the New Hampshire equal protection guarantee, also found no substantial relationship between the cap and the legislative purpose. The court rather found that "[i]t is simply unfair and unrea-

137. See, e.g., *Fein v. Permanente Medical Group*, 38 Cal. 3d 137, 695 P.2d 665, 211 Cal. Rptr. 368, appeal dismissed, 474 U.S. 892 (1985); *Rose v. Doctors Hosp. Facilities*, 735 S.W.2d 244 (Tex. Ct. App. 1987). The courts in *Fein* and *Rose* applied minimal, rather than intermediate, scrutiny.

138. See *Hunter v. North Mason School Dist.*, 85 Wash. 2d 810, 814, 539 P.2d 845, 848 (1975).

139. See *Arneson v. Olson*, 270 N.W.2d 125 (N.D. 1978); *Carson v. Maurer*, 120 N.H. 925, 424 A.2d 825 (1980). *Contra Johnson v. St. Vincent Hosp.*, 273 Ind. 374, 404 N.E.2d 585 (1980) (purported to invoke substantial relationship test but in fact decided equal protection challenge under rational basis test).

140. *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976), cert. denied, 431 U.S. 914 (1977); *Sibley v. Board of Supervisors*, 477 So. 2d 1094 (La. 1985). On at least one of these remands, the limit was held unconstitutional. *Boyd v. Bulala*, 647 F. Supp. 781, 785 n.2 (W.D. Va. 1986) (citing *Jones v. State Bd. of Medicine*, Nos. 55527, 55586 (4th Dist. Idaho Nov. 3, 1980)).

141. 270 N.W.2d 125, 135 (N.D. 1978).

142. *Id.* at 135-36.

143. 120 N.H. 925, 424 A.2d 825, 837 (1980).

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sonable to impose the burden of supporting the medical care industry solely upon those persons who are most severely injured and therefore most in need of compensation."¹⁴⁴

Washington's cap denies equal protection for similar reasons. The cap denies adequate compensation to the most seriously injured plaintiffs, plaintiffs with proven meritorious claims, and imposes on them the burden of supporting the insurance industry. The legislative object of preserving insurance availability and affordability is not substantially related to the classifications of plaintiffs according to whether their damages are economic or noneconomic, whether their noneconomic damages are above or below an arbitrary limit, or whether they are young or old.¹⁴⁵ The difference between economic loss and noneconomic loss is that economic loss is quantified by doctors, hospitals, and employers, who establish the monetary value of past and future medical care and lost wages, whereas noneconomic loss is quantified by laypersons who sit on juries. There is no substantial relationship between the distinction and the legislative purpose. The distinction merely enforces a suspicion of claims for noneconomic loss.

The statute's classifications may not even have a substantial relationship to a reduction in insurer uncertainty and liability. Although the statute forbids the instruction of juries as to the existence of a limit, it seems likely that citizens eventually will learn that the limit exists.¹⁴⁶ Such knowledge might encourage juries that wish to avoid the statute to categorize their awards as economic damages, which are unlimited under the statute.

Additionally, the legislature cannot guarantee that a reduction in insurer uncertainty and liability will be passed along to the entities

144. 424 A.2d at 837. There are many analogies between automobile guest statutes—and the reasons for abolishing such statutes—and contemporary tort reform legislation. Consider the discussion of guest statutes in W. KEETON, PROSSER AND KEETON ON THE LAW OF TORTS 215-17 (5th ed. 1984). Washington repealed its guest statute in 1974. *Id.* at 216 n.84.

145. A 55-year-old male who has suffered severe and permanent injuries is limited to \$177,610 in noneconomic damages, whereas a 25-year-old male who has suffered severe injuries from which he will completely recover within a year can recover as much as \$399,102 in noneconomic damages. See WASH. REV. CODE § 4.56.250 (1987); WASH. SUP. CT. COMM'N ON JURY INSTRUCTIONS, *supra* note 32; WASH. STATE EMPLOYMENT SEC. DEPT LABOR MKT. & ECON. ANALYSIS BRANCH, *supra* note 32. "There is no substantial relationship or rational basis asserted which the court could accept for that difference in classification." *Foster v. Fibreboard Corp.*, No. 87-2-05629-5, slip op. at 9 (Wash. Super. Ct. order on pre-trial motion Sept. 18, 1987).

146. For example, a front-page newspaper story in the Seattle Times recently announced that a trial court judge had ruled the Washington limit unconstitutional. *Judge Rules Lid on Injury Awards Unconstitutional*, Seattle Times, Feb. 20, 1988, at 1, col. 4.

that must buy liability insurance. Aggregate awards may have dropped after medical malpractice damages caps were imposed in the mid-1970's, but there might be no relationship between the drop in awards and the promise of available and affordable liability insurance.

The classifications are not substantially related to the legislative end. While a rational relationship might exist between the classifications and the end, this relationship does not rise to the level of substantiality. The damages limit therefore denies the equal protection of the laws guaranteed by the Washington Constitution.¹⁴⁷

C. Washington Constitution: Right of Trial by Jury

Washington's limit on damages requires the trial court to reduce the jury's determination of noneconomic damages when the jury's award exceeds the statute's ceiling. This interference with the jury function raises another constitutional challenge. The Washington Constitution provides that "[t]he right of trial by jury shall remain inviolate."¹⁴⁸ The word "inviolable" in the provision means "freedom from substantial impairment" but does not prohibit modification of administrative details that do not affect the enjoyment of the right to a jury trial.¹⁴⁹

Washington's noneconomic damages limit abridges the jury trial guarantee.¹⁵⁰ The guarantee limits the authority of the legislature to take away the right to a jury trial.¹⁵¹ The damages limit does more than modify administrative details; it substantially impairs the jury trial right.

More than one court already has invalidated a damages limit on right to jury trial grounds. In *Boyd v. Bulala*¹⁵² a federal district court judge held that both the federal and Virginia constitutional guarantees of the right to a jury trial were violated by Virginia's \$750,000 limit on

147. Because Washington's equal protection guarantee does not prohibit the grant of special privileges or immunities to municipal corporations, the damages limit probably is not unconstitutional on state equal protection grounds when applied to a municipality. See WASH. CONST. art I, § 12.

148. *Id.* art. I, § 21.

149. *State v. Furth*, 5 Wash. 2d 1, 18-19, 104 P.2d 925, 933 (1940).

150. *Foster v. Fibreboard Corp.*, No. 87-2-05629-5, slip op. at 12 (Wash. Super. Ct. order on pre-trial motion Sept. 18, 1987); accord *Boyd v. Bulala*, 647 F. Supp. 781 (W.D. Va. 1986) (Virginia damages ceiling violates federal and Virginia guarantees of right to jury trial). *Contra Johnson v. St. Vincent Hosp.*, 273 Ind. 374, 404 N.E.2d 585 (1980) (Indiana damages cap does not violate jury trial provision of Indiana constitution).

151. *State v. Ellis*, 22 Wash. 129, 131, 60 P. 136, 137 (1900), overruled on other grounds, *State v. Lane*, 40 Wash. 2d 734, 246 P.2d 474 (1952).

152. 647 F. Supp. 781 (W.D. Va. 1986).

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damages recoverable in medical malpractice actions.¹⁵³ The court found that the federal jury trial guarantee provided the right to have the jury determine not only liability but damages.¹⁵⁴ According to the court, the statutory limit, which required "entering a judgment predetermined by the legislature in place of a judgment on a verdict properly reached by a jury," had no permissible basis.¹⁵⁵ At least two Washington trial courts, on pre-trial motions, have rejected the defense of the damages limit partly on right of trial by jury grounds.¹⁵⁶

The determination of the plaintiff's damages, including noneconomic damages,¹⁵⁷ is a question of fact for the jury.¹⁵⁸ The statutory cap, in effect, permits the legislature to reexamine and modify the findings of the jury. This interference is especially inappropriate in view of the authority of a judge to set aside an excessive verdict and order a new trial, enter judgment notwithstanding the verdict, or order remittitur where the evidence does not support the verdict. This authority is well-established both at common law and in modern court rules.¹⁵⁹ Unlike a statutory damages cap, these judicial interventions are exercised neither arbitrarily nor in disregard of the facts proved at trial.

Washington's damages cap ignores facts proved at trial. It takes into account only the plaintiff's age and the average annual state wage and not the seriousness of either the injury or the loss. The statute

153. *Id.* at 789; see also *Smith v. Department of Ins.*, 507 So. 2d 1080, 1088-89 (Fla. 1987) (Florida tort reform damages cap invalidated partly because it denies plaintiff constitutional benefit of jury trial). The *Boyd* court later refused to reconsider its holding. *Boyd v. Bulala*, 672 F. Supp. 915 (W.D. Va. 1987).

154. 647 F. Supp. at 788 ("Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935))).

155. *Id.* at 789.

156. *Foster v. Fibreboard Corp.*, No. 87-2-05629-5, slip op. at 12 (Wash. Super. Ct. order on pre-trial motion Sept. 18, 1987); *Carter v. Fibreboard Corp.*, No. 87-2-03555-7, slip op. at 30 (Wash. Super. Ct. order on pre-trial motion Feb. 19, 1988). In *Foster*, King County Superior Court Judge Ellington declared that the limit "renders the right to a jury trial not substantive, not fully extended." *Foster v. Fibreboard Corp.*, No. 87-2-05629-5, slip op. at 12 (Wash. Super. Ct. order on pre-trial motion Sept. 18, 1987).

157. *Power v. Union Pac. R.R.*, 655 F.2d 1380, 1388 (9th Cir. 1981) (under Washington law, amount of damages for loss of companionship is left to trier of fact); *Farman v. Farman*, 25 Wash. App. 896, 611 P.2d 1314 (1980) (amount of damages for intentional infliction of emotional distress is question for trier of fact).

158. *Shea v. City of Spokane*, 17 Wash. App. 236, 562 P.2d 264 (1977) (proof of damages is question of fact for jury); *Baker v. Prewitt*, 3 Wash. Terr. 595, 19 P. 149 (1888) (where amount of damages is not fixed, agreed upon, or liquidated, jury must be called unless waived).

159. Some such common-law rules have become court rules. *E.g.*, WASH. SUPER. CT. CIV. R. 59(a)(5) (judge may set aside excessive verdict and order new trial).

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"invades the province of the jury and restricts the jury's ability to assess damages."¹⁶⁰ It is therefore unconstitutional under the Washington Constitution.¹⁶¹

III. CONCLUSION

Washington's damages limit violates the state equal protection and right of trial by jury guarantees. Under the state equal protection provision, courts should give the statute intermediate scrutiny. This standard of review is supported by Washington case law, case law in other states, and public policy considerations. Because the statute's classifications are not substantially related to a legitimate legislative interest, the statute denies tort plaintiffs the equal protection of the laws. The statute denies the right of trial by jury because it materially invades the province of the jury to find facts.

State constitutional guarantees of due process and equal protection should not be understood by courts merely to restate the fourteenth amendment. Washington courts can and do grant greater protections of individual rights under the state constitution. Such protection is warranted in the review of legislation that classifies and affects the rights of tort victims.

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160. *Boyd v. Bulala*, 647 F. Supp. 781, 789 (W.D. Va. 1986).

161. The limit by its terms applies to all "action[s] seeking damages for personal injury or death." WASH. REV. CODE § 4.56.250(2) (1987). Nevertheless, the limit is not unconstitutional on jury trial grounds as to all such actions, but rather only to actions for personal injury. Whether a person is entitled to a jury trial under the Washington Constitution depends on whether the right existed in 1889, when the Washington Constitution was adopted. *Firchau v. Gaskill*, 88 Wash. 2d 109, 558 P.2d 194 (1977). The right to a jury trial in a civil action existed in Washington in 1889. See *Baker v. Prewitt*, 3 Wash. Terr. 395, 19 P. 149 (1888) (breach of warranty action); *Northern Pac. R.R. v. Holmes*, 3 Wash. Terr. 543, 18 P. 76 (1888) (negligence action). The state constitution therefore preserves the right. On the other hand, the cause of action for wrongful death did not exist until created by the legislature in 1917. 1917 Wash. Laws ch. 123, § 1. Although parties to a claim for wrongful death have a right to a jury trial, that right is statutory and not constitutional.

The distinction may cause a court to sever the application of the damages limit as to personal injury actions but leave intact the limit as to wrongful death. *Contra Carter v. Fibreboard Corp.*, No. 87-2-03555-7, slip op. at 31 (Wash. Super. Ct. order on pre-trial motion Feb. 19, 1988) (jury trial right exists regardless of "whether the right was created by statute or existed at common law"). Severance would, in effect, amend Washington's wrongful death act to provide for a limit on noneconomic damages. Such a limit is probably constitutional under the Washington jury trial guarantee. See *Hall v. Gillins*, 13 Ill. 2d 26, 147 N.E.2d 352 (1958). But see *White v. State*, 203 Mont. 363, 661 P.2d 1272 (1983).

Washington's Noneconomic Damages Limit

TABLE: REPORTED DECISIONS ON THE CONSTITUTIONALITY OF MEDICAL MALPRACTICE AND TORT REFORM DAMAGES LIMITS. This Table gathers in chronological order recent decisions on the constitutionality of medical malpractice and tort reform damages limits. The Table does not include cases that have been overruled or that merely follow binding precedent. Where both a state and federal court have decided the constitutionality of the same statute, the Table reports both decisions. For citations to the following cases, see footnotes 38-49.

CASE	LIMIT	STANDARD OF REVIEW	HELD	GROUND
Wright v. Central DuPage Hosp. (Ill. 1976)	\$500,000 ^A	Q	UC	SL ¹
Jones v. State Bd. of Medicine (Idaho 1976)	Variable ^A	NA	C	AC ²
Simon v. St. Eliz'th Med. Cntr. (Ohio C.P. 1976)	\$200,000 ^D	RB/I	R	DP, ³ EP ⁴
Prendergast v. Nelson (Neb. 1977)	\$500,000 ^A	Q	UC ⁵	EP ⁶
Arneson v. Olson (N.D. 1978)	\$300,000 ^A	RB	C	SP ⁷
Johnson v. St. Vincent Hosp. (Ind. 1980)	\$500,000 ^A	I	UC	EP ⁸
Carson v. Maurer (N.H. 1980)	\$250,000 ^{NE}	Q	C	DP, ⁹ EP, ¹⁰ JT ¹¹
Baptist Hosp. v. Baber (Tex. App. 1984)	\$500,000 ^{NM}	RB	UC	EP ¹²
Malone & Hydz, Inc. v. Hobrecht (Tex. App. 1985)	\$500,000 ^{NM}	I	UC	EP ¹³
Fein v. Permanente Medical Group (Calif. 1985)	\$250,000 ^{NE}	NA	UC	Baptist Hosp.
Detar Hosp. v. Estrada (Tex. App. 1985)	\$500,000 ^{NM}	RB	C	DP, ¹⁴ EP ¹⁵
Hoffman v. United States (9th Cir. 1985)	\$250,000 ^{NE}	RB	UC	EP, ¹⁶ AC ¹⁷
Duren v. Suburban Comm'y Hosp. (Ohio C.P. 1985)	\$200,000 ^D	RB	C	EP ¹⁸
Sibley v. Board of Supervisors (La. 1985)	\$500,000 ^{NM}	Q	UC	Q ¹⁹
Waggoner v. Gibson (N.D. Tex. 1986)	\$500,000 ^{NM}	Q	R	EP ²⁰
Boyd v. Bulala (W.D. Va. 1986)	\$750,000 ^A	RB	UC	DP, ²¹ EP, ²² AC ²³
Lucas v. United States (5th Cir. 1986)	\$500,000 ^{NM}	RB	C	DP, ²⁴ EP ²⁵
Smith v. Dep't of Ins. (Fla. 1987)	\$450,000 ^{NE}	NA	UC	AC, ²⁶ JT ²⁷
Lucas v. United States (Tex. 1988)	\$500,000 ^{NM} \$150,000 ^{NE}	RB	UC	AC ²⁸

Explanation of symbols:

Type of damages limited: A = All damages; G = General damages; NE = Noneconomic damages; NM = Nonmedical damages

Standard of review: I = Intermediate; RB = Rational basis; NA = Not applicable; Q = Unclear

Holding: C = Constitutional or not unconstitutional; UC = Unconstitutional; D = Dictum; R = Not decided in reported case, remanded to trial court for decision as to constitutionality

Grounds for court's decision: AC = Right of access to courts; DP = Due process; EP = Equal protection; JT = Right of trial by jury; SL = Special legislation; SP = Special privilege; Q = Unclear

Constitution relied on by court: B = Both federal and state constitutions; F = Federal constitution only; S = State constitution only; Q = Unclear

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76 (1888) (negligence
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but see White v. State,



Preserving tort reform gains

By J. Anthony Manger, Esq., Norris, McLaughlin & Marcus, General Counsel to PIAA

While the pace of legislative reform of medical professional liability has often been frustrating to those of us in the PIAA community, significant achievements have been realized in several states. Unfortunately, conclusion of the legislative battle does not end the war. In addition to on-going legislative assaults, we have learned that we can expect court challenges to any significant tort reform.

Unfortunately, supporters of tort reform, to date, have suffered about as many losses as victories in facing these court challenges. It is sometimes difficult to discern a pattern to the decisions of various courts in addressing tort reform. With a significant number of such cases now behind us, it is important that we assess, as best we can, the reasons differentiating our successes from our failures.

Naturally, the first and most important distinguishing characteristic among the court decisions involves the differences among the statutes in question. Sometimes, to the casual observer, these differences may not be obvious. Many of the most important court decisions in this field have, for example, passed upon statutes imposing damage caps. Some of the statutes have sought to limit all damages, while other statutes have attempted to restrict only non-economic damages. Total damage caps have been upheld in some instances (such as Indiana), while non-economic damage caps have been struck down in some cases. Nevertheless, it is clear that caps which apply only to non-economic damages have a far better chance of withstanding challenge.

Second, in many cases, the reviewing court will look for a "quid pro quo" in the legislation. The classic cases of this type are those from the early part of this century upholding worker's compensation acts of the various states. There, the quid pro quo was obvious: replacement of the tort system with a no-fault mechanism. While the Virginia birth-related injury statute offers such a quid pro quo, most malpractice reform statutes do not. Nevertheless, other types of quid pro quo may be afforded. The PIAA and AMA/GMSS proposals, for example, offer the speed and reduced expense of an administrative system.

Virtually all legal challenges to tort reform statutes are based, at least in part, on arguments that the legislation violates the due process and equal protection clauses of the federal constitution (and often of similar state constitutional provisions). Thus, a reviewing court will require a showing with regard to the situa-

tion which the legislature sought to address in adopting the statute. It is certainly helpful, and perhaps essential, that a legislative record be established showing that the legislature considered such factors as (i) increasing numbers and severity of claims, (ii) rising costs of insurance, (iii) estimated social costs of "defensive medicine", and (iv) withdrawal of physicians from practice or limitations of practice, and the resulting impact on access to medical care. A review of court decisions indicates that some legislatures did a better job than others in establishing such a record. A review of those same decisions also emphasizes the importance of presenting that argument persuasively and effectively to the court.

In addition, we must recognize that differences among the constitutional provisions of the various states, along with different judicial philosophies and political climates, will also yield varying results even in similar cases.

Finally, courts in these cases have applied inconsistent legal standards of review of the equal protection argument. In general, courts have applied three standards of review in equal protection cases. The most stringent, "strict scrutiny," is applied in such instances as those involving claims of racial discrimination. In other types of cases, the courts will uphold the statute as long as it bears a reasonable relationship to a valid legislative purpose. In recent years, however, the courts have applied an "intermediate standard" of review in some equal protection cases.

In reviewing tort reform legislation, the selection of the appropriate standard of review for the equal protection claim may determine the result. In two recent cases, for example, the validity of Virginia's cap on damages was upheld. The state's Supreme Court and a federal appeals court both agreed that the limited "rational basis" review was the appropriate standard. In a recent lower court decision in New Mexico, however, the court applied the more stringent intermediate standard of review and, as a result, struck down New Mexico's cap.

PIAA is monitoring the New Mexico case and, in all likelihood, will file an *amicus curiae* brief when it reaches the state's Supreme Court. The struggle to preserve tort reform, even after a legislative victory, is a difficult one requiring vigilance and perseverance. PIAA expects to be an active participant in that struggle.

**SPECIAL ATTACHMENT
PRE-JUDGEMENT INTEREST**

A RAND NOTE

JURY AWARDS AND PREJUDGMENT INTEREST
IN TORT CASES

Stephen J. Carroll

May 1983

N-1994-ICJ

Prepared for

The Institute for Civil Justice

35th
Year

Rand
SANTA MONICA, CA 90406

THE
INSTITUTE FOR
CIVIL JUSTICE

PREFACE

This Note is based on a briefing presented to the Board of Overseers of The Institute for Civil Justice on February 17, 1983. It reports preliminary results from an ongoing Institute study of the effects of inflation on jury awards and the implications of those effects for the policy debate about prejudgment interest. A full report of the completed study will be published in the near future.

SUMMARY

This Note reports the preliminary results of research now under way at The Institute for Civil Justice which empirically examines issues central to the prejudgment interest policy debate. Our work thus far establishes that juries are implicitly awarding prejudgment interest.

At least 26 state legislatures have enacted laws that provide such interest on awards to victorious plaintiffs in tort cases. These laws are ostensibly designed to compensate prevailing plaintiffs for the decline in the real value of their recovery caused by delay between the time of their injury and the time when they go to trial, and to eliminate the defendants' incentive to delay in order to benefit from the use of the money.

There are plausible arguments both for and against prejudgment interest, but the empirical crux of these arguments is how delay actually affects awards and legal costs. Our current study focuses on the question of whether juries provide larger awards to longer delayed cases; the effects of delay on legal costs will be the subject of future research.

Our analysis is based on data on all awards returned in civil jury trials in the federal, state, and municipal courts in Cook County, Illinois, from 1960 to 1979 relating to injuries arising from automobile accidents (1,349 cases). Controlling for the severity of injury, we find that, on average, juries increased awards over and above inflation as measured by the Consumer Price Index at a rate of 3.7 percent per year for the time between injury and trial. Overall, juries implicitly provide prejudgment interest at a rate equal to the underlying inflation rate plus 3.7 percent per year.

This result raises questions that policymakers must consider: Who should set the prejudgment rate--legislatures, judges, or juries (as juries appear to be doing informally in Cook County)? How can discretionary decisions be coordinated?

The "true" prejudgment interest rate equals whatever the jury awards by way of implicit interest plus the statutory prejudgment interest rate if the state has one. If a state enacted a prejudgment interest statute and juries continue to mark up awards by the rate of inflation plus 3.7 percent per year, the true prejudgment interest rate will be much different from that intended by either the legislature or the jury.

The analysis also raises the question: What is the appropriate rate? The policy debate has ignored the differences between plaintiff's and defendant's positions. The prejudgment interest rate (implicit plus statutory) that fully compensates the plaintiff may not eliminate the defendant's incentive to delay, while the rate that eliminates the defendant's incentive to delay may create an incentive for the plaintiff to delay. There may be prejudgment interest rates (including the jury's markup) at which both plaintiff and defendant have an incentive to delay. Moreover, differences among plaintiffs, among defendants, and over time make it difficult to establish any one rate that will serve policy objectives.

In future research, we will replicate our analysis using different measures of inflation. We will also analyze data from San Francisco County, thus enlarging the data base and enabling comparisons with Cook County. And we will review the economics literature on the opportunity cost of money to plaintiffs and to defendants so that we can include this information in our final report for the benefit of concerned policymakers.

Finally, the question of increased litigation costs due to delay for both plaintiffs and defendants is obviously important to this whole issue and merits a thorough separate study. We plan to undertake that study as resources become available.

Appendix A

PREJUDGMENT INTEREST STATUTES

INTRODUCTION

Between 1980 and 1982 twenty state legislatures enacted or amended prejudgment interest statutes applicable to damages in tort cases, while many others denied passage of similar bills.¹ In 1983, legislative sessions around the country are debating the merits of prejudgment interest, with new or expanded legislation proposed in at least 20 states.² Where no statutes exist to clarify legislative intent, or statutes are unclear on what constitutes "full and just compensation," the award of prejudgment interest is left to the discretion of the adjudicator. Courts and juries around the country differ in their application of prejudgment interest to awards, and appeals tribunals are asked in many cases for rulings on trial court decisions awarding or withholding prejudgment interest.³

This appendix provides comparative data on current statutes and rules, pattern of their adoption, and their key characteristics.

METHODOLOGY

We reviewed the statutes of all 50 states for evidence of prejudgment interest laws. In most states the code sections dealing with interest and judgments contain reference to the legal rate of interest, the accrual of interest and types of cases eligible for interest. In addition we looked at tort and personal injury sections of the codes and at wrongful death statutes. We did not review court rules

¹In this Appendix we discuss only the regulations that include tort actions within their scope. Numerous other states have legislation that authorizes prejudgment interest for contract disputes and other civil cases claiming only liquidated damages.

²As of April 1983.

³*In re Air Crash Disaster near Chicago, Ill.*, on May 25, 1979, D.C.Ill.1979, 480 F.Supp. 1280, affirmed 644 F.2d 633; *Statler Hotels v. Herbert Rosenthal Jewelry Corp.*, 351 SW2d 579 (Texas Civ App 1961); *Hewitt v. Hutter*, 432 F.Supp. 795 (W.D.Va. 1977), aff'd, 574 F.2d 182 (4th Cir. 1978).

in all 50 states because very few states have enacted regulation of prejudgment interest by rule rather than statute. Nor did we review the 1982 session laws from all 50 states. We did refer to the session laws when changes had been so recent that they had not yet been incorporated into the code. We used the *State Legislative Report*, published by the Alliance of American Insurers, for information about legislation pending in 1983.

PATTERN OF ADOPTION

Twenty-six states currently authorize prejudgment interest for one or more types of tort litigation. Table A-1 shows that 20 of the 26 have mandatory provisions for prejudgment interest. In the other six states prejudgment interest, although provided for by statute, is left to the discretion of the court or jury to award.

Many bills providing for prejudgment interest have been introduced in 1983 state legislative sessions. At least 12 states, where no statute already exists, will consider prejudgment interest proposals this year. In five other states, 1983 proposals have already been defeated, and in 1982, when more than 50 bills were considered around the country, two states voted to add prejudgment interest to tort awards. A number of bills are also before 1983 legislatures to expand or amend prejudgment interest legislation already in place. Table A-1 shows the 20 states where bills were introduced during the first quarter of 1983, and were still pending as of April. Finally, as shown in Table A-1, there are 12 states where no statutes have been passed and none are currently under consideration by the legislatures.

No clear distinction exists between states that have prejudgment interest laws and those that do not. For example, some states with large populations, such as New York and California, have prejudgment interest laws while others like Illinois and Florida do not. In contrast, Alaska, with a small population, has had prejudgment interest for tort cases for many years, while Alabama and Kansas, also with small populations, have never passed such legislation.

Although the last five years have seen laws passed for the first time in seven states, during the five years from 1973-1978 only one state enacted prejudgment interest legislation. Five states--Colorado,

Table A-1

**STATUS OF STATE LAWS OR COURT RULES
REGULATING PREJUDGMENT INTEREST FOR TORT CASES**

STATE	MANDATORY STATUTE/RULE	DISCRETIONARY STATUTE/RULE	LEGISLATION ¹ PROPOSED	NONE PENDING NOR ENACTED	STATE	MANDATORY STATUTE/RULE	DISCRETIONARY STATUTE/RULE	LEGISLATION ¹ PROPOSED	NONE PENDING NOR ENACTED
Alabama	—	—	—	•	Montana	—	—	•	—
Alaska	•	—	—	—	Nebraska	—	—	•	—
Arizona	—	—	—	•	Nevada	•	—	—	—
Arkansas	—	—	—	•	New Hampshire	•	—	•	—
California	•	—	—	—	New Jersey	•	—	—	—
Colorado	•	—	—	—	New Mexico	—	—	•	—
Connecticut	•	—	—	—	New York	•	—	•	—
Delaware	—	—	—	•	North Carolina	—	—	—	—
Florida	—	—	—	•	North Dakota	—	—	—	•
Georgia	•	—	—	—	Ohio	—	•	—	—
Hawaii	—	•	•	—	Oklahoma	•	—	—	—
Idaho	—	—	•	—	Oregon	—	—	•	—
Illinois	—	—	•	—	Pennsylvania	•	—	—	—
Indiana	—	—	—	•	Rhode Island	•	—	•	—
Iowa	•	—	—	—	South Carolina	—	—	—	•
Kansas	—	—	—	•	South Dakota	—	—	—	•
Kentucky	—	—	—	•	Tennessee	—	•	—	—
Louisiana	•	—	—	—	Texas	—	—	•	—
Maine	•	—	—	—	Utah	•	—	—	—
Maryland	—	•	—	—	Vermont	—	—	—	•
Massachusetts	•	—	—	—	Virginia	—	•	—	—
Michigan	•	—	—	—	Washington	—	—	•	—
Minnesota	—	—	•	—	West Virginia	—	•	•	—
Mississippi	—	—	•	—	Wisconsin	•	—	—	—
Missouri	—	—	•	—	Wyoming	—	—	•	—

¹Introduced and still pending as of April, 1983.

Louisiana, Massachusetts, New Hampshire, and Rhode Island--have had laws on the books for more than 20 years that mandate prejudgment interest in tort cases. Table A-2 shows the date of first enactment and the date of most recent amendment of mandatory prejudgment interest statutes. Table A-3 shows the date of most recent action on discretionary prejudgment interest laws.

New Jersey and Pennsylvania are the only states where prejudgment interest was authorized by court rule rather than by statute. The supreme courts of both states upheld the constitutionality of the rules. The New Jersey rule includes a provision that it can be suspended upon exceptional circumstances, an example of which has been interpreted to be delay of the litigation by the plaintiff. In Pennsylvania the court included a provision that suspends prejudgment interest after the time of an offer by the defendant if the judgment does not exceed 125 percent of the offer. Several of the statutes authorizing prejudgment interest are less explicit in their intent, and leave more uncertainty as to the purpose of the provision, and when it is to be applied.⁴

FEATURES OF PREJUDGMENT INTEREST REGULATIONS

The key features of the statutes and rules regulating the award of prejudgment interest include:

- the types of actions included within the scope of the provision;
- the rate of interest and how it is calculated;
- the date that interest commences to accrue; and
- the contingencies upon the application of the provision.

⁴Ha.Rev.Stat. Sec. 636-16; Tn. Code Ann. Sec. 47-14-123; Code of Va.Rem.& Proc. Sec. 8.01-382.

Table A-2

STATES WITH MANDATORY PREJUDGMENT INTEREST STATUTES

<u>STATE</u>	<u>AUTHORIZATION</u>	<u>FIRST ENACTED</u>	<u>MOST RECENT AMENDMENT</u>	<u>TYPES OF ACTIONS</u>	<u>RATE OF INTEREST</u>	<u>DATE OF ACCRUAL</u>	<u>APPLICATION CONTINGENT ON:</u>
Alaska	Al. Statutes CCP 09.50.270; Trade & Commerce 45.45.010	1965	1982	Tort, excluding Alaska government as defendant	8.5% ¹ , 12.5%	Date cause of action accrued.	
California	CA Civ. Code §3291	1982	-- ²	Personal injury excluding CA government as defendant	10%	Date of offer.	Award greater than plaintiff offer.
Colorado	C.R.S. 13-21-101	1935	1982	Personal injury	9% ^{3,4}	Date cause of action accrued.	
Connecticut	Conn. Gen. Stat. §37-3a	1981	-- ²	Civil	12%	Date complaint filed, or date of offer, if offer is made more than 18 months after filing.	Award greater than plaintiff offer.
Georgia	Code of GA 51-12-14	1968	1981	Tort	12%	Date of offer.	Award equal to or greater than offer.
Iowa	Iowa Code Ann. §535.3	1980	-- ²	Civil	10%	Commencement of action.	
Louisiana	LA Revised Stat. §13:4203	1916	1981	Tort	12%	Date complaint filed.	
Maine	MRSA Title 14 §1602	1969	1979	Civil	8%	Date complaint filed.	If prevailing party has a continuance of greater than 30 days, interest is suspended for that time.
Massachusetts	Ann. Laws of Mass. C.231 §6B Supp. §11	1946	1982	Personal injury/ property damage	12%	Date complaint filed.	
Michigan	MSA 27A.6013 Mich. Comp. Laws 600.6013	1965	1980	Civil	12% ³	Date complaint filed.	If an offer was equal to or greater than the award, the court may suspend interest after date of offer.

Table A-2 (continued)

<u>STATE</u>	<u>AUTHORIZATION</u>	<u>FIRST ENACTED</u>	<u>MOST RECENT AMENDMENT</u>	<u>TYPES OF ACTIONS</u>	<u>RATE OF INTEREST</u>	<u>DATE OF ACCRUAL</u>	<u>APPLICATION CONTINGENT ON:</u>
Nevada	NRSA §1(b) 1974	1979	1981	Civil	12%	Date complaint filed.	
New Hampshire	NH Rev. Stat. Ann. 524:1-b	1957	1981	Civil law & equity	6%	Date of writ.	
New Jersey	Civ. Prac. Rules Governing Courts of the State of NJ Rule 4:42-11(b)	1971	1981	Tort, excluding NJ government as defendant	12%	Date complaint filed, or 6 months after cause of action accrued.	"Court may suspend in exceptional cases."
New York	NY Estates Power & Trust Law §5-4.3	1967	1980	Wrongful death	9%	Date of death.	
North Carolina	Gen. Stat. of NC §24-5	1981	-- ²	Civil claims covered by liability insurance	8%	Date complaint filed.	
Oklahoma	12 OK Stat. §727(2)	1971	1982	Personal injury	15% ⁵	Date complaint filed.	
Pennsylvania	PA Rules of Civil Procedure §231 Rule 238	1979	-- ²	Personal injury, death, or property damage	10%	Date filed, or 1 yr. after date cause accrued, whichever is later.	Award must be greater than 125% of offer. If not, interest accrues only to date of offer.
Rhode Island	RI Gen. Law 9.21-10	1958	1981	Civil	12%	Date cause of action accrued.	
Utah	Utah Code Ann. §15-1-4; 78-27-44	1975	1981	Personal injury	12%	Date cause of action accrued.	
Wisconsin	Wis. Ann. Code §807.01	1980	-- ²	Civil	12%	Date of offer of settlement.	Award greater than offer.

¹ Higher interest rate applies if plaintiff offer is refused, lower rate of interest applies if defendant offer is refused.

² None known.

³ Compounded annually.

⁴ Rate on appealed cases to be certified each Dec. 31st at 2 percentage points above current discount rate.

⁵ Rate limited to 10% against Oklahoma government entities.

Table A-3

STATES WITH DISCRETIONARY PREJUDGMENT INTEREST STATUTES

<u>STATE</u>	<u>AUTHORIZATION</u>	<u>DATE ENACTED/ AMENDED</u>	<u>TYPE OF CASES</u>	<u>RATE OF INTEREST</u>	<u>DATE OF ACCRUAL</u>	<u>UPON DISCRETION OF:</u>
Hawaii	Hawaii Rev. Stat. §636-16	1979	Tort	10%	Earliest possible is date of injury.	Judge
Maryland	MD Cts. & Jud. Proc. Code Ann. §11-301	1980	Personal inj. motor veh. only	10% max.	Earliest possible is date of complaint.	Court finding of un- necessary delay by defendant.
Ohio	Ohio Rev. Code §1343.03	1982	Tort	10%	Date action accrued.	Court finding of lack of good faith effort to settle.
Tennessee	Tenn. Code Ann. §47-14-123	1979	Civil Actions for monetary damages.	10% max.	Determined by court or jury.	Court or jury.
Virginia	Code of VA Civil Rem. & Proc. §8.01-382	1979	Civil law & equity.	10%	Determined by court or jury.	Court or jury.
West Virginia	W. VA Code §56-3-31	1981	Civil ¹	10%	Date cause accrued as determined by the court.	Court.

¹For special damages only.

Types of Actions Included in Scope

Most of the statutes authorizing prejudgment interest at the discretion of the adjudicator are applicable to the majority of civil tort actions for monetary damages. In some cases the interest is limited to the special damages, while in others future damages are explicitly excluded. In the 20 states where the statutes are mandatory, most refer broadly to civil actions as within their scope. Typically, the language reads "money judgment recovered in a civil action," "in all civil actions," or more broadly "money judgments." Several, though not excluding other types of actions, specifically cite tort actions as eligible for prejudgment interest. Seven others are even more narrow and indicate personal injury, wrongful death, property damage, or a combination of these three as within the scope of the provision. North Carolina's statute is specifically limited to claims covered by liability insurance. In a number of states, cases in which the state government or any public entity is a defendant are not eligible for prejudgment interest under the provisions of the statute. Table A-2 and Table A-3 show the types of cases included within the scope of the prejudgment interest statutes and rules.

Rate of Interest

In all six states where the statutes are discretionary, the rate of interest is fixed at 10 percent. In the 20 states with mandatory provisions, ten specify 12 percent as the current prejudgment interest rate. Oklahoma has the highest rate, increased in 1982 to 15 percent. The lowest current rate is 6 percent in New Hampshire. Alaska has two different rates. There, 8.5 percent is applied to judgments where the refused offer was made by the defendant, and 12.5 percent is applied when the plaintiff made the offer and was refused by the defendant. Only the Colorado and Michigan statutes provide that prejudgment interest be compounded annually. Others either do not specify or provide for simple interest.

Fifteen of the twenty statutes referred to in Table A-2 specify the rate as part of the prejudgment interest statute. One specifies that the rate is to be the legal rate in effect at the time of judgment and

three others make no mention of the rate, which is therefore assumed to be the legal rate in each state. When the Michigan statute was amended in 1980 it provided that the rate would vary according to the date of filing. The rate is 12 percent per year on all suits filed after June 1, 1980, but those filed before that date had interest calculated at six percent per year through June 1980 and at 12 percent per year thereafter through the satisfaction of the judgment. No other statutes contain such a provision.

All but one of the prejudgment interest rates are fixed. Only Colorado provides for annual adjustment of the legal rate in accordance with the discount interest rate prevailing during the time of the litigation. The annual adjustment of the rate provided for in Colorado applies only to cases that are appealed and affirmed. On all other cases the rate is 9 percent per year compounded annually.

Accrual of Interest

Most of the states that have discretionary statutes provide that the determination of the date when interest commences should be left to the adjudicator. The most liberal date is the date when the action accrued, or the date of injury. In five of the 20 states shown on Table A-3, interest accrues from the date the action accrued. Eight states trigger the running of interest from the date the case was filed, while in three other states the interest is calculated from the date of an offer of settlement.

Contingencies

Six of the 20 states in Table A-2 include provisions in their statutes that make the award of prejudgment interest contingent on obtaining an award that is equal to or greater than previous offers to settle. In California and Connecticut, the offer is to be made by the plaintiff. In the other four states with similar provisions the offer can be made by either party. If it is refused and the judgment is greater than the offer, the prevailing party is awarded prejudgment interest. If the award is not 125 percent greater in Pennsylvania, prejudgment interest accrues only to the date of the offer. In Michigan, if an offer was equal to or greater than the award, the court

may suspend the accrual of interest after the date of the offer. In Maine, if the prevailing party has had a court continuance of the case for more than thirty days, interest is suspended throughout the length of the continuance. Twelve of the mandatory statutes place no contingencies on the award of prejudgment interest.

Other states with contingencies on the award of prejudgment interest are Maryland and Ohio. These statutes are shown in Table A-3, because unlike the mandatory statutes, interest is awarded to prevailing parties in these states only if the court determines that the defendant has caused unnecessary delay or has failed to make a good-faith effort to settle. The statutes in these two states are the most narrowly designed to reduce delay and promote settlement of cases.

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LEGISLATIVE RESEARCH AGENCY REPORTS

- 1) Memo: 06/17/1985 To: Senator Bennett From: Carol Berryhill,
enclosures
- 2) Memo: 03/15/1989 To: Rep. Goll From: Hayden Kayden, enclosures
- 3) Memo: 04/18/1989 To: Rep. Goll From: Hayden Kayden
- 4) Memo: 03/13/1989 From: Karen Oakley, enclosures
- 5) Memo: 06/06/1988 To: Rep. Boyer From: Ed Flanagan, enclosures
- 6) Memo: 06/06/1988 To: Senator Jones From: Becky Penrose
- 7) Memo: 12/16/1987 To: Rep. Boyer From: Karen Oakley, enclosures
- 8) Colorado Chapter
- 9) Minnesota Chapter 604
- 10) North Dakota Judicial Remedies
- 11) South Dakota Non-Profit Corporation Members
- 12) State of New Jersey Assembly No. 2398
- 13) Memo: 05/28/1987 To: Rep. Swackhammer From: Gretchen Keiser,
enclosures
- 14) Report: Workmen's Compensation Committee
- 15) Memo: 01/30/1987 To: Rep. Sund From: Penelope Weyrauch,
enclosures
- 16) Memo: 11/06/1985 To: Rep. Koponen From: Mark Torgerson, enclosures

American Bar Association Journal

American Insurance Association Studies

- 1) Annual Report

Insurance Services Office, Inc.

- 1) Report: Coming Capacity Shortage

Liabilities of Municipalities 1983

- 1) Report: NIMLO 1983

Information From the National Insurance Consumer Organization

- 1) Letter: 08/14/1985 To: Rick Rule From: Ron Landsman, enclosures

United States General Accounting Office Report - 1985

California Draft Legislation - 1985

Colorado - 1985 Self-Insurance for State

Connecticut - 1895 Discussion of Sovereign Immunity Doctrine

Illinois Governmental Tort Immunity - 1985

Louisiana - 1985 Legislation on Self-Insurance Liability of Public Entities

Maine Study - 1980

Maryland 1985 Tort Claims Act Amendments

New York Draft Legislation

New York Tort Reform Article

New York Tort Reform Article

North Dakota 84 Collateral Source Rule

Ohio Legislative Alternatives 1983

Ohio Municipal Liability 1979

Oregon 1980 Self-Insurance for State Tort Liability

South Carolina 1985 Amendments to Tort Claims Act

- 1) Memo: 06/17/1985 To: Sen. Bennett From: Carol Berryhill
- 2) Memo: 09/17/1985 To: Sen. Bennett From: Carol Berryhill,
enclosures
- 3) Memo: 04/24/1985 To: Sen. Zharoff From: Elizabeth Hickerson
- 4) Memo: 03/28/1985 From: Rob Nauheim, enclosure
- 5) Memo: 03/01/1985 To: Sen. Zharoff From: Rob Nauheim, enclosures
- 6) Memo: 04/03/1985 To: Rep. Szymanski From: Jonathan Sherwood,
enclosures

LEGISLATIVE RESEARCH AGENCY REPORTS



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box 1, State Capitol
Juneau, Alaska 99811-1100
Mail Stop 1100
(907) 465-1991

March 15, 1989

MEMORANDUM

TO: Representative Peter Goll

ATTN: Hayden Kaden

FROM: Karen Oakley *VO*
Legislative Analyst

RE: Medical Malpractice Premiums Paid by Alaska Doctors
Research Request 89.297

You asked how many doctors are in private practice in rural Alaska communities, and whether these doctors pay more for medical malpractice insurance than do other doctors. You also asked if the federal government pays medical malpractice premiums for the doctors it employs in Alaska.

In summary, there are only a handful of doctors in private practice living in rural Alaska communities. Medical malpractice premiums paid by Alaska doctors depend on the type of medicine practiced and the limits of liability chosen; the location of the practice does not directly affect premium cost. Liability for malpractice by federally-employed doctors is assumed by the federal government.

Geographic Distribution of Alaska Doctors

Currently, there are approximately 825 physicians working in Alaska. The Alaska State Medical Association (ASMA) Directory listed 827 doctors in Alaska in 1987. The Division of Occupational Licensing reported a similar number--833 doctors--with current licenses in August 1988.

Nearly 75 percent of doctors working in Alaska are in private practice. The major government employers of doctors in Alaska are the military, which employs 97 doctors, and the U.S. Public Health Service (PHS) (including the Indian Health Service), which employs 111 doctors. At least some of the PHS doctors are itinerants based in larger communities who travel to remote communities.

In Table 1, the number of doctors in private practice residing in each house election district is presented. We were not able to determine to what extent doctors in private practice provide services to communities other than the community in which the doctor resides. Conceivably, some private doctors living in urban areas travel to rural areas to provide services.

TABLE 1
NUMBER OF PRIVATE PHYSICIANS OF VARIOUS SPECIALTIES RESIDING IN EACH HOUSE ELECTION DISTRICT
(LIST RANKED BY THE NUMBER OF PRIVATE PHYSICIANS IN THE SPECIALTY)

SPECIALTY	TOTAL	HOUSE ELECTION DISTRICT															
		1	2	3	4	5	6	7-15	16	17	18-21	22	23	24	25	26	27
Family & General Practice	151	6		4	10	14	2	77	13		15				1	2	7
Internal Medicine	80	3		3	5	1		53			13						2
Pediatrics	44	2			2	1		26	2		10						1
Surgery	44	2		2	3	2		22	2		9						2
Obstetrics-Gynecology	42	1				1		29	3		8						
Orthopedic Surgery	41	2			2	1		24	1		10						1
Emergency Medicine	37				3	5		19	4		6						
Psychiatry	34	1			2			26			5						
Radiology	25	1			2	1		14	1		6						
Anesthesiology	25	1				1		18	1		4						
Ophthalmology	18				1	1		12			4						
Otolaryngology	14				1			9	1		3						
Pathology	12							8	1		3						
Cardiology	8							8									
Urology	7					1		4			2						
Neurology & Neurology Surgery	7							6			1						
Neonatal & Perinatal Medicine	7							7									
Dermatology	6				1			4			1						
Physical Medicine & Rehabilitation	4							4									
Occupational Medicine	4							4									
Acupuncture	2							2									
Sports Medicine	2							1			1						
Gastroenterology	2							2									
Family Therapy	2							1		1							
Public Health & Preventive Medicine	1							1									
Aerospace Medicine	0																
Primary Care	0																
TOTAL PRIVATE PHYSICIANS	619	19	0	9	32	29	2	381	29	1	101	0	0	0	1	2	13
TOTAL PHYSICIANS	827	24	1	19	36	29	2	496	29	3	138	4	6	0	17	7	16
PERCENT IN PRIVATE PRACTICE	74.8	79.2	0.0	47.4	88.9	100.0	100.0	76.8	100.0	33.3	73.2	0.0	0.0	0.0	5.9	28.6	81.3
PERCENT OF TOTAL IN PRIVATE PRACTICE		3.1	0.0	1.5	5.2	4.7	0.3	61.6	4.7	0.2	16.3	0.0	0.0	0.0	0.2	0.3	2.1

SOURCE: ALASKA STATE MEDICAL ASSOCIATION DIRECTORY (1987).

Prepared by the House Research Agency, March 1989 (89.297A).

These data indicate that very few doctors in private practice reside in rural areas. Four election districts that are generally considered to be rural (2, 22, 23, and 24) have no resident doctors in private practice.¹ The majority of doctors in private practice reside in Anchorage and Fairbanks (78 percent).

Twenty-four percent of all private doctors are in Family and General Practice. In those election districts with few resident private doctors, those doctors are typically in family practice. Most of the private specialists reside in Anchorage or Fairbanks.

For further information on the geographic distribution of doctors and other health care providers in Alaska, see House Research Memorandum 89.004, which is provided as Attachment A.

Medical Malpractice Premiums Paid by Alaska Doctors

Doctors employed by the federal government are not covered by medical malpractice insurance; instead, the federal government assumes liability for malpractice by its doctors. An individual who is injured by a federal government doctor in the normal course of the doctor's job may sue the federal government under the Federal Tort Claims Act. When the injured individual is successful in their claim against the government, damages are paid from a fund administered by the U.S. Department of Justice. Further information on medical malpractice coverage of federal government doctors is found in House Research Memorandum 87.097 (Attachment B).

Doctors in private practice obtain medical malpractice insurance from insurance companies.² According to the Alaska Division of Insurance Annual Report for FY 88, 22 insurance companies wrote medical malpractice insurance policies for doctors practicing in Alaska in that year. Attachment C, from the report, shows the percent of market share written by each company. A total of \$14.4 million in direct premiums written was reported. Three companies accounted for 92.5 percent of the total dollar value of premiums written. These companies were the Medical Indemnity Corporation of Alaska (MICA), Medical Insurance Exchange of California (MIEC), and the Continental Casualty Company.

¹One election district, Election District 24, has no resident doctors.

²The state does not require proof of insurance from doctors licensed to practice medicine in Alaska, and it is possible that some doctors do not have medical malpractice insurance.

The MICA had 48.3 percent of the medical malpractice market in Alaska in FY 88. The MICA was established by the Alaska Legislature in 1976 in response to the liability insurance crisis occurring at that time which severely reduced the availability of medical malpractice insurance in Alaska and elsewhere.³ The current premium schedule of the MICA is provided in Attachment D. The premium paid by a doctor depends upon the type of medicine the doctor practices and the limits of liability the doctor chooses. The MICA does not take the location of a doctor's practice into consideration in determining the premium.

The second largest provider of medical malpractice insurance to Alaska doctors is the MIEC. The MIEC is doctor-owned. The Alaska State Medical Association brought MIEC to Alaska around 1979 to provide doctors with a choice of insurance coverage. The current premium schedule of the MIEC is provided in Attachment E. As for the MICA, the premium schedule depends upon the doctor's specialty and limits of liability; the location of the doctor's practice is not taken into consideration.

In FY 88, the Continental Casualty Company, which is based in Chicago, wrote \$1.6 million in direct medical malpractice premiums, for an 11 percent market share. According to Renee Smith, of the company, Continental uses the standard ISO rates in determining the premiums to charge Alaska doctors that insure with them.⁴ She could not provide a premium schedule and was not sure how their rates compared with those of MICA or MIEC.

Premiums charged by both MICA and MIEC are based on actual Alaska loss experience data. Although none of the companies takes the precise location of the doctor's practice within Alaska into account when determining the premium, the doctor's location and the type of medicine practiced are often related; thus, the doctor's location may indirectly affect the doctor's medical malpractice insurance costs. Doctors practicing in rural areas are more likely to be generalists, rather than specialists. Rural doctors would therefore be more likely to be placed in the lower risk classifications and consequently pay less for medical malpractice insurance than specialized practitioners.

* * *

I hope you find this information useful. If I can provide any further information, please let me know.

Attachments

³For further information on the Medical Indemnity Corporation of Alaska, see House Research Memorandum 81.010.

⁴The ISO is one of the major ratings organizations.

ATTACHMENT A
House Research Memorandum 89.004

ATTACHMENT B
House Research Memorandum 87.097

ATTACHMENT C
Alaska Division of Insurance Annual Report FY 88
Companies Writing Medical Malpractice Insurance
Policies for Alaska Doctors

From Division of Insurance Annual Report for FY 88

PROPERTY AND CASUALTY MARKET SHARE
11 - MEDICAL MALPRACTICE

RANK	COMPANY NAME	PERCENT OF MARKET	DIRECT PREMIUMS WRITTEN
1	MEDICAL INDEMNITY CORP OF AK	48.32	6,937
2	MEDICAL INS EXCHANGE OF CALIFORNIA	33.27	4,777
3	CONTINENTAL CASUALTY CO	10.93	1,570
4	NATIONAL UNION FIRE INS CO OF PITTSB	3.04	437
5	ST PAUL FIRE & MARINE INS CO	1.13	163
6	AETNA CASUALTY & SURETY CO	.90	130
7	NATIONAL CHIROPRACTIC MUTUAL INS CO	.59	85
8	CHICAGO INS CO	.45	65
9	AMERICAN CASUALTY CO OF READING	.45	65
10	TRAVELERS INDEMNITY CO	.41	59
11	NATIONAL FIRE INS CO OF HARTFORD	.24	35
12	INS CO OF THE STATE OF PA	.07	11
13	RLI INS CO	.06	9
14	AMERICAN CONTINENTAL INS CO	.03	5
15	ALASKA PACIFIC ASR CO	.03	5
16	PACIFIC EMPLOYERS INS CO	.02	4
17	HARTFORD FIRE INS CO	.01	2
18	INTERSTATE INDEMNITY CO	.00	1
19	JEFFERSON INS CO OF NY	.00	1
20	ST PAUL MERCURY INS CO	.00	-1
TOTAL FOR TOP 20 RANKED INSURERS		99.95	14,360
TOTAL FOR ALL 22 INSURERS WRITING THIS LINE		99.93	14,356

ATTACHMENT D
Medical Indemnity Corporation of Alaska
1989 Premium Schedule

BOARD OF GOVERNORS:

William G. Brock, Chairman
David J. Frazier, 1st Vice-Chairman
Frederick R. Hood, M.D., 2nd Vice-Chairman
David S. Grauman, M.D., Member At Large
Ronald W. Keller, M.D.
Renee Murray
Kim C. Smith, M.D.
C. Keith Campbell
Patricia L. Miles

ADMINISTRATIVE SERVICES:

Mary Pierce, Executive Director
Janet Sloan Johnston, Claim Manager
Penny Chmielewski, Risk Management Coordinator
Art Stanford, Underwriting Manager
Vickie Powell, Policyholder Services

MICA Medical Indemnity
Corporation of Alaska
ALEUT PLAZA OFFICE BUILDING
4000 OLD SEWARD HIGHWAY, SUITE 203
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 563-3414

1989

**Physician's and Surgeon's
Professional Liability Coverages and Premium Schedules**

Death or Total and Permanent Disability:

A Reporting Endorsement (tail coverage) will be issued at no extra cost because of death or permanent and total disability.

New Doctor Rule:

For physicians entering private practice for the first time following completion of medical school, residency training, military or public health service, premiums will be discounted 25 % for the first year of coverage.

Claims Free Premium Discount:

A 20 % premium discount will be provided to our insured physicians for a five year claims free history. This policyholder benefit will be provided upon renewal following the completion of the fifth year in which a claims free record has been demonstrated.

Claims Experience Premium Surcharges:

Claims experience premium surcharges may be imposed upon insureds with two or more claims in the last three years in which some elements of negligence or other contributing adverse factors are involved.

Employee Coverages:

Unlike many policies, most employees are provided coverage under the MICA policy.

Employee surcharges are limited to (1) Advanced Nurse Practitioners or Physician's Assistants added to a physician's or clinic's policy subject to 50 % of Class 1 premium (shares policy limits with employer, sponsor or supervising physician). (2) Physician's Assistants or Nurse Practitioners on policies providing separate limits of liability from sponsoring/supervising physician, subject to higher premium based upon specialty and practice situation; (3) employed Nurse Midwives or directly supervised Certified Registered Nurse Anesthetists (CRNAs) are subject to 100 % Class 3 annual premium; (4) unsupervised CRNAs or Nurse Midwives are subject to 100 % of Class 4 and Class 4A premium respectively.

No additional premium charges are incurred for other employees.

Locum Tenens:

MICA provides up to 60 days of coverage annually for a temporary substitute physician - locum tenens - for surgical and non-surgical specialties. Completion of application and prior approval of MICA is required.

This coverage is limited to 6 separate periods per year (except for illness or family emergencies of the insured physician) and any additional periods will involve customary premium charges.

Part Time Practitioners:

Class 1, 2, 2-A and 2-B: 35 % of the scheduled annual premiums for 10 hours or less per week practice; 65 % of the scheduled annual premium for 20 hours or less per week practice.

Short Term Practice Situations:

Pro-rated amount of annual premium computed on short rate tables subject to \$250 minimum premium.

Comprehensive General Liability Coverages:

This optional coverage is available at \$50 per physician covered, subject to the same limits of liability carried for professional liability. This coverage extends to bodily injury and property damage liability protection for those injuries accidentally sustained on the office premises by the general public.

This coverage is limited to only those premises actually occupied by our insured in rendering professional services. For example, if an insured occupied only one suite of a building, coverage would be limited to only that suite and not the entire building and parking lots. An entire building cannot be covered under the Comprehensive General Liability Endorsement unless the insured or the insured's employees occupy the entire building in the rendering of medical services.

Corporate/Partnership/Group Professional Liability:

This optional coverage is available at no additional charge to solo practitioners and group practices, providing each member or employed physician carries coverage through the Company. Limits of each physician's coverage must be equal to that carried by the group. The separate limits of liability for the corporation/partnership/group does not apply to policyholders who are solo practitioners nor does it apply concurrently or on an excess basis to the physician (s) scheduled on the policy or associated with the same medical organization who also allegedly provided negligent patient care for the same occurrence.

This form provides individual limits of liability to each physician named on the policy schedule in an amount equal to the limits of liability stated on the declarations page of the policy except these limits shall not be concurrent nor excess to the corporate limits of liability as stated in the previous paragraph.

Optional Shared Limits Professional Liability Group Coverage:

This optional coverage is available through the Company for your group at reduced premium levels. (See discount schedule that follows). One master policy is issued with each associated or employed physician covered by endorsement.

Coverages are limited to the course and scope of employment or association with your group. The combined clinic/group insureds are subject to the single limits of liability per occurrence and annual aggregate limits as procured. Completion of the Physician's and Surgeon's Professional Liability Group Application is required, along with completion of individual application for each physician to be insured.

Discounts Per Limits of Liability		
# Doctors on Policy	\$500,000	\$1,000,000
1	0	0
2	9%	7%
3	11%	9%
4	12%	10%
5	13%	11%
6	14%	12%
7	15%	13%
8	16%	14%
9+	17%	15%

PHYSICIAN'S RATE CLASSIFICATIONS

Class 1

Neurology

Psychiatry - excluding ECT;

Physicians - no surgery. Applies to general practitioners and physician specialists who do not perform obstetrical procedures or surgery (other than incision of boils and superficial abscesses or suturing of skin and superficial fascia) who do not ordinarily assist in surgical procedures.

Class 2

Neonatology

Ophthalmology (Excluding Radial Keratotomy)

Physicians - minor surgery or assisting in major surgery. * Applies to general practitioners and physician specialists who perform minor surgery (including catheterization) or assist in major surgery.

Class 2-A

Emergency Medicine

Class 3

Physicians who include obstetrical procedures as any part of their practice. (May still be indicated as class 2-B on policy:)

Physicians - major surgery *

Proctology

Otorhinolaryngology

Abdominal Surgery

General Surgery

Pediatric Surgery

Thoracic Surgery

Traumatic Surgery

Plastic and Reconstructive Surgery, excluding cosmetic surgery

Urology

Gynecology (No Obstetrics)

Installments - Deferred Payments:

Initial policy issuance subject to deposit of \$1,000 or two month's annual premium. Deferred payments are available in quarterly or semi-annual installments payable: 35%, 25%, 25% and 15% quarterly or 60% and 40% semi-annually. Premium invoices should be paid upon receipt and the policy is subject to immediate cancellation if payment is not received by the first day of the quarter in which the premium is earned. Carrying charges are computed at 10% annual simple interest on the unpaid balance.

Class 4

Anesthesiology

Class 4-A

Physicians - major surgery

Therapeutic Radiology

Obstetrics - Gynecology

Cardiovascular Surgery

Hand Surgery

Plastic and Reconstructive Surgery, including cosmetic surgery

Vascular Surgery

Orthopedic Surgery, excluding total joint procedures, spinal surgery and insertion of prosthetic devices.

Class 5

Physicians - major surgery

Neurosurgery

Orthopedic Surgery, including total joint procedures, spinal surgery and insertion of prosthetic devices.

* Major Surgery - involves operations in or upon any body cavity including but not limited to the cranium, thorax, abdomen or pelvis, or any other operation that presents a distinct hazard to life because of the condition of a patient or the length or circumstances of an operation. It also includes removal of tumors (except skin tumors), open bone fractures, amputations, abortions, removal of any gland or organ, plastic surgery and any operations using general anesthesia.

NOTE: IF A PORTION OF THE PHYSICIAN'S PRACTICE IS IN A SPECIALTY WITH A HIGHER CLASS THAN HIS NORMAL SPECIALTY, HE OR SHE WILL BE PLACED IN THE HIGHER SPECIALTY FOR RATING PURPOSES.

PROFESSIONAL LIABILITY COVERAGES

Explanation of Policy:

The Claims-Made Policy extends professional liability protection to the physician, clinic or employee for claims reported in a single year, regardless of when service is rendered as long as the incident occurred while continuously insured under Claims-Made with MICA. Thus, claims reported this year are covered by this year's policy; claims reported next year by next year's policy and so on.

MICA's premium rates are derived from the historical pattern of reported claims resulting from the performance of professional services which form a "stair step" with an increasing number of claims being reported each year until the fifth year. In the first year, only about 19 % of the total claims resulting from professional services are reported; the second 39 %; the third 78 %; the fourth 93 %; the fifth and subsequent years, about 100 %.

Cost:

In keeping with the "stair step" development of claims, the rates charged for the Claims-Made policy mature at the fifth year. Subsequent renewal policies are charged at the mature rates. The specific cost of coverage is shown within our table entitled CLAIMS-MADE PREMIUM SCHEDULE.

All policies issued by MICA are renewed on January 1 of each year. Your first years and renewal rates are pro-rated from the first date of coverage (inception date) of the original policy. For example, if your continuous coverage became effective on July 1, 1985, your annual renewal premium on January 1, 1989 would be pro-rated from January 1 through June 30 on the fourth year rates and from July 1 through December 31 on the fifth year rates.

Limits of Liability:

MICA's professional and optional comprehensive general liability coverages are available with policy limits of:

\$200,000 per occurrence/\$600,000
aggregate per calendar year.
\$500,000 per occurrence/\$1,000,000
aggregate per calendar year.
\$1,000,000 per occurrence/\$2,000,000
aggregate per calendar year.
\$1,000,000 per occurrence/\$3,000,000
aggregate per calendar year.

Tail Coverages:

Should you stop practicing or change to another insurance company, MICA guarantees availability of a limited or unlimited Reporting Endorsement known as "tail" coverage to cover subsequently reported claims.* Tail coverage must be purchased by the insured within 30 days of termination of coverage, by cancellation or non-renewal; or by termination of employment or association with the physicians insured under a master group policy.

"Tail" coverage must also be recognized when a physician reduces rating classification to offset reduced premium charges while subsequently reported claims from the higher specialty continues to occur. This is currently being accomplished on a pro-rata basis when the policy is ultimately terminated, but depends on the company's rules, rates and rating plans in effect at the time the physician's class reduction is made.

Cost:

The cost of "tail" coverage will depend upon the length of time you have been insured with MICA, and will be subject to the company's rules, rates, and rating plans in effect at the time the unlimited reporting endorsement is requested.

The tail premium is quoted as a one time cost but may be paid in installments. Refer to paragraph INSTALLMENTS.

The full premium for an Unlimited Reporting Endorsement must be received by the company within twelve months following its inception date. The Unlimited Reporting Endorsement will be cancelled at the end of this twelve month period if the full premium has not been received at that time, and only premium earned for this twelve month Reporting Endorsement period will be charged in accordance with rates actuarially determined and filed with the Division of Insurance.

Retirement Benefit:

An Unlimited Reporting Endorsement (tail coverage) will be issued at no extra cost to any physician who has attained the age and years in the MICA program (as per the schedule below) and having completed five consecutive years as a MICA insured just prior to retirement:

Age	Years as MICA Insured
60	5
59	6
58	7
57	8
56	9
55	10

* The policy limits in effect at the time the Unlimited Reporting Endorsement is purchased will be applicable just as if the policy had not been cancelled or terminated and the claim had been reported during the last policy year.

CLAIMS - MADE PREMIUM SCHEDULE

Effective January 1, 1989 **

LIMITS OF LIABILITY: EACH CLAIM AND ANNUAL AGGREGATE

	1st - 5th Years	\$200,000/\$400,000	\$500,000/\$1,000,000	\$1,000,000/\$2,000,000 \$1,000,000/\$3,000,000 *
CLASS 1				
1st year rates	Jan. 1, 1989	3,087	3,598	4,364
• 2nd year renewal rates	Jan. 1, 1988	4,532	5,644	7,269
• 3rd year renewal rates	Jan. 1, 1987	7,141	9,275	12,374
• 4th year renewal rates	Jan. 1, 1986	8,027	10,504	14,098
• 5th year renewal rates	Jan. 1, 1985	8,082	10,581	14,206
CLASS 2				
1st year rates	Jan. 1, 1989	4,477	5,396	6,740
• 2nd year renewal rates	Jan. 1, 1988	7,031	8,950	11,736
• 3rd year renewal rates	Jan. 1, 1987	11,515	15,161	20,441
• 4th year renewal rates	Jan. 1, 1986	13,029	17,256	23,376
• 5th year renewal rates	Jan. 1, 1985	13,125	17,387	23,560
CLASS 2-A *				
1st year rates	Jan. 1, 1989	6,066	7,451	9,454
• 2nd year renewal rates	Jan. 1, 1988	9,886	12,728	16,840
• 3rd year renewal rates	Jan. 1, 1987	16,514	21,887	29,661
• 4th year renewal rates	Jan. 1, 1986	18,747	24,972	33,980
• 5th year renewal rates	Jan. 1, 1985	18,887	25,166	34,251
CLASS 2-B/3				
1st year rates	Jan. 1, 1989	7,655	9,506	12,168
• 2nd year renewal rates	Jan. 1, 1988	12,742	16,506	21,944
• 3rd year renewal rates	Jan. 1, 1987	21,514	28,613	38,880
• 4th year renewal rates	Jan. 1, 1986	24,465	32,688	44,584
• 5th year renewal rates	Jan. 1, 1985	24,650	32,944	44,942
CLASS 4				
1st year rates	Jan. 1, 1989	11,032	13,873	17,936
• 2nd year renewal rates	Jan. 1, 1988	18,810	24,535	32,790
• 3rd year renewal rates	Jan. 1, 1987	32,138	42,906	58,472
• 4th year renewal rates	Jan. 1, 1986	36,615	49,085	67,117
• 5th year renewal rates	Jan. 1, 1985	36,895	49,473	67,659
CLASS 4-A				
1st year rates	Jan. 1, 1989	12,422	15,671	20,311
• 2nd year renewal rates	Jan. 1, 1988	21,309	27,841	37,256
• 3rd year renewal rates	Jan. 1, 1987	36,512	48,791	66,539
• 4th year renewal rates	Jan. 1, 1986	41,617	55,837	76,395
• 5th year renewal rates	Jan. 1, 1985	41,938	56,279	77,013
CLASS 5				
1st year rates	Jan. 1, 1989	16,991	21,578	28,115
• 2nd year renewal rates	Jan. 1, 1988	29,519	38,703	51,931
• 3rd year renewal rates	Jan. 1, 1987	50,886	68,129	93,046
• 4th year renewal rates	Jan. 1, 1986	58,056	78,021	106,881
• 5th year renewal rates	Jan. 1, 1985	58,505	78,641	107,749

* PREMIUM COST IS 4 % ABOVE \$1,000,000/\$2,000,000 LIMITS.

CLAIMS-MADE PREMIUMS PREPARED BY MILLMAN & ROBERTSON INC., CONSULTING ACTUARIES FOR THE MEDICAL INDEMNITY CORPORATION OF ALASKA, ARE BASED ON A FIVE YEAR PRICING STEP FOR REPORTED CLAIMS ADJUSTED ANNUALLY FOR CLAIMS EXPERIENCE.

* RETROACTIVE DATES AND RENEWAL PREMIUMS APPLY TO 2ND THROUGH 5TH YEAR ANNUAL RENEWAL. FIRST YEAR PHYSICIANS ARE SUBJECT TO FIRST YEAR RATES. ALL POLICIES ARE RENEWED EACH YEAR ON JANUARY 1. ALL 1ST AND RENEWAL PREMIUMS ARE PRORATED SUBJECT TO THE FIRST DAY OF COVERAGE UNDER THE ORIGINAL POLICY.

** SUBJECT TO 12.6 % INCREASE (RETROACTIVE TO 1/1/89) IF MICA'S FEDERAL TAX LIABILITY HAS NOT BEEN LEGISLATIVELY RESOLVED BY 7/1/89.

ATTACHMENT E
Medical Insurance Exchange of California
1989 Premium Schedule

MIEC**Medical Insurance Exchange of California****ALASKA****1988 Coverage Classification and Premium Schedule**

If you practice in more than one specialty, use the highest rated specialty.

Class	Specialty	Class	Specialty
2	Administrative Medicine	4	Neurology, Excluding Invasive Procedures
2	Allergy	5	Neurology, Including Invasive Procedures
8	Anesthesiology	10	Neurological Surgery
5	Assisting at Surgery	3	Nuclear Medicine*
4	Cardiology*	10	OB-GYN
9	Cardiovascular Surgery	3	Occupational Medicine (Not Industrial)
8	Colon & Rectal Surgery	4	Ophthalmology, Excluding Radial Keratotomy
3	Dermatology, Excluding Hair Transplants	7	Ophthalmology, Including Radial Keratotomy or 5% or more from cosmetic surgery
5	Dermatology, Including Hair Transplants	9	Orthopedics, Excluding Spinal Surgery and use of Chymopapain
7	Dermatology—liposuction	10	Orthopedics, Including Spinal Surgery and use of Chymopapain
8	Emergency Medicine	8	Otolaryngology
3	Endocrinology*	9	Otolaryngology—5% or more from Cosmetic Surgery
3	Family Practice—General Practice	2	Pathology
3	—No Surgery	3	Pediatrics
7	—Less than 5% of income from performance of Surgery	4	Pediatric Cardiology
8	—5% or more of income from performance of Surgery	8	Pediatric Surgery
10	—Including Obstetrics	3	Physical Medicine and Rehabilitation
9	—Including 5% or more income from any combination of Orthopedics, Gynecology, ENT Surgery	8	Plastic Surgery
3	Gastroenterology*	1	Psychiatry**
3	General Preventive Medicine	1	Psychiatry, Child**
8	General Surgery	2	Public Health
8	Gynecology (Only)	3	Pulmonary Diseases*
8	Hand Surgery	7	Radiology, Diagnostic and Therapeutic
8	Head & Neck Surgery	4	Radiology, Diagnostic Only*
3	Hematology*	7	Radiology, Therapeutic Only*
6	Industrial Medicine	3	Rheumatology*
3	Infectious Diseases*	8	Thoracic Surgery, Excluding Cardiovascular
3	Internal Medicine*	4	Urgent Care Medicine
4	Neonatology*	7	Urology
3	Neoplastic Diseases*		
3	Nephrology*		

*Includes all procedures, including Invasive Diagnostic Procedures, considered usual and customary to and within the training and purview of the specialty.

**Without ECT or drug shock therapy. With ECT or drug shock therapy, use Class 3.

Partnership Corporation Liability and Full Time Employed Physicians — 7% if all partners/shareholders and employed doctors have \$500,000/1,500,000 limits. 2.5% if all partners/shareholders and employed doctors have \$1,000,000/3,000,000 limits or higher. Full Time Employed Physicians must carry limits at least equal to employer. Employer will be charged a percentage of the premium charged for the employed physician's classification at employer's limits.

Secretaries, Receptionists and Bookkeepers — No charge

Optional Coverages:**Professional premises limited non-owned automobile liability**

Covers certain liabilities for injuries sustained by the public or for damage to property of third persons at your offices. It also covers certain liabilities to injured parties arising from an employee's use of an automobile not owned, rented or leased to you in the course of your professional practice, up to \$100,000 per bodily injury and \$25,000 for property damage. Refer to the policy for coverage specifics.

LIMITS OF LIABILITY: Bodily injury, \$500,000 each claim aggregate, or \$1,000,000 each claim aggregate to coincide with professional liability limits, but not higher than \$1,000,000. Property damage, \$100,000.

PREMIUM: No additional premium for premises occupied as physicians' professional offices. Clinics and other premises refer to MIEC.

Defense coverage for miscellaneous liability

Provides up to \$100,000 legal defense coverage only for alleged acts or omissions involving:

- Certain civil actions or proceedings, including a physician's acts or omissions as an officer of a national, state or local medical or specialty society.
- Alleged wrongful termination or discrimination against an employee.
- Breach of contract or other alleged misconduct in the nature of a commercial or fee dispute arising from professional practice.
- Assault, battery, false arrest or personal restraint, malicious prosecution or conspiracy arising from professional practice.

This optional coverage is fully described in Part IV of the MIEC policy and is subject to the terms and conditions of the policy and endorsements actually issued. MIEC pays 90% of legal expenses to a maximum amount of \$100,000.

PREMIUM: Individuals and solo professional corporation, \$1,500 per year. Individuals with more than 10 employees, medical corporations with more than one physician shareholder, partnerships, laboratories and all other non-individual policyholders should contact MIEC for a special application and premium quotation.

MIEC**Medical Insurance Exchange of California****ALASKA****Claims Made Professional Liability Premium Schedule**

Effective June 1, 1988

Limits of Liability: 500,000 Each Claim / 1,500,000 Annual Aggregate

DOCTORS COVERAGE CLASSIFICATIONS	FIRST YEAR RATES RETROACTIVE DATES: 01/01/88 OR LATER		SECOND YEAR RATES RETROACTIVE DATES: 01/01/87 - 12/31/87		THIRD YEAR RATES RETROACTIVE DATES: 01/01/86 - 12/31/86		FOURTH YEAR RATES RETROACTIVE DATES: 01/01/85 - 12/31/85		FIFTH YEAR RATES RETROACTIVE DATES: 08/01/75 - 12/31/84	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	1,900	475	3,732	933	4,744	1,186	5,120	1,280	5,564	1,391
2. COVERAGE CLASS 2	2,416	604	4,748	1,187	6,036	1,509	6,516	1,629	7,080	1,770
3. COVERAGE CLASS 3	3,448	862	6,784	1,696	8,620	2,155	9,312	2,328	10,116	2,529
4. COVERAGE CLASS 4	3,968	992	7,800	1,950	9,912	2,478	10,708	2,677	11,632	2,908
5. COVERAGE CLASS 5	6,036	1,509	11,868	2,967	15,084	3,771	16,292	4,073	17,700	4,425
6. COVERAGE CLASS 6	6,724	1,681	13,224	3,306	16,808	4,202	18,152	4,538	19,724	4,931
7. COVERAGE CLASS 7	8,620	2,155	16,952	4,238	21,548	5,387	23,272	5,818	25,284	6,321
8. COVERAGE CLASS 8	12,412	3,103	24,412	6,103	31,032	7,758	33,512	8,378	36,408	9,102
9. COVERAGE CLASS 9	17,240	4,310	33,904	8,476	43,096	10,774	46,544	11,636	50,568	12,642
10. COVERAGE CLASS 10	23,444	5,861	46,108	11,527	58,612	14,653	63,300	15,825	68,772	17,193
11. NURSE/TECHNICIAN	148	37	288	72	364	91	392	98	428	107
12. PHYSIOTHERAPIST	292	73	572	143	728	182	784	196	852	213
13. PHYS ASST/NURSE PRAC	348	87	680	170	864	216	932	233	1,012	253

The Retroactive Date is the original date of your first MIEC policy.

6250 Claremont Avenue, Oakland, California 94618-1324
Telephone (415) 428-9411 / From outside California (800) 227-4527



Medical Insurance Exchange of California

ALASKA

Claims Made Professional Liability Premium Schedule Effective June 1, 1988

Limits of Liability: 1,000,000 Each Claim / 3,000,000 Annual Aggregate

DOCTORS COVERAGE CLASSIFICATIONS	FIRST YEAR RATES RETROACTIVE DATES: 01/01/88 OR LATER		SECOND YEAR RATES RETROACTIVE DATES: 01/01/87 - 12/31/87		THIRD YEAR RATES RETROACTIVE DATES: 01/01/86 - 12/31/86		FOURTH YEAR RATES RETROACTIVE DATES: 01/01/85 - 12/31/85		FIFTH YEAR RATES RETROACTIVE DATES: 08/01/75 - 12/31/84	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	2,232	558	4,388	1,097	5,580	1,395	6,024	1,506	6,544	1,636
2. COVERAGE CLASS 2	2,840	710	5,584	1,396	7,100	1,775	7,668	1,917	8,232	2,058
3. COVERAGE CLASS 3	4,060	1,015	7,980	1,995	10,144	2,536	10,952	2,738	11,900	2,975
4. COVERAGE CLASS 4	4,668	1,167	9,176	2,294	11,664	2,916	12,596	3,149	13,664	3,416
5. COVERAGE CLASS 5	7,100	1,775	13,960	3,490	17,748	4,437	19,168	4,792	20,824	5,206
6. COVERAGE CLASS 6	7,912	1,978	15,556	3,889	19,776	4,944	21,356	5,339	23,204	5,801
7. COVERAGE CLASS 7	10,144	2,536	19,944	4,986	25,352	6,338	27,380	6,845	29,748	7,437
8. COVERAGE CLASS 8	14,604	3,651	28,720	7,180	36,508	9,127	39,428	9,857	42,832	10,708
9. COVERAGE CLASS 9	20,284	5,071	39,888	9,972	50,704	12,676	54,760	13,690	59,492	14,873
10. COVERAGE CLASS 10	27,584	6,896	54,244	13,561	68,956	17,239	74,472	18,618	80,904	20,226
11. NURSE/TECHNICIAN	172	43	336	84	428	107	464	116	500	125
12. PHYSIOTHERAPIST	344	86	672	168	856	214	924	231	1,000	250
13. PHYS ASST/NURSE PRAC	408	102	800	200	1,016	254	1,096	274	1,192	298

The Retroactive Date is the original date of your first MIEC policy.

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Telephone (415) 428-9411 / From outside California (800) 227-4527

MIEC**Medical Insurance Exchange of California****ALASKA****Claims Made Professional Liability Premium Schedule** Effective June 1, 1988

Limits of Liability: 2,000,000 Each Claim / 4,000,000 Annual Aggregate

DOCTORS COVERAGE CLASSIFICATIONS	FIRST YEAR RATES RETROACTIVE DATES: 01/01/88 OR LATER		SECOND YEAR RATES RETROACTIVE DATES: 01/01/87 - 12/31/87		THIRD YEAR RATES RETROACTIVE DATES: 01/01/86 - 12/31/86		FOURTH YEAR RATES RETROACTIVE DATES: 01/01/85 - 12/31/85		FIFTH YEAR RATES RETROACTIVE DATES: 08/01/75 - 12/31/84	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	2,968	742	5,836	1,459	7,420	1,855	8,012	2,003	11,714	2,928
2. COVERAGE CLASS 2	3,408	852	6,704	1,676	8,520	2,130	9,210	2,302	13,990	3,497
3. COVERAGE CLASS 3	4,868	1,217	9,576	2,394	12,168	3,042	13,144	3,286	19,420	4,855
4. COVERAGE CLASS 4	5,600	1,400	11,008	2,752	13,996	3,499	15,116	3,779	21,400	5,350
5. COVERAGE CLASS 5	8,520	2,130	16,752	4,188	21,296	5,324	23,000	5,750	29,996	7,499
6. COVERAGE CLASS 6	9,492	2,373	18,668	4,667	23,728	5,932	25,628	6,407	32,944	8,236
7. COVERAGE CLASS 7	12,676	3,169	24,928	6,232	31,688	7,922	34,224	8,556	37,104	9,276
8. COVERAGE CLASS 8	18,252	4,563	35,896	8,974	45,632	11,408	49,284	12,321	53,540	13,385
9. COVERAGE CLASS 9	26,364	6,591	51,852	12,963	65,912	16,478	71,164	17,796	77,336	19,334
10. COVERAGE CLASS 10	36,960	9,240	72,688	18,172	92,396	23,099	99,788	24,947	108,412	27,103
11. NURSE/TECHNICIAN	208	52	404	101	512	128	556	139	600	150
12. PHYSIOTHERAPIST	412	103	808	202	1,024	256	1,108	277	1,200	300
13. PHYS ASST/NURSE PRAC	488	122	960	240	1,220	305	1,316	329	1,408	352

The Retroactive Date is the original date of your first MIEC policy.

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Telephone (415) 428-9411 / From outside California (800) 227-4527

MIEC**Medical Insurance Exchange of California****ALASKA****Claims Made Professional Liability Premium Schedule**

Effective June 1, 1988

Limits of Liability: 5,000,000 Each Claim / 5,000,000 Annual Aggregate

DOCTORS COVERAGE CLASSIFICATIONS	FIRST YEAR RATES RETROACTIVE DATES: 01/01/88 OR LATER		SECOND YEAR RATES RETROACTIVE DATES: 01/01/87 - 12/31/87		THIRD YEAR RATES RETROACTIVE DATES: 01/01/86 - 12/31/86		FOURTH YEAR RATES RETROACTIVE DATES: 01/01/85 - 12/31/85		FIFTH YEAR RATES RETROACTIVE DATES: 08/01/75 - 12/31/84	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	3,712	928	7,296	1,824	9,272	2,318	10,016	2,504	10,880	2,720
2. COVERAGE CLASS 2	4,260	1,065	8,376	2,094	10,648	2,662	11,500	2,875	12,496	3,124
3. COVERAGE CLASS 3	6,084	1,521	11,968	2,992	15,212	3,803	16,428	4,107	17,848	4,462
4. COVERAGE CLASS 4	7,000	1,750	13,760	3,440	17,492	4,373	18,892	4,723	20,524	5,131
5. COVERAGE CLASS 5	10,648	2,662	20,940	5,235	26,620	6,655	29,748	7,437	31,232	7,808
6. COVERAGE CLASS 6	11,864	2,966	23,336	5,834	29,660	7,415	32,036	8,009	34,804	8,701
7. COVERAGE CLASS 7	15,844	3,961	31,160	7,790	39,612	9,903	42,780	10,695	46,476	11,619
8. COVERAGE CLASS 8	22,816	5,704	44,872	11,218	57,040	14,260	61,604	15,401	66,924	16,731
9. COVERAGE CLASS 9	32,956	8,239	64,812	16,203	82,388	20,597	88,980	22,245	96,666	24,167
10. COVERAGE CLASS 10	46,200	11,550	90,856	22,714	115,496	28,874	124,736	31,184	135,516	33,879
11. NURSE/TECHNICIAN	256	64	504	126	640	160	592	148	752	188
12. PHYSIOTHERAPIST	512	128	1,008	252	1,280	320	1,384	346	1,500	375
13. PHYS ASST/NURSE PRAC	512	153	1,200	300	1,524	381	1,644	411	1,766	442

6250 Claremont Avenue, Oakland, California 94618-1324

Telephone (415) 428-9411 / From outside California (800) 227-4527

The Retroactive Date is the original date of your first MIEC policy.

MIEC**Medical Insurance Exchange of California****ALASKA****Claims Made Professional Liability Premium Schedule** Effective June 1, 1988**First Year New Doctor Rule Rates*** Retroactive Date 1-1-88 or Later

DOCTORS COVERAGE CLASSIFICATIONS	LIMITS 1 500,000/1,500,000		LIMITS 2 1,000,000/3,000,000		LIMITS 3 2,000,000/4,000,000		LIMITS 4 5,000,000/5,000,000	
	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY	ANNUAL	QUARTERLY
1. COVERAGE CLASS 1	475	118.75	558	139.50	742	185.50	928	232.00
2. COVERAGE CLASS 2	604	151.00	710	177.50	852	213.00	1,065	266.25
3. COVERAGE CLASS 3	862	215.50	1,015	253.75	1,217	304.25	1,521	380.25
4. COVERAGE CLASS 4	992	248.00	1,167	291.75	1,400	350.00	1,750	437.50
5. COVERAGE CLASS 5	1,509	377.25	1,775	443.75	2,130	532.50	2,662	665.50
6. COVERAGE CLASS 6	1,681	420.25	1,978	494.50	2,373	593.25	2,966	741.50
7. COVERAGE CLASS 7	2,155	538.75	2,536	634.00	3,169	792.25	3,961	990.25
8. COVERAGE CLASS 8	3,103	775.75	3,651	912.75	4,563	1,140.75	5,704	1,426.00
9. COVERAGE CLASS 9	4,310	1,077.50	5,071	1,267.75	6,591	1,647.75	8,239	2,059.75
10. COVERAGE CLASS 10	5,861	1,465.25	6,896	1,724.00	9,240	2,310.00	11,550	2,887.50

ALASKA
DATE PREPARED: MARCH 17, 1988
PROCEDURE: NDPREM
USERID: MIECUWK

*These rates apply only to physicians entering the practice of medicine for the first time after completion of a residency, fellowship training or military service.

6250 Claremont Avenue, Oakland, California 94618-1324
Telephone (415) 428-9411 / From outside California (800) 227-4527



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box 5, State Capitol
Juneau, Alaska 99811-1100
Mail Stop 1100
(907) 165-1991

April 18, 1989

MEMORANDUM

TO: Representative Peter Goll

ATTN: Hayden Kaden

FROM: Karen Oakley *KE*
Legislative Analyst

RE: Medical Malpractice Premiums Paid by Alaska Doctors
Research Request 89.297 (Supplemental Information)

You requested further information concerning medical malpractice insurance in Alaska. Specifically, you wanted to know how many private doctors are covered by the Medical Indemnity Corporation of Alaska (MICA) and how many are covered by other insurance companies or are without insurance. You also asked about reinsurance purchased by MICA.

According to Art Stanford, with the MICA underwriting department, MICA currently covers about 250 individual physicians, ten hospitals and ten to 12 "related health care facilities." The latter include clinics, such as the Alaska Kidney Center, which are staffed primarily by technicians.

There are just over 600 doctors in private practice in Alaska, thus, 40 percent of the private doctors in Alaska are insured with MICA. I was unable to obtain estimates of the number of doctors insured by each of the 22 other companies writing medical malpractice insurance in Alaska. In 1988, MICA had 48 percent of the medical malpractice market in Alaska, so these other companies together probably insure a similar number of doctors, leaving some 100 to 125 private doctors without insurance. This estimate of the number of uninsured doctors is consistent with the observations of Mary Pierce, executive director of MICA; she estimates that from 15 to 20 percent of Alaska's private doctors are currently "going bare".

Ms. Pierce provided information on reinsurance purchased by MICA. She indicated that MICA pays about \$1.2 million for reinsurance annually. The primary reinsurer is Lloyd's of London, but a number of other companies, including at least one domestic hospital reinsurance company, sign on the policy. The MICA's retention (i.e., deductible portion) is \$250,000 per claim, however, the retention is indexed and increases by about 10 percent per year between the time the claim is made and the time the claim is settled.

Representative Goll
April 18, 1989
Page 2

The MICA is an associate member of the Physicians' Insurance Association of America (PIAA). Because MICA is not a physician-owned company, MICA cannot be a full member of the PIAA. The MICA has broached the idea of putting together a reinsurance pool with the other members of PIAA, but the idea has not generated much interest. Compared with the other companies in the association, MICA is small, and the other companies have nothing to gain from joining with MICA. For further information on MICA's reinsurance situation, please contact Ms. Pierce at 563-3414.

I hope this information is useful. Please let me know if I can provide any further information.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Box V, State Capitol
Juneau, Alaska 99811-1100
Mail Stop 1100
(907) 461-1991

March 13, 1989

MEMORANDUM

TO: House Finance Fiscal Policy Subcommittee

FROM: Karen Oakley *VO*
Legislative Analyst

RE: Insurance Taxes in Alaska
Research Request 89.256

You asked for information on insurance taxes in Alaska. This memorandum provides background information on regulation and taxation of the insurance industry; a description of the current tax structure; a history of Alaska's insurance taxes; past, present and future revenues from insurance taxes; a comparison with other states; and current issues.

In summary:

- Premium taxes and fees paid by insurance companies generated \$25.6 million in FY 88, representing slightly more than one percent of the state's total unrestricted general fund revenues.
- Although the state must expend money to regulate the insurance industry, the premium tax is a net revenue producer for the state.
- Except for the tax rate on wet marine and transportation premiums, which is one of the lowest in the nation, Alaska's premium tax rate of 2.7 percent is average; however, Alaska has the highest per capita insurance tax revenue of any state.
- Current issues are the low tax rate applied to wet marine and transportation premiums and a pattern of nonpayment of taxes by foreign insurers.
- Due to slower population growth, premium tax revenues have probably peaked; any increased revenues in the foreseeable future will be due to increased enforcement.

Background

The insurance industry occupies the unique position of being the only form of interstate commerce regulated by the states.¹ Due to the difficulty of taxing the net income of insurance companies, states have instead levied taxes on gross premium income. Currently, all states levy taxes on insurance premiums. The tax is essentially a sales tax on insurance sold which is ultimately paid by insurance consumers. The tax rates are fairly uniform, most in the range of two to three percent. Prior to 1985, most states, including Alaska, employed a retaliatory system of taxing insurers--taxing insurance companies domiciled in other states (foreign insurers) at higher rates than domestic insurers. The U.S. Supreme Court found this practice violated the equal protection clause of the constitution in 1985 in Metropolitan v. Ward, a case involving Alabama's retaliatory taxation of foreign insurers.²

Insurance premium taxes generate considerably more revenue than is required to operate the agencies that regulate the insurance industry. In recent years, states have collectively spent less than \$200 million to regulate the insurance industry, whereas state taxes on insurance companies have totalled approximately \$4 billion.

Current Tax Structure

Table 1 summarizes the current taxes levied in Alaska on insurance premiums. The relevant statutes are provided in Attachment A.

In addition to premium taxes, the state also collects various fees from insurance companies and their agents. These fees were set in statute until 1985, when the relevant statute (AS 21.06.250) was amended to provide that the Division of Insurance shall adopt regulations setting the fees. The fees are to be set in an amount sufficient to reimburse the state for the expenses of the state in regulating the insurance industry. Current fees are found in 3 AAC 31.010 through 3 AAC 31.090; these regulations are included in Attachment A.

¹See House Research Agency Memorandum 88.122 for further information on state regulation of the insurance industry.

²Metropolitan Life Insurance Co. et. al. v. W.G. Ward et al. 105 S. Ct. 1676.

TABLE 1
INSURANCE TAXES IN ALASKA

INSURANCE TYPE	TAX RATE (%)	WHAT IS TAXED	STATUTE
ADMITTED LINES			
Domestic and Foreign Insurers (see Note 1)	2.7	total direct premiums after certain deductions (see Note 2)	AS 29.09.210(b)(1)
Hospital and Medical Service Corporations	6.0	gross premiums less claims paid	AS 29.09.210(b)(2)
Wet Marine and Transportation Insurers	0.075	gross underwriting profit (see Note 3)	AS 29.09.210(d)
Title Insurers	1.0	gross premium income (no deductions)	AS 21.66.110
SURPLUS LINES			
Casualty Insurance	2.7	total direct premiums after certain deductions (see Note 2)	AS 21.34.180
Marine Insurance (except Wet Marine)	2.7	total direct premiums after certain deductions (see Note 2)	AS 21.34.180
Wet Marine Insurance	0.075	gross underwriting profit (see Note 3)	AS 21.34.180
All Surplus Lines (see Note 4)	1.0	gross returned premiums	AS 21.34.190
UNAUTHORIZED LINES			
Casualty Insurance	3.0	gross premiums	AS 21.33.055
Marine, Wet Marine, and Transportation Insurance	0.075	gross premiums	AS 21.33.055
SELF-PROCURED LINES			
Marine, Wet Marine, and Transportation Insurance	0.075	gross premiums	AS 23.33.061
All other lines	3.0	gross premiums	AS 23.33.061

NOTES:

1. Domestic insurers are companies formed under the laws of the state of Alaska. Foreign insurers are companies formed under the laws of other states or countries. Until 1985, most states, including Alaska, taxed foreign insurers at a higher rate than domestic insurers. This practice of retaliatory taxation on the insurance industry was found unconstitutional in *Metropolitan v. Ward*, 105 S. Ct. 1676.
2. The tax is paid on total direct premium income less the following: applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums returned to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders.
3. Gross underwriting profit is computed by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) the net losses paid (i.e., gross losses paid, less salvage and recoveries on reinsurance ceded).
4. This tax is a "filing fee" required to be paid by all surplus lines brokers.

Prepared by the House Research Agency, March 1989 (89.256A).

History of Alaska's Premium Taxes

A premium tax was first levied in Alaska in 1915. In addition to premium taxes, insurance companies were also charged various fees for filing, licensing and examinations. Shortly after statehood, the legislature undertook studies of all the territorial taxes to determine what revisions were necessary. Several problems with the insurance tax were identified at that time. Insurance companies were subject to the corporate net income tax, in addition to the premium tax, but due to the difficulty of identifying net income and of applying allocation factors, almost no income tax revenue was produced by insurance companies. The insurance tax law also favored domestic companies--which were not required to pay the premium tax for a five year period following incorporation and were taxed at one-half the rate at which foreign companies were taxed--and nonprofit fraternal associations--which were exempt from the premium tax.

In 1966, the Insurance Code (Title 21) was adopted (1 ch 120 SLA 1966). The select treatment of domestic companies and fraternal organizations was retained, but insurance companies were exempted from the corporate net income tax. The state also preempted the field of taxing insurance; thus, local governments are prohibited from taxing the sale of insurance within their bounds. (Local governments are, however, allowed to tax the property of insurance companies located within their bounds.)

The taxation provisions of the insurance code have been amended infrequently since they were adopted. In 1982, the statutes were amended to exempt premiums paid by the state for insurance policies and contracts from the premium tax. In 1986, following the Metropolitan v. Ward ruling, the tax rate was equalized for foreign and domestic insurers.³ The most recent amendment was made in 1987, when a sunset date of 1989 for the provision granting the five year exemption from premium taxes for newly incorporated domestic companies was set.

Revenues from Insurance Taxes and Fees

Revenues from insurance taxes and fees were \$25.6 million in FY 88. Total premiums written reached the \$1 billion mark in FY 86. Table 2 presents the amount of revenue generated by insurance premium taxes and fees each year since FY 60; the table also shows the gross premium income generated by the insurance of risks located in Alaska. Figure 1 shows annual tax revenues, and Figure 2 shows annual premiums written.

³The tax rate for domestic companies had been 1.5 percent, and the tax rate for foreign companies had been 3.0 percent. The 1986 amendment established the tax rate at 2.7 percent for both types of insurers.

TABLE 2
REVENUES FROM INSURANCE TAXES AND FEES IN ALASKA: FY 60-FY 88

FISCAL YEAR	INSURANCE TAX REVENUES				TOTAL PREMIUMS WRITTEN (\$1,000s)	INSURANCE TAX REVENUES AS A PERCENT OF:	
	FEES	TAXES	TOTAL	PER CAPITA		TOTAL PREMIUMS	UNRESTRICTED REVENUES
60	880,204	8857,211	8937,415	94.1	834,154	2.7	
61	70,250	963,784	1,034,034	4.4	36,881	2.8	
62	73,561	1,031,274	1,104,835	4.6	40,075	2.8	
63	75,726	1,135,279	1,211,005	4.8	42,900	2.8	
64	75,572	1,197,018	1,272,590	5.0	47,567	2.7	
65	78,974	1,321,067	1,400,041	5.3	58,628	2.4	
66	88,474	1,646,703	1,735,177	6.4	64,727	2.7	
67	123,560	1,802,721	1,926,281	6.9	70,159	2.7	
68	142,354	1,946,854	2,089,208	7.3	79,785	2.6	
69	152,651	2,200,987	2,353,638	8.0	93,859	2.5	
70	171,114	2,561,761	2,732,875	8.9	113,193	2.4	
71	208,599	3,018,206	3,226,805	10.1	131,519	2.5	
72	210,427	3,475,954	3,686,381	11.2	146,033	2.5	
73	242,761	3,729,747	3,972,508	11.8	155,738	2.6	1.9
74	246,213	3,765,090	4,011,303	11.5	189,880	2.1	1.6
75	265,570	4,419,887	4,685,457	12.2	264,829	1.8	1.4
76	329,210	6,078,744	6,407,954	15.6	356,048	1.8	0.9
77	404,654	8,063,205	8,467,859	20.3	452,564	1.9	1.0
78	511,667	10,001,963	10,513,630	25.5	473,711	2.2	1.4
79	500,078	10,772,179	11,272,257	27.2	459,467	2.5	1.0
80	536,297	10,435,773	10,972,070	26.1	478,688	2.3	0.4
81	654,757	10,618,190	11,272,947	26.0	578,457	1.9	0.3
82	868,689	12,530,175	13,398,864	28.8	648,723	2.1	0.3
83	801,034	13,842,732	14,643,766	29.4	760,143	1.9	0.4
84	833,710	16,172,775	17,006,485	32.6	829,606	2.0	0.5
85	876,059	17,504,733	18,380,792	34.1	956,125	1.9	0.6
86	1,641,244	21,283,325	22,926,569	41.9	1,041,981	2.2	0.7
87	1,411,122	23,659,248	25,070,370	46.6	944,922	2.7	1.4
88	1,763,499	23,847,174	25,611,073	47.6			1.1

Source: Annual Reports of the Alaska Division of Insurance

Prepared by the House Research Agency, March 1989 (89.256C).

FIGURE 1

INSURANCE TAX REVENUES IN ALASKA

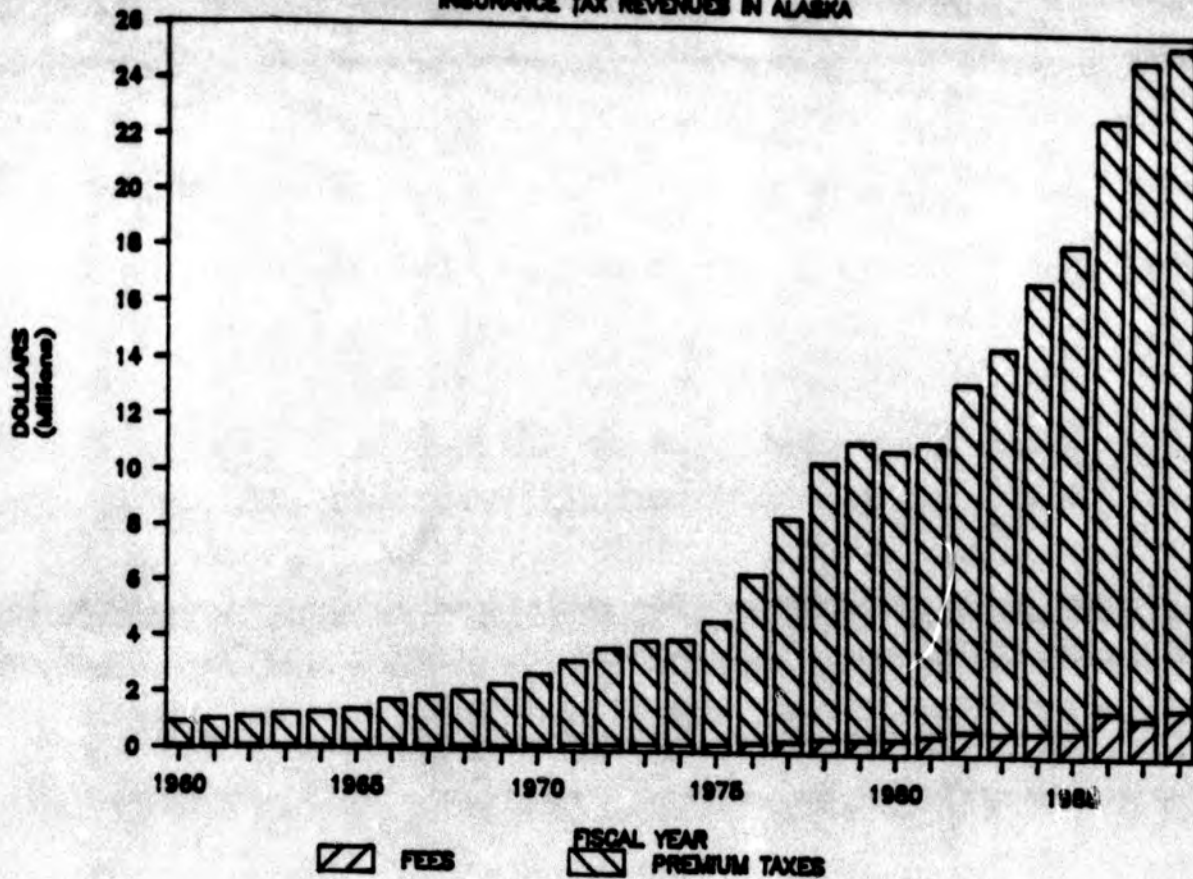
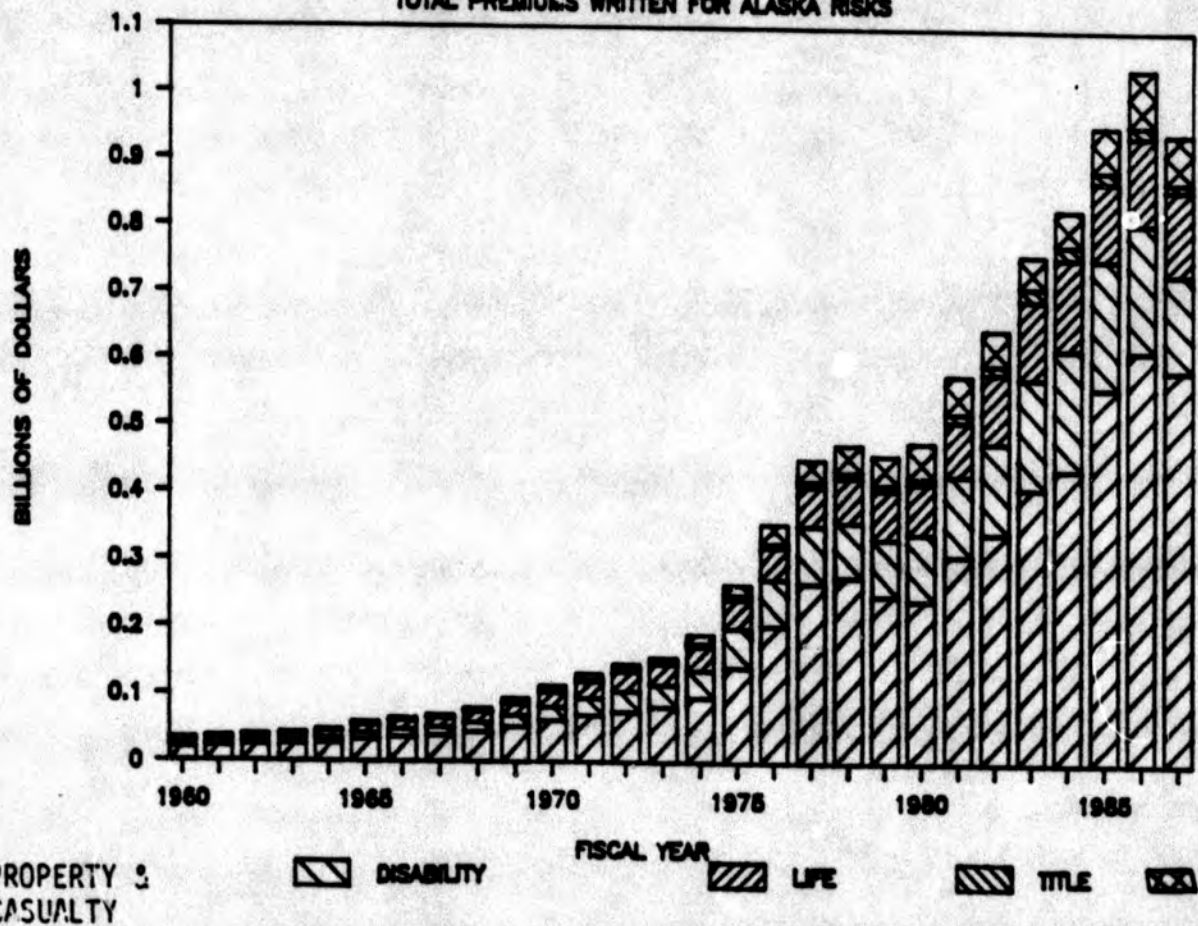


FIGURE 2

TOTAL PREMIUMS WRITTEN FOR ALASKA RISKS



The majority of revenues are generated by premiums for property and casualty insurance. Premium income for these types of insurance typically accounts for 50 to 60 percent of all premium income. Figure 3 shows the percentage of total premium income from each of the major types of insurance; there has been relatively little change during the past 29 years.

The majority of insurance companies insuring Alaska risks are domiciled in other states. Ninety-eight percent of all admitted insurers are foreign. Thus, the majority of insurance revenues are attributable to foreign insurers.

Revenues from insurance taxes and fees increased from \$11 million in FY 80 to over \$25 million in FY 89. Population appears to be the driving force behind the amount of premiums paid and therefore the amount of revenue generated. Population growth has slackened in the past two years due to the regression of the Alaska economy, and growth in insurance premium income and premium tax revenues has also slowed. According to Joan Brown, Division of Insurance, insurance tax and fee revenues have probably peaked, at least for the next few years. For the foreseeable future, any increased revenues will probably be due to increased enforcement (see below). Revenue from insurance taxes and fees has typically represented about one percent of total unrestricted general fund revenues.

Comparison to Other States

Attachment B provides a summary of the basic premium tax rates levied by each state. Most states levy a tax of two to three percent on gross premiums. The highest tax rate is four percent (West Virginia); the lowest tax rate appears to be found in Louisiana which charges 0.025 percent plus a flat annual license tax which varies depending on the line and gross premiums. Alaska's basic rate of 2.7 percent is average.

Table 3 compares the FY 85 per capita insurance tax revenues of the 50 states. Alaska, which collected \$33 per capita, had the highest per capita revenues from insurance taxes in that year. Illinois, with per capita revenues of \$10, had the lowest per capita insurance tax revenues.

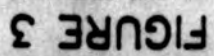


TABLE 3
1985 REVENUES FROM INSURANCE PREMIUM TAXES IN ALASKA AND OTHER STATES
(List sorted in descending order by per capita revenues)

STATE	INSURANCE TAX REVENUES (1,000s)	POPULATION (1,000s)	PER CAPITA REVENUES
ALASKA	817,557	521	833.7
NEVADA	28,420	936	30.4
KANSAS	73,666	2,450	30.1
OKLAHOMA	97,681	3,301	29.6
CONNECTICUT	92,840	3,174	29.3
NEW MEXICO	42,297	1,450	29.2
KENTUCKY	107,457	3,726	28.8
MASSACHUSETTS	163,684	5,822	28.1
DELAWARE	17,378	622	27.9
HAWAII	29,417	1,054	27.9
LOUISIANA	124,311	4,481	27.7
MONTANA	20,798	826	25.2
CALIFORNIA	654,557	26,365	24.8
TEXAS	378,649	16,370	23.1
SOUTH DAKOTA	16,279	708	23.0
WEST VIRGINIA	44,092	1,936	22.8
ALABAMA	90,046	4,021	22.4
MISSISSIPPI	54,084	2,613	20.7
IDAHO	20,546	1,005	20.4
MISSOURI	99,088	5,029	19.7
IOWA	55,632	2,884	19.3
NEW HAMPSHIRE	19,080	998	19.1
TENNESSEE	90,994	4,762	19.1
VIRGINIA	108,633	5,706	19.0
MARYLAND	82,248	4,392	18.7
NORTH DAKOTA	12,635	685	18.4
NEBRASKA	29,540	1,606	18.4
NORTH CAROLINA	115,030	6,255	18.4
MINNESOTA	76,525	4,193	18.3
RHODE ISLAND	17,308	968	17.9
ARIZONA	55,436	3,187	17.4
PENNSYLVANIA	204,758	11,853	17.3
ARKANSAS	40,181	2,359	17.0
VERMONT	8,853	535	16.5
FLORIDA	187,634	11,366	16.5
NEW YORK	292,962	17,783	16.5
MAINE	19,023	1,164	16.3
UTAH	26,554	1,645	16.1
WYOMING	8,192	509	16.1
OHIO	170,805	10,744	15.9
OREGON	41,414	2,687	15.4
GEORGIA	91,310	5,976	15.3
WASHINGTON	61,396	4,409	13.9
COLORADO	43,647	3,231	13.5
NEW JERSEY	102,004	7,562	13.5
MICHIGAN	116,994	9,088	12.9
INDIANA	70,558	5,499	12.8
SOUTH CAROLINA	42,438	3,347	12.7
WISCONSIN	53,315	4,775	11.2
ILLINOIS	116,027	11,535	10.1
OVERALL	4,533,973	238,113	19.0

Source: U.S. Department of Commerce, Bureau of the Census, State Government Tax Collections in 1985, Series GF85, No. 1.

Prepared by the House Research Agency, March 1989 (89.2560).

Current Issues

Two issues are of concern at the present time with regard to Alaska's taxation of the insurance industry. These issues are 1) the lower tax rate applied to wet marine and transportation insurance, and 2) collection of taxes owed by foreign insurers.

Tax Rate on Wet Marine and Transportation Premiums. The tax levied on wet marine and transportation insurance premiums is 0.075 percent of gross underwriting profits--considerably lower than the tax rate of 2.7 percent of total direct premiums applied to most other types of insurance. The rate for wet marine and transportation insurance was set in 1966 and has not been changed since. Apparently, that rate (0.075 percent) was the typical rate applied to wet marine insurance at that time. Although 16 states do give preferential tax treatment to wet marine and transportation insurance, Alaska is one of only four states that taxes wet marine insurance at such a low rate. According to the Division of Insurance, insurance carriers in Alaska paid \$29,000 in taxes on wet marine and transportation insurance in 1986; if taxed at the standard rate at that time, these insurers would have paid \$229,000.⁴

Collection of Taxes Owed by Foreign Insurers. In their Annual Report for FY 88, the Division of Insurance noted the following about premium taxes:

A primary area where the division believes that additional revenue should be forthcoming is in the area of out-of-state insurance brokers who have failed to pay the premium taxes due and owing the State of Alaska for insurance written on Alaska risks and Alaska residents. Those additional revenues are in the process of being determined, but it is anticipated that the evaluation will show that substantial sums of tax revenues have gone uncollected. A pattern of nonpayment has been in existence for a period of time.

According to Joan Brown, Division of Insurance, many of the foreign insurers who have failed to pay premium taxes are firms located in Washington that underwrite wet marine risks (i.e. fishing boats) in Alaska. The division has performed a number of audits of such companies, and they plan to do more. The division has not yet completed their analysis of the amount of uncollected revenue. You may wish to contact Paul Roller, director, Division of Insurance, for further information on this topic (465-2515).

I hope this information is useful. If I can provide any further information, please let me know.

Attachments

⁴For further information on this topic, see House Research Memorandum 87.269.

ATTACHMENT A
Alaska Statutes and Regulations Concerning
Tax and Fees Collected from Insurance Companies

Sec. 21.66.050. Title insurance unearned premium reserve fund. (a) Every title insurance company, either foreign or domestic, operating in this state under the provisions of this chapter, shall annually set apart, establish, segregate and maintain at the end of each year into an account to be known as Title Insurance Unearned Premium Reserve Fund, a sum equal to three per cent of its gross premiums on title insurance policies issued during the year then ending covering property in this state. The reserve fund shall be in addition to the deposit with the director. There shall be no other reserve requirements. The reserve must be maintained separately and apart from the capital of the company, and shall be invested in the securities which are authorized for investment by domestic insurance companies under the laws of this state. Funds accumulated under this provision shall never be used for the payment of an obligation other than those incurred in connection with title insurance, and, in the event of the insolvency of a company, this fund shall be used to pay losses and to purchase reinsurance to protect title insurance policyholders even though there are no accrued title insurance claims. The reserve fund shall be considered and shall constitute unearned portions of the original premiums and shall be charged as a reserve liability of the company in determining its financial condition.

(b) The reserve funds shall be maintained in the treasury of the insurer as additional security to holders of title insurance policies issued by the insurer. When, on account of losses or otherwise, the amount of the reserve fund of an insurer is less than the amount required by this chapter no further insurance policies shall be issued by the insurer until the deficiency below the amount required is restored. The net income and profits derived from the fund shall be transferred to the general assets of the company. The company shall also at all times keep a separate record of the cash and securities of the reserve fund, giving complete identification of the assets belonging to the fund and showing full particulars as to withdrawals and additions. After the expiration of 120 months from the date of the first annual deposit in the unearned premium reserve fund made by a corporation now or hereafter qualified, that portion of the reserve fund established more than 120 months earlier shall be released and shall no longer constitute a part of the reserve fund and may be used for a corporate purpose. (§ 1 ch 120 SLA 1966, am § 5 ch 120 SLA 1974)

Sec. 21.66.060. Dividends. The corporation may not pay dividends except from net profits remaining on hand after retaining unimpaired

(1) the subscribed capital stock;
(2) the amount required to be set aside as unearned premium reserve fund;

(3) a sum sufficient to pay current liabilities for operating expenses and taxes, and losses established or in process of settlement, without impairment of the unearned premium reserve fund. (§ 1 ch 120 SLA 1966)

Sec. 21.66.070. Filing schedule of rates and policy forms. (Repealed. § 8 ch 120 SLA 1974)

Sec. 21.66.080. Annual statement. Every corporation, before March 2 of each year, shall furnish the director a sworn statement of assets and liabilities, and of all title premiums received by it during the preceding calendar year, setting out among other things that three per cent of all gross premiums on title insurance policies issued by it during the year covering property in this state have been set aside and held by it in an account known as the Title Insurance Unearned Premium Reserve Fund as provided in this chapter. The statement shall also show in the form which may be prescribed by the director all unpaid losses and claims upon title insurance policies of which the corporation has received due notice in writing from or on behalf of the insured. With the filing of the statement the corporation shall pay a filing fee of \$15 to be placed in the general fund. (§ 1 ch 120 SLA 1966)

Sec. 21.66.090. Application for certificate of authority. (a) Every company, before engaging in a title insurance business in this state, shall apply to the director for a certificate of authority to transact business. The company shall submit with the application a statement sworn to by the proper officers of the company showing its assets and liabilities and that it has complied with the capital requirements and initial guarantee fund deposit prescribed by this chapter.

(b) With the filing of the application the corporation shall pay a fee of \$50 to be deposited in the general fund and in addition shall pay all traveling expenses of the director or an authorized representative of the director and per diem of \$21 a day incurred in examining the applicant's title plant or plants. (§ 1 ch 120 SLA 1966)

Sec. 21.66.100. Issuance of certificate of authority by director. If satisfied that the applicant has fully complied with the provisions of this chapter the director shall issue a certificate of authority. A company that has heretofore qualified in this state as a trust company with title insurance powers under the banking act and is in good standing under existing law shall be entitled to a certificate of authority upon its filing the application and furnishing the information required in the preceding section. (§ 1 ch 120 SLA 1966)

Sec. 21.66.110. Annual tax on title insurance premiums. Annually each title insurance company shall pay before April 1, a tax of one per cent of the amount of gross title insurance premiums received by it including as premium income received from guaranteed certificates of title and other guarantees of title during the preceding calendar year covering property in this state, as shown by its annual statement to the director. (§ 1 ch 120 SLA 1966)

Sec. 21.66.120. Examination by director. (a) The director is authorized to examine the books, accounts, assets and title plants of a

Effect of amendments. — The 1984 amendment inserted "nonadmitted" in the first sentence.

Sec. 21.33.037. Acting for or aiding nonadmitted insurers prohibited. (a) A person may not directly or indirectly act as agent for, or otherwise represent, assist, or aid on behalf of another, a nonadmitted insurer in the transaction of insurance in this state.

(b) This section does not apply to

- (1) matters authorized to be done by the director,
- (2) surplus lines insurance effected and written under AS 21.34,
- (3) transactions for which a certificate of authority is not required under this title,
- (4) reinsurance,
- (5) the property and operations of railroads or aircraft engaged in interstate or foreign commerce and wet marine and transportation insurance,
- (6) life insurance, disability insurance and annuity contracts when solicited solely by mail or when not solicited, negotiated or procured in this state;

(7) transactions subsequent to issuance of a policy not covering domestic risks at time of issuance, and lawfully solicited, written or delivered outside this state.

(c) A person who represents or aids a nonadmitted insurer in violation of this section is subject to the penalties provided in AS 21.33.065. An insurance contract entered into in violation of this section shall not preclude the insured from enforcing the insured's rights in accordance with the terms and provisions of the contract and the laws of this state.

(d) If the nonadmitted insurer fails to pay a claim or loss within the provisions of the insurance contract, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract, shall be liable to the insured for the full amount under the provisions of the insurance contract. (5 10 ch 117 SLA 1984)

Sec. 21.33.040. Service of process. [Repealed, § 2 ch 234 SLA 1968.]

Sec. 21.33.041. Contract validity. [Repealed, § 26 ch 117 SLA 1984.]

Sec. 21.33.042. Suits by nonadmitted insurers. A nonadmitted insurer may not commence or maintain an action in law or equity in this state to enforce a right arising out of a transaction of insurance in this state except with respect to

- (1) claims under policies lawfully written in this state,
- (2) liquidation of assets and liabilities, other than the collection of new premiums, resulting from its former admitted operations in this state,

(3) transactions subsequent to issuance of a policy not covering domestic risks at time of issuance, and lawfully solicited, written or delivered outside this state.

(4) surplus lines insurance coverage exported in accordance with AS 21.34;

(5) reinsurance;

(6) the continuation and servicing of life insurance, disability insurance policies or annuity contracts remaining in force as to residents of this state where the insurer has withdrawn from the state and is not transacting new insurance;

(7) servicing of policies written by an admitted insurer in a state to which the insured has moved but in which the insured is not licensed, until the term of the policy expires.

(8) claims under policies covering wet marine and transportation insurance, including vessels of 50 displacement tons or less (5 11 ch 117 SLA 1984)

Sec. 21.33.045. Investigation and disclosure of insurance contracts. (a) When the director has reason to believe that insurance has been effectuated by or for a person in this state with a nonadmitted insurer the director shall in writing order the person to produce for examination all insurance contracts and other documents evidencing insurance with nonadmitted insurers and to disclose to the director the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation or effectuation of the insurance.

(b) [Repealed, § 26 ch 117 SLA 1984.]

(c) In case of a failure of any person to comply with the director's order under (a) of this section, the superior court, on application of the director, may issue an order requiring the production of the records and information sought by the director.

(d) This section does not apply to life insurance, disability insurance or annuity contracts (5 1 ch 234 SLA 1968, am §§ 12, 13, 26 ch 117 SLA 1984)

Effect of amendments. — The 1984 amendment added subsections (c) and (d); in subsection (a), substituted "a nonadmitted" for "both authorized and unauthorized," and repealed former subsection (b) relating to violations of this section.

Sec. 21.33.050. Exemptions from service of process provisions. [Repealed, § 2 ch 234 SLA 1968.]

Sec. 21.33.051. Reporting of unauthorized insurance. [Repealed, § 26 ch 117 SLA 1984.]

Sec. 21.33.055. Unauthorized insurance premium tax. (a) Except as to premiums on lawfully procured surplus lines insurance

of insurance in this state may be suspended by the director if the annual statement has not been filed by March 1. (1 ch 120 SLA 1966; am § 1 ch 149 SLA 1984; am § 7 ch 26 SLA 1986)

Effect of amendments. — The 1985 "set under" for "as prescribed in" and amendment in subsection (d) substituted made other minor changes

Sec. 21.09.210. Tax. (a) Each authorized insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall file with the director, before March 2 in each year, a report of all insurance business written or contracted in the state (with proper proportionate allocation of premium for the property, subjects, or risks in the state insured under policies or contracts covering property, subjects, or risks located or resident in more than one state) during the preceding year ending December 31. The report shall show

(1) the amounts paid policyholders on losses;

(2) the total direct premium income including policy membership and other fees, premiums paid by application of dividends, refunds, savings coupon, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance whether designated a premium or otherwise;

(3) the amounts paid policyholders as returned premiums;

(4) the amounts paid policyholders as dividends.

(b) Each insurer, and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state, shall pay a tax on the total direct premium income received during the year ending on the preceding December 31 and paid for the insurance of property or risks resident or located in the state other than wet marine and transportation insurance, after deducting from the total direct premium income the applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, all policy dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons and other similar returns paid or credited to policyholders with respect to their policies. No deductions may be made of cash surrender value of policies. Considerations received on annuity contracts are not included in the direct premium income and are not subject to tax. The tax shall be paid to the director annually before April 1, and is computed at the rate of

(1) for domestic and foreign insurers, except hospital and medical service corporations, 2.7 per cent;

(2) for hospital and medical service corporations, six per cent of their gross premiums less claims paid

(c) [Repealed effective July 1, 1989] A domestic company that has filed with the director, before July 1, 1987, for approval to orga-

nize is exempt from taxation under this section for a period of not more than five years from the date of its organization or until June 30, 1989, whichever occurs first

(d) An authorized insurer shall, with respect to all wet marine and transportation contracts written in this state during the preceding calendar year, before April 1 of each year, pay to the director a tax of three-quarters of one per cent on its gross underwriting profit. The gross underwriting profit is computed by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance), on wet marine and transportation insurance contracts, the net losses paid (i.e., gross losses paid, less salvage and recoveries on reinsurance ceded) during the calendar year under the contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit shall not include, for computation of the tax prescribed by this section, the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts

(e) Payment to the director by an insurer of the tax upon its premiums required by this section shall be in lieu of all other taxes imposed by the state upon premiums, franchises, privilege or other taxes measured by income of the insurer commencing with the taxable year beginning January 1, 1967

(f) The state hereby pre-empt the field of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses, and fees upon insurers and their general agents, agents and representatives as such, and on the intangible property of insurers or agents; and all political subdivisions of agencies in the state, including home rule boroughs or cities, are prohibited from imposing or levying upon insurers, or upon their general agents, agents and representatives as such, any tax, license, or fee. Provided that this subsection shall not be construed as prohibiting the imposition by political subdivisions of taxes upon real and tangible personal property of insurers and their general agents, agents and representatives.

(g) The director may suspend or revoke the certificate of authority of an insurer which fails to pay its taxes as required under this section.

(h) The provisions of this section do not apply to title insurance companies. A premium tax on title insurance companies shall be levied in accordance with the provisions of AS 21.66.110

(i) Premiums paid by the state for insurance policies and contracts purchased under the provisions of AS 39.30 are exempt from taxation under this section. Claims for exemption shall be made on forms provided by the division of insurance (1 ch 120 SLA 1966; am § 29 ch 137 SLA 1982; am § 1 ch 118 SLA 1986; am § 41 ch 14 SLA 1987; am §§ 1, 48 ch 29 SLA 1987)

Effect of amendments. - The 1986 amendment in subsection (b) in the third sentence substituted "are" for "shall" in two places and deleted "be" following "not" in two places. In paragraph (1) substituted "and foreign insurers, except hospital and medical service corporations, 2.7" for "companies, 1 1/2," in paragraph (2) substituted "six" for "8," and repealed paragraph (3), which read "for companies other than domestic and hospital and medical service corporations, 3 percent." The first 1987 amendment, effective May 30, 1987, deleted "except as provided in AS 21.09.280(c)" preceding "in computed at the rate" near the introductory language of subsection (b).

Sec. 21.09.250. Prohibited acts. An insurer doing business in this state may not make, write, place, or cause to be made, written, or placed in this state a policy, duplicate policy, or contract of insurance of any kind or character, or general or floating policy upon persons or property resident, situated, or located in this state, from or through a broker, agent, general agent, surplus line broker, or person who has not secured a license in this state. An insurer may not pay a commission or any form of remuneration to a person, firm, or organization for the writing or placing of insurance coverage in this state unless that person, firm, or organization holds a license issued by the director. (1 ch 120 SLA 1966; am § 2 ch 29 SLA 1987)

Effect of amendments. The 1987 amendment inserted "general agent" in the first sentence and made minor punctuation changes throughout the section.

Sec. 21.09.280. General agents. (a) An insurer appointing a person as its general agent to represent it in this state shall file notice of the appointment with the director on forms prescribed and furnished by the director.

(b) A general agent has the authority, consistent with this title, that may be conferred by the insurer. A general agent, resident or nonresident, qualified in AS 21.27.090, licensed as provided in this section in the same manner as is provided for agents in AS 21.27, may exercise the powers conferred by this title upon agents licensed for the kinds of insurance that the general agent is authorized to transact for the insurer appointing the agent.

(c) The appointment of a resident or nonresident general agent is not effective unless the person appointed is licensed as the general agent of the insurer by the director upon application and payment of a fee set under AS 21.06.250.

The second 1987 amendment in subsection (c) inserted "that has filed with the director, before July 1, 1987, for approval to organize" and "not more than" preceding "five years" and added "or until June 30, 1987, whichever occurs first" at the end of the subsection and repealed subsection (c), July 1, 1987.

Editor's notes. Section 2, ch 118, SLA 1986 provides that the tax rates in (b) of this section, as amended by § 1, ch 118, SLA 1986, apply "to the tax due by April 1, 1987 for the tax year beginning January 1, 1986 and to the tax due for subsequent tax years."

(d) Every licensee is subject to the payment of an annual fee set under AS 21.06.250 and payable on or before the close of business on the 30th day of June of each year.

(e) The director may deny, suspend, or revoke a license for any cause specified in AS 21.27.410 in the manner provided in AS 21.27.420.

(f) Persons employed on salary by an insurer, including officers and salaried employees performing the same services as general agents, are considered to be service representatives and are not required to be licensed.

(g) For purposes of this section, a person, firm, or corporation that performs management services for an insurer is not considered a general agent if

(1) the person, firm, or corporation is a wholly-owned subsidiary of the insurer;

(2) the person, firm, or corporation wholly owns the insurer; or

(3) the person, firm, or corporation is a wholly-owned subsidiary of the insurance holding company that owns or controls the insurer. (1 ch 120 SLA 1966; am § 7 ch 113 SLA 1974; am § 6 ch 26 SLA 1985; am §§ 3, 4 ch 29 SLA 1987)

Effect of amendments. - The 1985 amendment substituted "a" for "the" preceding "set under" for "as provided in."

Chapter 21. Investments.

Section 600. Definition of domestic insurer

Sec. 21.21.600. Definition of domestic insurer. In this chapter, unless the context requires otherwise, "domestic insurer" has the meaning given in AS 21.90.900 and, in addition, for the purposes of this chapter, includes an insurer which has been authorized to do business in this state and which, during its three preceding fiscal years taken together, or during any lesser period of time if it has been licensed to transact its business in the State of Alaska only for such lesser periods of time, has written an average of more gross premiums in the State of Alaska than it has written in its state of domicile during the same period, and the gross premiums written constitute 33 percent or more of its total gross premiums written everywhere in the United States for the three year or lesser period, as reported in its three most recent annual statements. (1 ch 206 SLA 1976)

Editor's notes. - This section is set out above to correct a minor error in the main pamphlet.

and premiums on independently procured insurance on which a tax has been paid under AS 21.33.061, every nonadmitted insurer shall pay to the director before April 1 following the calendar year in which the insurance was so effectuated, continued or renewed a premium-receipts tax of three percent of gross premiums charged for the insurance other than marine insurance and a premium-receipts tax of three-fourths of one percent of gross premiums charged for the marine insurance on subjects resident, located or to be performed in this state. The insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made in or from in or out of this state, or for which premiums in whole or in part are remitted directly or indirectly from in or out of this state, shall be considered to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. The tax is in lieu of all taxes and fire department dues. On default of a nonadmitted insurer in the payment of the tax the insured shall pay the tax. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty not to exceed \$100 a day from the date the payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be considered written on property or risks located or resident in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of another state. (S 1 ch 234 SLA 1968, am § 14 ch 117 SLA 1984)

Effect of amendments. - The 1984 amendment, in subsection (a), in the first sentence, substituted "nonadmitted" for "unauthorized", "a nonadmitted" for "an unauthorized" in the next-to-last sentence,

and "not to exceed \$100 a day" for "computed at the rate of one percent per month or any part of a month" in the last sentence.

Sec. 21.33.060. Defense of action by unauthorized insurer. (Repealed, § 2 ch 234 SLA 1968)

Sec. 21.33.061. Independently procured insurance; premium tax. (a) Every insured who procures or causes to be procured or continues or renews insurance with a nonadmitted insurer, or an insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed in this state, other than insurance procured through a sur-

plus lines broker under AS 21.34 shall, within 30 days after the date the insurance was procured, continued, or renewed, file a report with the director in writing and upon forms designated by the director and furnished to the insured upon request. The report shall show the name and address of the insured, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged, and additional pertinent information which is reasonably requested by the director.

(b) Insurance in a nonadmitted insurer of a subject of insurance resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made in or from in or out of this state, or for which premiums in whole or in part are remitted directly or indirectly from in or out of this state, is considered to be insurance procured, or continued or renewed in this state within the intent of (a) of this section.

(c) There is levied upon the obligation, chose in action, or right represented by the premium charged for the insurance, a premium receipts tax of three per cent of gross premiums charged for the insurance other than marine insurance and a premium receipts tax of three-fourths of one per cent of gross premiums charged for the marine insurance. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. The tax is in lieu of all taxes and fire department dues. The insured shall, before April 1 following the calendar year in which the insurance was procured, continued or renewed, pay the amount of the tax to the director. In event of cancellation and rewriting of the insurance contract the additional premium for premium receipts tax purposes is the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be considered written on property or risks located or resident in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of another state.

(e) If the insured fails to withhold from the premium the amount of tax levied, the insured is liable for the amount and shall pay the tax to the director within the time stated in (c) of this section. If the tax prescribed by this section is not paid within the time stated in (c) of this section, the tax shall be increased by a penalty of 25 percent and by the amount of an additional penalty not to exceed \$100 per day from the date the payment was due to the date paid.

(f) The attorney general, upon request of the director, shall proceed in the courts of this or another state or in a federal court or agency to recover the tax not paid within the time prescribed in this section.

(g) This section does not apply to individual life or individual disability insurance.

(h) This section does not abrogate or modify, and may not be construed or considered to abrogate or modify a provision of AS 21.33.037 or 21.33.042 or another provision of this chapter.

(i) This section does not apply to life insurance, disability insurance, annuity contracts, or insurance for aircraft regularly engaged in interstate or foreign commerce. (S 1 ch 234 SLA 1968; am §§ 15--18 ch 117 SLA 1984)

Effect of amendments. - The 1984 amendment added subsections (h) and (i) and, in subsection (a), substituted "a nonadmitted" for "an unauthorized" and "broker under AS 21.34 shall, within 30" for "agent under the surplus line law of this state shall, within 60" in the first sentence and deleted "or insureds" following

"insured" in the second sentence, in subsection (b), substituted "a nonadmitted" for "an unauthorized" and "is" for "shall be", and, in subsection (c), substituted "not to exceed \$100 per day" for "computed at the rate of one percent per month or any part of a month" in the second sentence.

Sec. 21.33.065. Penalties. (a) A person other than an insured, who in this state represents or aids a nonadmitted insurer in violation of AS 21.33.037, is subject to a civil penalty of not more than \$5,000 in addition to applicable criminal penalties and other penalties prescribed in this chapter.

(b) In addition to any other penalty provided, a person who violates a provision of this chapter shall be subject to a civil penalty of not more than \$1,000 for the first offense and not more than \$2,000 for each succeeding violation.

(c) An additional penalty of not more than \$1,000 may be levied for each month that a violation under this chapter continues. (S 1 ch 234 SLA 1968; am § 19 ch 117 SLA 1984)

Effect of amendments. - The 1984 amendment rewrote this section.

Sec. 21.33.068. Venue. (Repealed, § 26 ch 117 SLA 1984)

Sec. 21.33.070. Attorney fees. (Repealed, § 2 ch 234 SLA 1968)

Sec. 21.33.071. Insurer and insurance business defined. (Repealed, § 26 ch 117 SLA 1984)

Sec. 21.33.075. Exceptions. (Repealed, § 26 ch 117 SLA 1984)

Article 2. Surplus Lines.

Section

310 Exemptions from surplus line law

330 Surplus line broker defined

Secs. 21.33.080 - 21.33.300. Surplus Lines Insurance Law. (Repealed, § 26 ch 117 SLA 1984)

Sec. 21.33.310. Exemptions from surplus line law. The provisions of the surplus line insurance law controlling the placing of insurance with unauthorized insurers do not apply to reinsurance or to the following insurances when placed by licensed insurance agents of this state:

(1) wet marine and transportation insurance, except insurance covering risk or exposure of a marine vessel engaged in commercial fishing or fish processing in the state for a period of 30 or more consecutive days in a year;

(2) insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance on property or operations of railroads engaged in interstate commerce;

(4) insurance of aircraft operated in scheduled interstate flight, or cargo of such aircraft, or insurance against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of the aircraft. (S 1 ch 120 SLA 1966; am § 2 ch 156 SLA 1970; am § 8 ch 206 SLA 1976)

Sec. 21.33.320. (Renumbered as AS 21.33.900)

Sec. 21.33.330. Surplus line broker defined. A surplus line broker is an individual licensed to transact business in the state or on risks in the state for an unadmitted insurer. (S 1 ch 120 SLA 1966)

Reviser's notes. - This section is now "broker" is found at AS 21.33.910. A new definition of surplus line broker enacted in 1984.

Article 3. General Provisions.

Section

900 Records of insureds

910 Definitions

Sec. 21.33.900. Records of insureds. In order that the director may effectively administer this chapter, each person who has placed insurance with an unauthorized insurer shall, upon the director's order, produce for the examination of the director all policies and other documents evidencing the insurance and shall disclose to the director

license before December 2 shall pay a penalty of \$100. A surplus lines broker who fails to apply for renewal of the license before December 31 shall pay a penalty of \$250 and any other penalties provided in this title before the license may be renewed. (§ 21 ch 117 SLA 1984)

Sec. 21.34.150. Surplus lines brokers may accept business from other brokers. A surplus lines broker may originate surplus lines insurance or accept surplus lines insurance from another broker or surplus lines broker licensed in this state as to the kind of insurance involved. The surplus lines broker may compensate the licensed broker or surplus lines broker for the insurance. (§ 21 ch 117 SLA 1984)

Sec. 21.34.160. Records of surplus lines broker. (a) Each surplus lines broker shall keep in the office a full and true record of each surplus lines insurance contract placed by or through the surplus lines broker, including a copy of the policy, certificate, cover note, or other evidence of insurance showing the following items as may be applicable:

- (1) amount of insurance and perils insured;
- (2) brief description of property insured and its location;
- (3) gross premium charged;
- (4) any return premium paid;
- (5) rate of premium charged upon the several items of property;
- (6) effective date of the contract, and the terms of the contract;
- (7) name and address of the insured;
- (8) name and address of the insurer;
- (9) amount of tax and other sums to be collected from the insured;
- (10) any evidence of insurance issued in compliance with AS 21.34.160;
- (11) identity of the producing broker;
- (12) any confirming correspondence from the insurer or its representative; and
- (13) the application.

(b) The record of each contract shall be kept open at all reasonable times to examination by the director without notice for a period of not less than five years following termination of the contract. (§ 21 ch 117 SLA 1984)

Sec. 21.34.170. Monthly reports, summary of exported business. On or before the end of each month, each surplus lines broker shall file with the director, on forms prescribed by the director, a verified report in duplicate of all surplus lines insurance transacted during the preceding calendar month showing aggregate gross premiums written and aggregate return premiums by kind of insurance. (§ 21 ch 117 SLA 1984)

Sec. 21.34.180. Surplus lines tax. (a) Gross premiums charged, less any return premium, for surplus lines insurance are subject to a

premium receipts tax as outlined in AS 21.09.210, which shall be collected by the surplus lines broker as specified by the director, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the surplus lines broker shall be returned to the policy holder directly by the surplus lines broker or through the producing broker, if any. The surplus lines broker may not absorb the tax or any part of it, and may not rebate for any reason the tax or any part of it.

(b) The surplus lines tax is due on the second day of March following the calendar year in which the premium is written. The tax shall be paid to and reported on forms prescribed by the director, or upon the director's order paid to and reported on forms prescribed by the surplus lines association.

(c) If a surplus lines policy procured through a surplus lines broker covers risks or exposures only partially located or to be performed in this state, the tax payable shall be computed on the portions of the premium properly attributable to the risks or exposures located or to be performed in this state as follows:

(1) if the risk insured is real or personal property, the percentage of the entire tax that is due to this state is the same as the percentage of the entire risk that is located in this state, computed on the same basis as was employed to calculate the insurable value of the risk;

(2) if the risk insured is business operations, general liability or employee benefits, the percentage of the entire tax that is due to this state is the same as the percentage of the insured business operations or employees that are located in this state.

(d) This section does not apply to insurance of risks of state government or its political subdivision, to an agency of state government or its political subdivision, or to insurance of aircraft regularly engaged in interstate or foreign commerce.

(e) If a multi-state risk has a portion of that risk located within this state, the surplus lines broker will remit payment of taxes collected in this state in accordance with the provisions of (c) of this section. (§ 21 ch 117 SLA 1984)

Sec. 21.34.190. Filing fee. The fee for filing the statement under AS 21.34.180(b) is an amount equal to one percent on gross premium charged less any return premiums during the preceding calendar year. The surplus lines broker shall pay the fee at the time of filing of the statement. (§ 21 ch 117 SLA 1984)

Sec. 21.34.200. Collection of taxes and fees. (a) If the tax collectible under AS 21.34.180 or the fee collectible under AS 21.34.190 by a surplus lines broker is not paid within the time prescribed, the tax, fee or both along with appropriate penalties may be collected by distraint or by an action in court, against the surplus lines licensee and the surety on the bond filed under AS 21.34.140(b)(4).

1.06.040

§ 21.06.090

INSURANCE

§ 21.06.260

88.210,

Sec. 21.06.090. Regulations. (a) The director may adopt reasonable regulations to effectuate this title. A regulation may not extend, modify, or conflict with any law of this state or the reasonable implications thereof. Except for regulations adopted under AS 21.06.250, a regulation affecting a person or matter other than the personnel or the internal affairs of the director's office shall be adopted or amended only after a hearing, of which notice was given as required by AS 21.06.200. If reasonably possible the director shall set out the proposed regulation or amendment in or with the notice of hearing. A regulation or amendment as to which a hearing is required is not effective until it has been on file as a public record in the director's office for at least 10 days.

(b) In addition to any other penalty provided, wilful violation of a regulation subjects the violator to the administrative penalty prescribed for that violation. (§ 1 ch 120 SLA 1966; am § 1 ch 26 SLA 1985)

Effect of amendments. — The 1985 amendment in subsection (a) inserted "Except for regulations adopted under AS 21.06.250" at the beginning of the third sentence and made other minor word changes.

Sec. 21.06.250. Fees and licenses. The director shall collect in advance a fee for each license and for services performed by the division of insurance. Fees may be collected for but are not limited to applications, examinations, licenses and license renewals, certificates of authority, service of process, printed or photocopied material, and postage. The director shall adopt regulations setting the fees in an amount the director determines to be sufficient to reimburse the state for the actual expense incurred in providing a service. (§ 1 ch 120 SLA 1966; am §§ 1 — 6 ch 113 SLA 1974; am § 1 ch 206 SLA 1976; am § 2 ch 26 SLA 1985)

Effect of amendments. — The 1985 amendment rewrote this section.

Sec. 21.06.260. Accounting and disposition of fees. The commissioner of administration shall separately account for fees collected under this chapter that the division deposits in the general fund. The annual estimated balance in the account may be used by the legislature to make appropriations to the Department of Commerce and Economic Development to carry out the operations of the division. (§ 42 ch 138 SLA 1986)

(3) "Voluntary pool" means the workers' compensation insurance assigned risk pool in which participation by insurers is voluntary. (Eff. 1/1/77, Register 61)

Authority: AN 21 06 090
AN 21 38 155-b1

CHAPTER 31. MISCELLANEOUS

Section

- 10 General requirements
- 20 Agent, general agent, and adjuster fees
- 30 Broker fees

Section

- 40 Surplus lines broker fees
- 50 Insurer fees
- 60 Miscellaneous fees
- 90 Definitions

3 AAC 31.010. GENERAL REQUIREMENTS. (a) The applicable nonrefundable fee established by the division of insurance, under 3 AAC 31.020 -- 3 AAC 31.090, must be paid to the director in advance of the action requested.

(b) The director will promptly remit to the commissioner of revenue, for deposit in the general fund, all fees received under this section (Eff. 8/30/86, Register 99; am 6/2/88, Register 106)

Authority: AS 21 06 090
AS 21 06 250

3 AAC 31.020. AGENT, GENERAL AGENT, AND ADJUSTER FEES. The following fees are established for resident or nonresident licensees, permanent or temporary, for insurance agents, general agents, and adjusters:

(1) application for an original license for all lines, including issuance of the license, if issued,

(A) for a resident individual not acting on behalf of a firm, \$120;

(B) for a nonresident individual not acting on behalf of a firm, \$220;

(C) for any individual acting on behalf of a licensed firm, \$45;

(D) for a resident firm, including the principal or manager, \$220; and

(E) for a nonresident firm, including the principal or manager, \$120;

(2) application for an original license for property casualty lines only or for life lines only, including issuance of the license, if issued,

(A) for a resident individual not acting on behalf of a firm, \$70;

(B) for a nonresident individual not acting on behalf of a firm, \$120;

(C) for any individual acting on behalf of a licensed firm, \$45;

(D) for a resident firm, including the principal or manager, \$120; and

(E) for a nonresident firm, including the principal or manager, \$220.

(3) annual continuation of a license for all lines,

(A) for a resident individual not acting on behalf of a firm, \$100;

(B) for a nonresident individual not acting on behalf of a firm, \$200;

(C) for any individual acting on behalf of a licensed firm, \$25;

(D) for a resident firm, including the principal or manager, \$200; and

(E) for a nonresident firm, including the principal or manager, \$400.

(4) annual continuation of a license for property casualty lines only or for life lines only,

(A) for a resident individual not acting on behalf of a firm, \$50;

(B) for a nonresident individual not acting on behalf of a firm, \$100;

(C) for any individual acting on behalf of a licensed firm, \$25;

(D) for a resident firm, including the principal or manager, \$100; and

(E) for a nonresident firm, including the principal or manager, \$200.

(5) application for an original resident trainee adjuster license and for issuance of the license, if issued, \$70;

(6) annual continuation of a resident trainee adjuster license, \$50;

(7) application for an original firm limited license for a travel insurance agent, including the principal or manager, \$70; and

(8) annual continuation of a firm limited license for a travel insurance agent, including the principal or manager, \$50 (Eff. 8/30/86, Register 99; am 6/2/88, Register 106)

Authority: AS 21 06 090
AS 21 06 250

3 AAC 31.030. BROKER FEES. The following fees are established for licensees for insurance brokers:

(1) application for an original license for all lines, including issuance of the license, if issued,

(A) for a resident individual not acting on behalf of a firm, or a resident firm, including the principal or manager, \$220;

(B) for a nonresident individual not acting on behalf of a firm, or a nonresident firm, including the principal or manager, \$520; and

- (C) for any individual acting on behalf of a licensed firm, \$45.
- (2) application for an original license for property/casualty lines only or for life lines only, including issuance of the license, if issued,
 - (A) for a resident individual not acting on behalf of a firm, or a resident firm, including the principal or manager, \$170;
 - (B) for a nonresident individual not acting on behalf of a firm, or a nonresident firm, including the principal or manager, \$320; and
- (C) for any individual acting on behalf of a licensed firm, \$45.
- (3) annual continuation of a license for all lines,
 - (A) for a resident individual not acting on behalf of a firm, or a resident firm, including the principal or manager, \$200;
 - (B) for a nonresident individual not acting on behalf of a firm, or a nonresident firm, including the principal or manager, \$500; and
- (C) for any individual acting on behalf of a licensed firm, \$25.
- (4) annual continuation of a license for property/casualty lines only or for life lines only,
 - (A) for a resident individual not acting on behalf of a firm, or a resident firm, including the principal or manager, \$150;
 - (B) for a nonresident individual not acting on behalf of a firm, or a nonresident firm, including the principal or manager, \$300; and
- (C) for any individual acting on behalf of a licensed firm, \$25. (Eff. 6/2/88, Register 106)

Authority: AS 21.06.090
AS 21.06.250

3 AAC 31.040. SURPLUS LINES BROKER FEES. The following fees are established for licenses for surplus lines insurance brokers.

- (1) application for an original license, including issuance of the license, if issued,
 - (A) for a resident individual not acting on behalf of a firm, or a resident firm, including the principal or manager, \$220;
 - (B) for a nonresident individual not acting on behalf of a firm, or a nonresident firm, including the principal or manager, \$620; and
- (C) for any individual acting on behalf of a licensed firm, \$45.
- (2) annual continuation of a license,
 - (A) for a resident individual not acting on behalf of a firm, or a resident firm, including the principal or manager, \$200;
 - (B) for a nonresident individual not acting on behalf of a firm, or a nonresident firm, including the principal or manager, \$600; and

- (C) for any individual acting on behalf of a licensed firm, \$25. (Eff. 6/2/88, Register 106)

Authority: AS 21.06.090
AS 21.06.250

3 AAC 31.050. INSURER FEES. The following fees are established for insurers:

- (1) application for a certificate of authority, including a solicitation permit and issuance of the certificate, if issued, a one-time fee of \$1,000;
- (2) annual continuation of a certificate of authority, \$100;
- (3) amendment to a certificate of authority, \$100;
- (4) amendment to the articles of incorporation, \$100;
- (5) revised bylaws or amendment to bylaws, \$100;
- (6) filing an annual statement, \$100;
- (7) solicitation permit for subsequent financing, for domestic insurers, \$100;
- (8) insurer appointment of a general agent or agent, \$10;
- (9) annual continuation of an insurer appointment of a general agent or agent, \$10; and
- (10) reinstatement of a certificate of authority, \$500. (Eff. 6/2/88, Register 106)

Authority: AS 21.06.090
AS 21.06.250

3 AAC 31.060. MISCELLANEOUS FEES. (a) The following fees are established:

- (1) application for an original resident solicitor license, including issuance of the license, if issued, for an individual soliciting on behalf of a licensed individual or firm, \$70;
- (2) annual continuation of a resident solicitor license for an individual soliciting on behalf of a licensed individual or firm, \$50;
- (3) amendment to an insurance license, \$20;
- (4) insurance vending machine license, each machine, each year, \$70;
- (5) for issuing a certification, \$25;
- (6) for accepting service of process, \$25;
- (7) for a copy of an insurance report, \$25;
- (8) for a three-year rating bureau license, \$300; and
- (9) with respect to a license other than surplus lines broker, which has not been revoked, a surcharge for late payment of an annual license continuation fee, if payment is overdue by
 - (A) 1 to 60 days, \$100; or
 - (B) over 60 days, \$200.

3 AAC 31.090 ALASKA ADMINISTRATIVE CODE 3 AAC 31.090

(b) For any printed material furnished by the director and not otherwise described in this section, the director will, in his or her discretion, charge the actual cost of printing plus handling and postage (Eff. 6/2/88, Register 106)

Authority: AS 21.06.090
AS 21.06.250

3 AAC 31.090. DEFINITIONS. In this chapter,

- (1) "all lines" means both life lines and property/casualty lines;
- (2) "life lines" means life, disability, annuities, credit life and disability, and, if qualified, variable products insurance; and
- (3) "property casualty lines" means property, casualty, surety, marine, title, mortgage guaranty, and, if qualified, disability insurance (Eff. 6/2/88, Register 106)

Authority: AS 21.06.090
AS 21.06.250

PART 3. SECTION OF WEIGHTS AND MEASURES

Chapter

- 32 Specifications, Tolerances, and Regulations for Weighing and Measuring Devices (3 AAC 32.010 - 3 AAC 32.610)
- 33 Commodities (3 AAC 33.010 - 3 AAC 33.600)
- 34 Method of Sale and Delivery of Commodities (3 AAC 34.010 - 3 AAC 34.140)
- 35 Overweight and Overweight Vehicles (3 AAC 35.110 - 3 AAC 35.900)
- 36 Deleted

CHAPTER 32. SPECIFICATIONS, TOLERANCES, AND REGULATIONS FOR WEIGHING AND MEASURING DEVICES

Article

- 1 Repealed
- 2 Household Scales (3 AAC 32.050 - 3 AAC 32.070)
- 3 Testing and Inspecting of Commercial Devices (3 AAC 32.080)
- 4 Inspection of Incorrect Apparatus (3 AAC 32.090 - 3 AAC 32.110)
- 5 Gas Measuring Devices (3 AAC 32.120 - 3 AAC 32.150)
- 6 Specifications: Positive Displacement and Turbine Gas Measuring Devices (3 AAC 32.160 - 3 AAC 32.280)
- 7 Testing of Positive Displacement and Turbine Gas Measuring Devices (3 AAC 32.210 - 3 AAC 32.270)
- 8 Specifications and Requirements: Thrift Meters (3 AAC 32.280 - 3 AAC 32.290)
- 9 User Requirements: Gas Measuring Devices: General (3 AAC 32.300 - 3 AAC 32.370)
- 10 Corrections for Altitude: Applicable to All Gas Meters (3 AAC 32.380 - 3 AAC 32.400)
- 11 Electric Meters (3 AAC 32.410 - 3 AAC 32.610)

3 AAC 32.050 COMMERCE AND ECON DEV 3 AAC 32.070

Article 1. Hanging Scales

Repealed 7/17/82

Article 2. Household Scales

Section

50 Commercial use of household scales
60 Sale of household scales

Section

70 Prima facie evidence

3 AAC 32.050. COMMERCIAL USE OF HOUSEHOLD SCALES. No overload type of spring scale or balances commonly known as "household" scales shall be used or employed in any commercial establishment in the State of Alaska for the weighing of any commodity sold to the purchasing public (Eff. 7/24/70, Register 35)

Authority: AS 45.75.050
AS 47.75.120

3 AAC 32.060. SALE OF HOUSEHOLD SCALES. No "household" scale shall be sold or offered for sale by any manufacturer, vendor or vendors of such devices, for use or service whatsoever unless the dial or reading face is plainly and conspicuously marked with the wording, "Not legal for use in trade," it being provided that such scales may be sold or offered for household or noncommercial use only (Eff. 7/24/70, Register 35)

Authority: AS 45.75.050
AS 45.75.120

3 AAC 32.070. PRIMA FACIE EVIDENCE. Any such scale found in commercial use at any store, stand, business establishment, or on any vehicle from which commodities are sold or offered for sale, is prima facie evidence of commercial use, and shall be subject to immediate condemnation and confiscation (Eff. 7/24/70, Register 35)

Authority: AS 45.75.050
AS 45.75.120

Article 3. Testing and Inspecting of Commercial Devices

Section

80 Assistance in testing operations