ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4193 SLAB SB 384 - SB 392

1023

APPENDIX I
Comments on Audit 08-1221-86-R
Board of Electrical Examiners

This appendix will relate by page and paragraph number in the original report to facilitate cross reference.

PAGE 3, PARA 1: There appears to be a typo in the 4th and 5th lines: The Board members are appointed by the GOVERNOR, not the BOARD.

PAGE 5, PARA 2: Concur 1000% that continuation of the Board is not necessary to protect the public's health, safety and welfare, PROVIDED, however, that careful work is done to make certain that each proper function is performed by the correct agency, and that proper resources are allocated to allow continuation. (we note that the Sunset of the ATC last year was an absolute shambles, and that the surviving agencies have no expertise and no resources to enforce anything)

PAGE 5, PARA 4: DO NOT CONCUR that anyone needs to adopt more stringent control of an Administrator's "personal" inspection of each job. See same subject in Appendix II of this response for all details. AS 08.40 is WRONG in its approach, and its development and publication was ill-advised and impractical.

PAGE 5, Para 7: The Board needs to improve communications WITH EVERYONE! In all the time since we formed in 1977, the BOARD HAS NEVER RESPONDED TO ANYTHING WE EVER SENT THEM! They have NEVER solicited our input, NEVER commented on input we made, NEVER coordinated proposed regulations, NEVER reported back on regulations which were proposed but not implemented.

They operate 100% in a vacuum, doing "what is best for us", but totallyj ignoring a vast pool of expertise; the very administrators who are in the field night and day.

PAGE 5, PARA 8: Reciprocity sounds good, but has grave difficulties. One of them is detailed very nicely and very acurately by the Commissioner of the Department of Commerce in his comments appended to the back of the Audit; that of cooperation and coordination with other states. It is tedious at best, and not destined to happen in the near future for the mountain of work that is required.

The second aspect relates to a REAL problem discussed elsewhere in the audit: ABSENTEE ADMINISTRATORS. One thing that keeps a "lid" on the problem currently, is that one must get up here and go through the processes during one of the windows of opportunity four (4) times a year. If one could simply forward a copy of a certificate from say New Jersey, and obtain an Alaskan Administrator's license, we'd be awash with outsiders who either never return, and sign off on work from a retirement city, or who simply do not have the qualifications.

Alaska's rules and test are pretty high level. Many other states do not have the same classifications, let alone the high standards. LET THIS PROGRAM CONTINUE AT ITS OWN PACE, but don't knock the Board or the Departments of Labor or Commerce for not implementing an almost impossible, perhaps undesirable program.

PAGE 7, PARA 1: AGREE 1000% that the Administrator's must be retained. Loss of all that has been gained in regulation and control to date, would create total anarchy. The little authority and the minimum resources presently available to keep things legal, would evaporate to the extreme detriment of Pulbic Health and Safety. See our comments in Appendix II relating to creation of MASTER JOURNEYMAN ELECTRICIAN to help even more in this area.

PAGE 7, PARA 2: More of the same as above; agree totally.

PAGE 7, PARA 3: Agree totally with the first part, but then again, if the Board sunsets, and Labor takes over, the monitoring is already present. This failure to have the data passed on from an agency that already collects it, simply underscores the present duplicity and rationale' to dump it.

Do NOT agree with the second half, relating to personal supervision. See item above, and expansion in Appendix II of this response.

PAGE 7, PARA 4: Do not necessarily agree with this comment. The Board may be guilty of lots of malfeasance as relates to how they have treated some applicants in the past, but those charges must be met head-on and individually. Simply matching the failure rate against some "goal" is NOT the criteria to measure the board's effectiveness or the importance of the examinations or screening processes.

As noted above, the Alaskan standards are high. There is no shortage of Electrical Administrators; there are plenty to go around, and creating between 60 and 110/year is plenty to meet demand.

Use great caution not to set quotas of passing rates, or the importance of the program will deteriorate, again, to the public's vast detriment.

PAGE 7, PARA 7: Concur, as above.

PAGE 7, PARA 8: Concur, as above.

PAGE 8, PARA 2: Agree with the second half, which relates to the importance of having a central figure accountable as a justification for retention of the Administrator function, but do NOT agree with the personal inspection aspect, as above. Again, see comments in Appendix II of this response.

PAGE 8, PARA 3: Concur completely; hence our suggestion that the entire program be taken over by Labor. See our materials suggesting this and drafting legislation and regulation changes to accomodate this concept, attached to Appendix II of this response.

PAGE 8, PARA 5 & 6: TOTALLY DISAGREE. Again, see comments in Appendix II and its attachments. AS 08.40.195 is one of the most ill-conceived, impractical statutes on the books!

PAGE 9, PARA 1: Concur with the second half, ref comments about "non-resident" administrators above, do NOT concur with front half, as above.

PAGE 9, PARA 2: Concur completely. This is a tough one to work on. Almost anything anyone has developed to date fails the constitutional test of unduly restricting an American Citizen's right to travel interstate. It needs work, however.

PAGE 9, PARA 4: Strongly DISAGREE, per above, and per comments and materials in Appendix II to this response.

PAGE 10, PARA 4: Concur completely. As seen in the attachments to Appendix II of this response, we even go further and feel that we need to license the technicians. Obviously, grandfather rights must apply to those of us who have been performing both functions with considerable investment in equipment, rolling stock, tools and people all these years.

PAGE 11, PARA 8: Concur 100%. Obviously, if the Board is sunseted, this problem goes away, because Labor communicates very well with Labor.

PAGE 14, PARA IV, A: Concur 1000%. As stated in the cover letter to this response, the Board has NEVER, EVER coordinated or communicated with this group, even to the point of failing the test of the Alaska Administrative Code as relates to advertising etc.

PAGE 14, PARA V, A: This is pure BULL. The Board has done almost everything possible to let folks know that their input is not only not utilized, not desired, but that it may even be USED AGAINST THEM IN THE FUTURE!

PAGE 14, PARA VI, A: I understand that there have been several CASH SETTLEMENTS of claims of applicants for licenses to the Board, when Board members mismanaged their authority and allowed personal, business and union considerations to dictate successful candidates. Check with Representative Robin Taylor for some details. Check also with the AG's office, who handled the settlements.

PAGE 23, PARA 2: Concur completely that the Board should be discharged and that the licensing of Administrators should continue.

PAGE 24, PARAS 1, 2 & 3: Concur with qualification on paragraph 3: the responsibility for licensing Administrators should be moved to LABOR.

PAGE 24, PARA 4: Strongly disagree. Of the three-part system that currently exists, (Board, Labor and Commerce), Commerce plays the SMALLEST PART. Labor does the examination in the field for technician's compliance, why then should another department supervise the operations of their supervisors. It should all be moved into ONE DEPARTMENT, once and for all: LABOR. See additional comments on this subject in Appendix II.

PAGE 24, PARA 5: More as above. Admits duplicity.

PAGE 25, PARA 1: Absolutely NOT; see comments above & in Appendix II.

PAGE 25, PARA 2: Mild concurrance. We have already commented on this proposed regulation, and find it mildly non-objectionable. The real problem, however, is the out of state folks and a poorly written statute. See additional in Appendix II.

PAGE 25, PARA 3. We concur with his concurring.

PAGE 25, PARA 4: We concur completely. His analysis is excellent! END

APPENDIX II
Specific Comments on
Relationship With Board, Commerce and Labor

There are several elements to this appendix. For each element I have provided copies of all the correspondence relating, in order to enable the reader to have all the thinking and communications available for analysis. The attachments to this Appendix are merely the "proof", and need not be read in detail unless something in this Appendix creates a question.

I - NOMINATION TO THE BOARD:

Last year we became aware that two (2) seats on the State Board of Electrical Examiners would vacate soon. We determined to nominate an INDEPENDENT for one of the seats. The first several attachments to this Appendix provide copies of the original nomination, the letters of endorsement and other communications relating to the case. As can be clearly seen, we made a MAJOR nomination, substantially supported.

The Governor's Office instead elected to appoint Mr Walt Gardner, a long time member of the "Old Boy" union network. When we requested copies of his nomination, resume' and letters of recommendation, we received a MISERABLE seven page, lackluster resume'. All attempts from that date to this, to obtain the other material, have met with absolute refusal on the part of the Office of the Governor. We can only assume that he simply had NO RECOMMENDATIONS. We are extremely distressed that the Governor would refuse to even tell us who nominated him!

We were then in a position of deciding whether to make a mass mailing to all legislators, requesting that they block his confirmation. We were starting that effort when your package arrived and we saw that simple SUNSET was by far a better solution to the over all problem.

BOTTOM LINE: This package and its treatment in Juneau, is additional proof that politics/union hold sway over the operations of this Board.

II - 02 September 1983 Altercation with the Board:

The next batch of attachments relate to difficulty in obtaining a clear reading on a confusing statute, which resulted in a flat refusal to provide a copy of some proposed regulations changes.

III - 28 November 1983 Appearance before the Board:

Though we were never provided the text of the proposed regulations changes as requested above, we were finally able to obtain a set through out own contacts. The attachments constitute the text of a presentation to the Board by Woodman, representing AIECA.

Among other items in that presentation, were complaints about COMMUNICATIONS, to the point; violation of the State's Administrative Procedures Act. In that proposed rule making and our response, was the first effort to inflict "PERSONAL INSPECTION" on Administrators. The text says it all!

THE BOARD NEVER RESPONDED TO EVEN ONE SINGLE LINE OF ALL THAT INPUT, and in fact, the only response Woodman received after the presentation, was the presentation, publically, of a humiliating CEASE AND DESIST NOTICE, by the Board. What a waste of time. They were just sitting there laughing and then they dumped an expensive harassment on one of our member firms.

IV - CEASE & DESIST ORDER:

The next batch of documents relate to the above noted order placed on Woodman the moment he completed his public testimony before the Board. (the meeting, by the way, was held at the NECA building in Anchorage..... How blatent can you get?!)

As can be seen, after the attorneys got their money, absolutely nothing happened. We wasted government and private money and time for nothing. It was a senseless harassment of a company that does everything by the numbers, while the wasted efforts could have been brought to bear on the catching of real offenders and unlicensed folks.

V - 25 April 1985 Communications to Labor; bad legislation:

This package includes a letter to the Department of Labor, with copies to Commerce, the AG and others. It points out a grave difficulty with AS Sec 08.40.195, and recommends a fix. WE NEVER RECEIVED A RESPONSE FROM ANYONE!

VI - 06 May 1985 Letter and comments on proposed changes:

This letter documents again the Board's inability to even get routine correspondence in the hands of the proper people. They simply never provided a copy of the proposed changes to us in DIRECT VIOLATION OF THE ALASKA ADMINISTRATIVE CODE. In spite of the lack of notification, we made a great effort to provide input which is the balance of the attachment. We NEVER RECEIVED A SINGLE COMMUNICATION ON THIS PRESENTATION OR OUR LETTER FROM ANYONE!

VII - 21 May 1985 Proposed changes to Statutes and Regulations:

This is an EXTREMELY IMPORTANT ATTACHMENT! We made a major effort to search through all the appropriate statutes and regulations in a coordinated attempt to get them all fixed and heading the same direction. To our knowledge, NEVER HAS THERE BEEN A COOPERATIVE EFFORT TO REPAIR FAULTY STATUTES AND/OR REGULATIONS.

We made this major effort and provided an extremely valuable body of study in a sincere effort to help the state repair some real problems. WE NEVER RECEIVED A SINGLE BIT OF COMMUNICATION ON ANY PART OF IT FROM ANYONE and yet it addresses problems everyone seems to agree need addressing.

VIII - 29 May 1985 proposed Department of Labor regulation changes:

As the cover letter in this package dramatically states, they FAILED UTTERLY IN THEIR DUTIES TO COMMUNICATE THEIR PROPOSED CHANGES LOGICALLY, TIMELY AND PROPERLY. Nevertheless, we made a massive effort to come to grips with the material and provide a major input.

WE NEVER RECEIVED ANY RESPONSE FROM ANYONE ON THIS PACKAGE.

IX - 04 November 1985 Testimony on Rule Changes:

The attachment here is the text of the testimony presented at public hearing in Anchorage. A copy of the text was provided to the recorder.

Once again, we were not served any of the proposed changes. Additionally, the hearing was held in a far too small room with over 100 people standing in the halls who could not hear testimony before or after them. During our testimony, which was carefully pared down to minimum length, and mercifully presented one time by one representative of over 26 companies, the room, which was loaded with IBEW "crowd scene" hooted, catcalled and attempted to cut the testimony to a minimum.

It was a joke. If I did not know better, I'd have said it was southern "justice", circa 1938. WE HAVE NEVER RECEIVED A SINGLE IOTA OF FEEDBACK FROM ANYONE ON ANY PART OF THIS PRESENTATION!

X - SUMMARY:

If you look through the texts of the attachments, you will see that they repeat the same errors over and over again:

1. People who write and formally request "Party of Record" status are NOT afforded copies of anything.
2. Suspenses when anything at all becomes available are non-existant.
3. Proposed Statute/Regulation changes NEVER have any justification or rationale' attached so one can come to grips with what the problem is that the proposed changes are supposed to fix.
4. Most changes proposed are NEVER coordinated between Labor, Commerce and the Board, and oftentimes conflict with others by another branch of government.
5. NEVER does any entity communicate back to folks who make input, or make requests for specific information, in writing!
6. Even proposed regulations which have been beaten down into defeat by overwhelmingly negative response, rise again with almost the same wording a year later, this time with no notice, in an attempt to ram them through anyway when no one is looking!

RECOMMENDATION:

Not only does this "triumvirate" need to be reduced by at least a factor of 1/3, when the Board does sunset, a careful, coordinated plan needs developed so that the problems do not simply move to new shoulders.

We highly recommend that a real cleanup, a real efficiency move, would be to get it all under one roof: LABOR. There is no benefit to having one set of investigators harassing an Administrator for technical compliance, and another set from a different department harassing the Administrator's Journeyman about technical compliance.

Finally, much has been said about "absentee" Administrators, and Unlicensed contractors. ALMOST NOTHING has been done to fix the problem. Over and over again come new proposed rules to tighten up on THE ADMINISTRATORS AND THE COMPANIES WHO ARE HERE, AND WHO ARE DOING IT RIGHT! [It's called "preaching to the choir']

The new rules about us all having to repaint our trucks and re-do all our letterhead to include our license number works a hardship on us, but does NOTHING WHATSOEVER to stop the unlicensed and absentee folks!

The efforts to have properly operating Administrators somehow be responsible for personal supervision and inspection of each and every job is A PHYSICAL IMPOSSIBLITY. No one has addressed the fact that the LAW IS WRITTEN BADLY.

We need to pool our thinking and get a workshop together to brainstorm a fix for this one. Recommend LABOR, COMMERCE, the AG's Office, NECA and AICECA.

SB 384: BOARD OF ELECTRICAL EXAMINERS
SUMMARY OF INFORMATION

LEGISLATIVE BUDGET AND AUDIT REPORT

A. findings:

Purpose of Board is to enforce the electrical code by monitoring current administrators and to test qualified applicants for administrator.

1. The Board does not directly enforce codes now, DOL does through electrical inspectcrs. The inspectors are responsible for large jurisdictions, so, they are dependent on administrators' reports. DOL recieved reports. The Board gets them later.
   note: 20% of the administrators at this time have permanent addresses outside the state.

2. Tests given by the Board are too broad (include subjects not applicable to the job an administrator does) and have a high rate of failure.

3. The Board should make sure that applicants are qualified. Most applications have not been accompanied by evidence of electrical licensure or letters of recommendation.

B. recommendations:

1. ENFORCEMENT
   Can be retained by the DOL, as is done now, through retaining Administrators and continuing to collect their reports.

2. PERSONAL SUPERVISION
   LB&A suggestes that the Board needs to require evidence that sites have been personally inspected by Administrators.

   Both the LB&A audit and Ak. Independent Electrical Contractors Association (AIECA) state that it is physically inpossible for administrators to inspect all sites. AIECA suggests that a requirement be made (probably in the Ak. Administrative Code) that each site have a MASTER JOURNEYMAN to do onsite supervision of all inspections so that administrators would only have to do spot checks. AIECA suggests that the job of an administrator should be to develop quality procedures and policy for a

job site, not ongoing inspections.

3. EXAMINATIONS
Tests should be limited to the category being tested for.

4. QUALIFIED APPLICANTS
Applicants should be required to prove they are qualified electricians before they are tested.

5. BOARD COMMUNICATIONS
LB&A suggested taht the Board be required to improve communications with the DOL so that violations that are reported come to the Board's attention so they can take appropriate actions.

6. RECIPROCITY
LB&A suggested the Board provide for reciprocity.

Commissioner Lounsbury rebutted in the report that reciprocity was not possible because other states will not share their examination information much less enter into reciprocal testing. There is a national effort afoot to have a national electrical administrators test, which should come forth in "the next couple of years" (Com. Lounsbury)

ADDITIONAL INFORMATION:

A. Appointment of Walt Gardiner

The Kent Woodman Story:
Administrator for Yellow Electric, Director of Administration for AIECA (Ak. Independent Electrical Contractors Asso.), was issued a cease and desist order for Amber Electric, div of Yellow.

Was endorsed for Bd. of Examiners by Robin Taylor, Jay Kerttula, AIECA, and others.

Walt was appointed. Kent and AIECA repeatedly asked the Gov's office who nominated Walt and Gov's office refuesed to tell.

The feeling of Charlie Bussell and Kent Woodman is that the Board is appointed to serve political interests and is inhibiting the efforts of those in the industry who wish to become administrators. Current appointments are one point of their arguement.

B. Testing of Administrators

As discussed earlier, tests are too difficult and too broad. This is limiting the number of Electrical Administrators in Alaska, which Charlie Bussell and Kent Woodman claim is part of the

Board's inability to serve its purpose.

COVERING THE BOARD'S DUTIES IF THEY SUNSET

Enforcement of code can continue to be done by administrators and DOL inspectors without the Board.

Testing and licensure can be handled by the Division of Occupational Licensing, probably in cooperation with DOL.

Sunset TC's — Joint L+C

4/28; 1-5pm) BDS OF VETS + ELEC EXAMINERS

SITES: KTN, ~~FBX~~, ANC, JNU,* NOM, SOL

4/30; 1-5pm) REAL EST. COMMISSION + APUC

SITES: KTN, FBX, ANC, JUN.* &
~~PALMER~~? MAT-SU (WASILLA)

BOARD: ELECTRICAL EXAMINERS, BOARD OF

TITLE: Board of Electrical Examiners

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.40.010

STATUS: 86/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two consecutive terms

TERM: 3 years - staggered

DESCRIPTION: 3 members appointed by Governor: 2 licensed electrical administrators and 1 public member; serve at the pleasure of Governor; Board selects chair.

SPECIAL FACTS: Quorum - 2 members

FUNCTION: Regulates and controls licensing, suspension, revocations of electricians

COMPENSATION: Standard travel/per diem

MEETINGS: Normally 4 times per year; 20 days maximum

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Box D, Juneau, AK 99811 - 465-2547

Electrical Examiners Board

MEMBER	APPT	REAPPT	TERM
Steven F. Boyd Box 5865 Ketchikan 99901 Elec/Administrator	85/05/21		87/07/10
Terence L. Duszynski 3289 Rosie Creek Fairbanks 99701 Public - Chairman	80/10/07	84/07/31	86/07/10
Walter R. Gardner 7731 Island Drive Anchorage 99504 Elec/Administrator	85/09/19		88/07/10

BOARD: REAL ESTATE COMMISSION

TITLE: Real Estate Commission

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.88.011

STATUS: 86/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS:

TERM: 4 years - staggered

DESCRIPTION: 7 members appointed by Governor: 5 real estate brokers or associate brokers licensed in Alaska for 3 years, to represent each judicial district, and 1 at-large; if none available from second judicial district, 2 shall be at-large; plus 2 public members; Commission appoints Executive Director; Commission elects chair.

SPECIAL FACTS: Quorum - majority (at least 2 judicial districts represented)

FUNCTION: Regulates and controls licensing, suspensions, revocations of real estate industry; manages surety claim fund

COMPENSATION: Standard travel/per diem

MEETINGS: 6 times per year, 2 days each; 6-12 committee meetings per year; 24 days total

*FOR FURTHER INFORMATION CONTACT: Executive Director, Real Estate Commission, Frontier Building, 3601 C Street, Suite 722, Anchorage, AK 99501 - 563-2169

Real Estate Commission

MEMBER	APPT	REAPPT	TERM
John E. Benson P.O. Box 7076 Ketchikan 99901 Broker/1st JD	83/10/19	85/01/31	89/01/31
Barry L. Brown 627 Gaffney Fairbanks 99701 Broker/4th JD	85/01/31		89/01/31
LaVerne F. Collins P.O. Box 102751 Anchorage 99510 Public	83/05/20	84/01/31	88/01/31
Barbara J. Hill 4201 Tudor Centre Drive Anchorage 99508 Broker at Large - Chairman	80/02/21	84/02/15	88/01/31
Jon "Dave" D. Ribacchi 2531 Banbury Drive Anchorage 99504 Broker/3rd JD	83/05/20		87/01/31
Gilbert Serrano c/o Land Co., 641 "A" St. Anchorage 99502 Broker at Large	83/10/19		87/01/31
Iola Young-Robinson P.O. Box 1329 Palmer 99645 Public	85/02/21		87/01/31

BOARD: UTILITIES COMMISSION, ALASKA PUBLIC

TITLE: Alaska Public Utilities Commission

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 42.05.010

STATUS: 85/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION AND FINANCIAL DISCLOSURE

PROHIBITIONS: No stock or interest in public utilities in Alaska; Check AS 42.05.131 for restrictions.

TERM: 6 years - staggered

DESCRIPTION: 5 members appointed by Governor: 1 graduate of accredited school of law; 1 graduate of accredited university, with major in engineering; and 1 one with major in finance, accounting, or business administration (5 years actual experience in field is equivalent to a degree); plus 2 consumers; Governor designates chair (for 4-year term).

SPECIAL FACTS: Quorum - 3 members; may be removed by and with consent of majority of Legislature; Attorney General is legal counsel; annual report to Legislature

FUNCTION: Certifies qualified providers of public utilities services; ensures that certified utilities and pipeline carriers, unless exempted by statute, provide adequate, efficient, and safe services and facilities to the public at just and reasonable rates, terms and conditions.

COMPENSATION: SALARIED

MEETINGS: Continuous hearings throughout the year.

*FOR FURTHER INFORMATION CONTACT: Executive Director, Alaska Public Utilities Commission, 420 L Street, Suite 100, Anchorage, AK 99501 - 276-6222

Utilities Commission

MEMBER	APPT	REAPPT	TERM
Louis L. Agi 1730 Crescent Driv Anchorage 99504 Salaried/Attorn	83/02/07		88/10/31
Carolyn S. Guess 3226 Upland Drive Anchorage 99504 Salaried/Consumer - Chairman	81/09/15		87/10/31
Susan M. Knowles 1146 "S" Street Anchorage 99501 Salaried/Consumer	81/09/15		87/10/31
Marvin R. Weatherly 6928 Fairweather Drive Anchorage 99502 Salaried/Engineer	75/08/21	84/10/30	90/10/31
Kathleen L. Whiteaker 4321 Edinburgh Court Anchorage 99515 Salaried/Business	85/01/15		86/10/31

BOARD: VETERINARY EXAMINERS, BOARD OF

TITLE: Board of Veterinary Examiners

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.98.010

STATUS: 85/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two successive complete terms

TERM: 4 years - staggered

DESCRIPTION: 5 members appointed by Governor: 4 licensed veterinarians in active practice in Alaska for 5 years; plus 1 public member; no person may serve who is, or was during the two years immediately preceding appointment, a member of a faculty, board of trustees, or advisory board of a veterinary school.

SPECIAL FACTS: May be removed for cause; quorum - majority

FUNCTION: Regulates and controls applications, licenses, and permits of veterinarians

COMPENSATION: Standard travel/per diem

MEETINGS: At least 3 annually; normally 3 times per year, 3 days maximum, plus 2-4 work sessions

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Box D, Juneau, AK 99811 - 465-2544

Veterinary Examiners

MEMBER	APPT	REAPPT	TERM
David V. George 2505 David Street #49 Juneau 99801 Public	85/06/11		88/01/31
Derrick J. Leedy, DVM P.O. Box 1164 Nome 99762 Veterinarian	85/06/28		89/01/31
Stephen A. Mersch, DVM SR2 Box 880 Soldotna 99669 Veterinarian	84/03/30		87/01/31
Val D. Stuve, DVM 1651 College Road Fairbanks 99701 Veterinarian - Chairman	82/01/75		86/01/31
Pamela A. Tuomi, DVM 2036 East Northern Lights Anchorage 99508 Veterinarian	80/04/01	84/04/09	88/01/31

Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4931

DISTRICT 10
BOX 111038
ANCHORAGE, ALASKA 99511
(907) 349-2192

CHAIRMAN
Special Committee on
Telecommunications

MEMBER
Labor and Commerce
State Affairs
Finance—Subcommittee Administration

Representative H. A. "Red" Boucher

March 11, 1986

Loren H. Lounsbury, Commissioner
Department of Commerce and Economic
Development
P.O. Box D-LIC
Juneau, Alaska 99811

Dear Commissioner Lounsbury:

I understand that there is currently a bill in Senate Labor and Commerce, SB 384, that deals with the sunset of the Board of Electrical Examiners, and that it has had one public hearing already. While it is too early to predict the outcome of this bill, I understand the Committee is looking closely at the recommendation of the Legislative Budget and Audit Committee to sunset the Board.

If sunset occurs, it seems to me that this would have some impact on the proposed regulation changes in your January 17 notice, and in fact may negate them. It would be helpful to me if you could explain what the potential impact would be either with or without the Board sunset.

I would also like to formally request that you delay final approval of the proposed changes in the regulations of the Board of Electrical Examiners in your January 17 notice until the sunset issue has been resolved or until it has been made clear that the sunset would not affect the proposed regulations.

Sincerely,

Representative H.A. "Red" Boucher

RB/rp

cc: Senator Zharoff, Chair of Senate Labor & Commerce

B. HERBERT
P. O. Box 2240
Valdez, Alaska 99686

FEB 2 0 1986

February 17, 1986

Mr. Kevin Henderson
Division of Occupational Licensing
P. O. Box D-LIC
Juneau, Alaska 99811

Dear Mr. Henderson:

I have received several copies of the proposed changes to the statutes and regulations governing the Board of Electrical Examiners. At present, I am in contact with twelve other persons in the electrical industry as concerned with the proposed changes as I am.

The proposed changes are only more restrictive to the majority and favor in some instances only a small minority.

Enclosed is a list of the changes with revisions to make them more equitable. As proposed by the Board of Examiners, the changes would increase costs to the public through added administrative expense. The consumer would also have additional costs passed on as the cost of doing business. The applicant for a license would also be more restricted as he would lose rights now afforded by statute in its present form.

I am sure the public good should be considered and I hope my suggestions will be of help with your deliberations which are greatly appreciated.

Thank you for your time and attention.

Sincerely,

B. Herbert

cc: Senator Edna DeVries
Senator Fred Zharoff
Senator Richard Eliason
Senator Don Bennett
Senator Bill Ray
Senator John Sackett
Commissioner Loren Lounsbury
Representative Andre Marrou
Representative Mike Navarre
Representative Nike Davis
Representative H. A. "Red" Boucher
Representative Virginia Collins
Representative Alyce Hanley
Representative Niilo Koponen
Representative Drue Pearce
Representative Bette Cato

12.AAC.32.001 (4) Should be amended to read:

(4) An Alaska registration as a professional electrical engineer plus -

(A) Management experience in the electrical construction industry as a field engineer, office engineer or in a similar engineering position for at least four of the six years immediately preceding the date of application;

(B) Experience as a journeyman lineman in outside construction for three of the six years immediately preceding the date of application;

(C) Certified inspector for the State of Alaska or one of its municipalities with experience as a journeyman lineman in outside construction for two of the four years immediately preceding the date of application;

(D) Full time instructor at a school approved by the Board with experience as a journeyman lineman in outside construction for two of the four years immediately preceding the date of application.

12.AAC.32.090 (2) Is amended to read:

(2) Construction Management experience in inside wiring as a field superintendent, field engineer, or similar position for at least four of the six years immediately preceding the date of application; or

12.AAC.32.090 (4) Should be amended to read:

(4) An Alaska registration as a professional electrical engineer plus -

(A) Management experience in the electrical construction industry as a field engineer, office manager or in a similar position for at least four of the six years immediately preceding the date of application; or

(B) Experience as a journeyman electrician in outside construction for three of the six years immediately preceding the date of application; or

(C) Certified electrical inspector for the State of Alaska or one of its municipalities with experience in inside construction as a journeyman for two of the four years immediately preceding the date of application; or

(D) Full time electrical instructor at a school approved by the Board and experience in inside construction as a journeyman for two of the four years immediately preceding the date of application.

12.AAC.32.240 Examination Papers - Should be amended to read:

All examination papers will be preserved for a period of at least one year after notification of grade results, during which time any candidate who has failed the examination may inspect his or her papers in the presence of a Board member or his designee. However, no person may inspect examination papers during the 20 days immediately preceding any examination.

12.AAC.32.350 Exemption From Continuing Education

In agreement with changes.

12.AAC.32.900 Licensed Electrical Administrator is Responsible for Completed Project

This section should remain as is.

12.AAC.32.910 Change of Employer or Company Affiliation

This new addition is not necessary and should not be added.

12.AAC.32.990 (7) [Formerly 12.AAC.32.910 (7)]

No opinion

RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

02-519 (REV 8/78)

SB
392

PROGRAM BILL # //

GOVERNOR'S PROGRAM BILL

1985 Extraordinary Session

M E M O R A N D U M

AN ACT to amend the general municipal law, the insurance law, the education law, and the local finance law, in relation to making available to municipalities a system of self-insurance, reciprocal insurance, joint insurance funding, and making certain conforming changes in relation thereto, the cancellation and renewal of commercial risk, municipal risk and professional liability insurance policies, the issuance of property/casualty insurance on a group basis for commercial risks, municipal risks and professional liability; and to amend the civil practice law and rules, in relation to limiting the liability of public entities and public employees and periodic payment by public entities and public employees of certain judgments against them; and repealing sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of the insurance law relating to the termination of product liability and professional liability insurance policies

Purpose:

To allow various local governmental entities to organize and subscribe to a reciprocal insurer or to participate in a joint insurance fund and to expand their existing authority to engage in self-insurance programs.

To establish cancellation and renewal provisions for commercial risk and municipal risk insurance policies, and to amend such provisions as they currently apply to professional and product liability policies.

To authorize the issuance of property/casualty insurance policies on a group basis for commercial risks, municipal risks and professional liability.

To limit the liability of public entities and public employees and provide for the periodic payment by public entities and public employees of certain large judgments.

Summary of Provisions:

Section 1 sets forth the legislative intent regarding the authority given to local governmental entities to organize reciprocal insurers or joint insurance funds.

Sections 2 through 11 amend the General Municipal Law and Sections 22 through 25 amend the Education Law, to accomplish the following:

1. The liability and casualty reserve fund established by Chapter 684 of the Laws of 1979 has been expanded to a self-insurance reserve fund which will authorize local governmental entities to use the fund for various types of property/casualty insurance and to pool their revenues. The entities to which such authorization is given are municipal corporations as defined in section 2 of the General Municipal Law, school districts (except school districts in cities with a population of 125,000 or more), boards of cooperative educational services, fire districts, and special improvement districts governed by separate boards of commissioners.

2. Local governmental entities, as specified above, are authorized to establish pooling arrangements to be known as "joint insurance funds" which will serve as an alternative or supplement to various types of property/casualty insurance authorized or required by law. The joint insurance funds will be created from pooled contributions of the entities which agree to assume risk on a group basis.

Section 13 of the bill adds a new section 335 to the Insurance Law to require that each insurance company issuing municipal liability insurance file a semi-annual report with the Superintendent of Insurance detailing all municipal liability claims made against its insureds and all claims paid. Section 13 also provides that the Superintendent of Insurance shall submit a report on June 1, 1987 to the Governor and the Legislature containing a summary of the data collected, an assessment of the status of municipal liability insurance costs, and recommendations for changes to reduce or contain such costs.

Section 14 of the bill adds a new paragraph 12 to subsection (b) of section 2305 of the Insurance Law to include within the list of types of rate filings which require the prior approval of the Superintendent, municipal liability insurance when written by a licensed insurer which is owned by, or whose membership or subscribers are principally comprised of, local governmental entities.

Sections 12 and 18 of the bill amend sections 107 and 6102 of the Insurance Law to enable local governmental entities as specified above to join together under a common name to exchange insurance contracts on the reciprocal plan through an attorney-in-fact.

Section 19 of the bill adds a new subsection (j) to section 6102 of the Insurance Law to require any such reciprocal insurer (whose membership is limited as set forth above) to comply with all the applicable provisions of the Insurance Law, including Article 76 (Property/Casualty Insurance Security Fund), and with such additional standards as the Superintendent of Insurance shall prescribe by regulation.

Section 20 of the bill amends section 6104(a) of the Insurance Law, which presently provides that no authorized reciprocal insurer which issues assessable policies shall make any new agreement for insurance with any subscriber which does not have assets in his, their or its own right in an amount not less than $10,000 in excess of liabilities. The bill would increase the $10,000 amount to $50,000.

Section 21 of the bill sets forth a conforming amendment to the Local Finance Law to provide a "period of probable usefulness" for the contribution of the locality to fund the reciprocal insurers.

Section 15 of the bill adds a new section 3426 to the Insurance Law to establish cancellation and renewal provisions for commercial risk, municipal risk and professional liability policies.

The bill establishes a minimum one year required policy period and provides that cancellation of covered policies may not take place during this period except for certain specific reasons set forth in the bill.

The bill also provides that commercial risk and professional liability insureds must be given sixty days notice of nonrenewal and municipal risks must be given one hundred twenty days notice of nonrenewal.

A copy of all notices of cancellation, nonrenewal and conditional renewal sent to municipal risk insureds must be

forwarded to the superintendent concurrently with the notice to the insured.

The provisions of this new law would not apply to policies issued through residual market vehicles such as the Assigned Risk Pool, the Fire Pool and the Medical Malpractice Insurance Association.

Section 16 of the bill repeals existing Section 3426 (relating to professional liability insurance contracts) and existing Section 3427 (relating to product liability insurance)

Section 17 of the bill renumbers existing section 3435 of the Insurance Law to be section 3439 and adds a new section 3435 which authorizes the approval of insurance policies which provide property/casualty insurance on a group basis for commercial risks, municipal risks, and professional liability. The bill requires that the Superintendent of Insurance promulgate regulations prior to the approval of such policies.

Sections 26 through 31 add a new Article 16 to the Civil Practice Law and Rules to require that a plaintiff must exhaust all diligent efforts to collect the equitable share of a judgment apportioned to a public entity or public employee's co-defendants prior to seeking recovery of such co-defendants' equitable share from the governmental defendant. The bill also provides that if a public entity or public employee is properly called on to assure payment in full of the judgment by paying the equitable share of a co-defendant, the governmental defendant would be entitled to make any such payment which exceeds $100,000 in equal installments over a period of five years.

The bill defines "public entity" as (a) the state of New York, (b) a county, city, town, or village, (c) a school district or board of cooperative educational services, (d) a fire district, and a special improvement district governed by a separate board of commissioners, special district or district corporation.

The term "public employee" is defined to mean any employee of a public entity as defined in the bill while acting within the scope of his public employment or duties, but does not include an independent contractor.

Section 32 of the bill sets forth an immediate effective date, except that section 13 would take effect April 1, 1986, section 16 would take effect January 1, 1986, sections 15 and 16 shall apply to all policies issued or

renewed on or after January 1, 1986, and sections 26 through 31 shall take effect February 1, 1986 and apply to all actions or proceedings instituted on or after its effective date.

Existing Law:

Chapter 684 of the Laws of 1979 established a liability and casualty reserve fund for self-insurance programs.

Currently, the local governmental entities referred to in sections 12 and 18 of the bill cannot participate in the formation of a reciprocal insurer. The present required net worth amount for a subscriber to a reciprocal is $10,000.

The Insurance Law currently provides minimum cancellation and renewal provisions for personal lines, private passenger automobile, professional liability and product liability policies. In general, no provision in the law regulates the cancellation or nonrenewal of commercial or municipal risk policies.

The Insurance Law currently does not permit the issuance of property/casualty insurance policies on a group basis. The bill would authorize the issuance of such policies for commercial risks as well as for municipal risks and professional liability.

Under existing law, in actions against public entities and employees and other parties, all the defendants are jointly and severally liable to the plaintiff for any judgment rendered against them. Plaintiffs are permitted to recover the full amount of a judgment from the governmental defendant, regardless of the other defendants' ability to pay their equitable share.

Statement in Support:

Joint Insurance Funds and Municipal Reciprocal Insurance

Recent increases in the cost of commercial insurance for municipalities has made it difficult to obtain adequate protection at reasonable cost. The number and amount of lawsuits pending against local governments have grown significantly in recent years. This, coupled with other economic factors affecting insurance companies, has created a very serious problem for municipalities to meet their insurance needs.

During the past decade municipal liability insurance costs have escalated, requiring local governments to spend a larger percentage of their budgets on insurance. This problem has been coupled with the growing need for such insurance and a general decrease in the availability of such coverage in the normal market. Local governments can no

longer tolerate such a situation, but their only alternative has been self-insurance.

The bill would provide new alternatives for local officials to consider as they face increasing costs for insurance.

Joint Insurance Funds - This bill would provide authorization for local governments to form and participate in insurance pools (called "joint insurance funds"). Properly managed insurance pools can result in both cost savings and cost stability. Provisions contained in this bill provide for minimum standards that are intended as a prerequisite that will facilitate proper management and operating practices.

The definition of the participants in the reciprocal insurer (in sections 12 and 18 of the bill) is consistent with the definition of the participants in the joint insurance fund, so that there will be two alternatives--regulated reciprocals and unregulated pools, for the same parties to consider.

Municipal Reciprocal Insurance - This bill will allow governmental entities to join together and engage in the exchange of contracts of insurance through a reciprocal plan. A reciprocal is created by a group of participants known as "subscribers" who under a common name and through an attorney-in-fact engage in the business of insuring one another. Contracts of insurance are exchanged among subscribers on a reciprocal basis so that each insured is also an insurer.

Management of the reciprocal is through an attorney-in-fact who is empowered to act on behalf of the subscribers. The attorney-in-fact is responsible for all functions required in the conduct of the business. The attorney-in-fact in turn is subject to the control of an advisory committee elected by the subscribers. The attorney-in-fact maintains a separate account for each subscriber and the account is credited with the subscriber's initial surplus contribution and the subscriber's share of any future earnings. The attorney-in-fact would also be in a position to supply loss prevention and control assistance and render technical advice in this highly specialized field.

The organization and operating requirements for a reciprocal insurer are stipulated in Article 61 of the Insurance Law. Due to the uniqueness of a reciprocal whose membership is limited to local governments, this bill authorizes the Superintendent to promulgate additional standards in order to facilitate the reciprocal's

organization, safeguard its financial soundness, and ensure the continuance of a viable organization.

The bill provides for prior approval of the municipal reciprocal insurer's rates. Coverage of the municipal reciprocal insurer by the Property/Casualty Insurance Security Fund is retained so that this type of reciprocal insurer is treated in the same manner as other reciprocals.

Increase in Net Worth Required for Subscriber - A reciprocal insurer is an unincorporated group of individuals or corporations that exchange insurance contracts through an attorney-in-fact. Each member or subscriber of a reciprocal assumes a liability for a portion of the losses of the other subscribers. This is accomplished by requiring each subscriber to enter into a contract which sets forth the subscriber's liability and grants authority to the attorney-in-fact to operate on his or its behalf.

Therefore, each subscriber must have substantial resources which the subscriber can call upon to meet its share of any underwriting deficiencies. The attorney-in-fact must ascertain and monitor the financial condition of each subscriber and requiring a minimum net worth of $50,000 is not unreasonable in today's times. In view of the tremendous decrease in the value of the dollar since the existing $10,000 net worth requirement was established more than a generation ago, a substantial increase in such amount is justified.

The increase will also affect the amount of net worth required for individuals who become members of the Lloyds underwriters of New York heretofore organized in this State under section 6116 of the Insurance Law, since section 6116(b) provides that "every such Lloyds underwriters shall be subject to all of the provisions of this chapter which are applicable to reciprocal insurers."

Cancellation and Nonrenewals

The commercial property and casualty insurance industry has recently engaged in the indiscriminate cancellation and nonrenewal of a large number of commercial and municipal insureds. These cancellations have frequently occurred during the policy term, with only minimal notice to the insured. Similarly, insureds have been informed of an insurer's intention to non-renew policies with only a few weeks' or even days' notice.

Obviously, such short term notices of cancellation and nonrenewal place an inordinate burden on the insureds. The tight market makes obtaining replacement coverage, a difficult task, more burdensome by the inadequacy of the notices provided.

The bill would eliminate indiscriminate and irresponsible mid-term cancellations of commercial risk, municipal risk and professional liability policies, as well as establish minimum time limits for notification of nonrenewal.

Group Insurance Policies see fictitious group law.

Consumers of the commercial property/casualty insurance industry are currently facing severe constriction in the availability of some insurance products and the affordability of those products which are still available.

Repeal fictitious group law 21.36.190

The availability of property/casualty insurance on a group basis to the members of associations or organizations whose membership is of a relatively homogeneous nature (i.e. housing associations, day care centers, etc.) and for public entities could result in reduced underwriting costs and enhance both the availability and affordability of insurance products for these consumers.

Exhaustion of Remedies

The bill would protect taxpayers by requiring that a plaintiff must exhaust all diligent efforts to collect the equitable share of a judgment apportioned to a governmental entity's co-defendants prior to seeking recovery of such co-defendants' equitable share from the governmental defendant. Taxpayers should not be called on to finance lack of diligence on the part of the plaintiff in obtaining satisfaction of judgments,

The bill would recognize that in the event a governmental defendant is properly called on to assure payment in full of the judgment by paying the equitable share of a co-defendant, the governmental defendant should be entitled to make a large payment in equal installments over a period of years instead of a lump sum payment.

Budget Implications:

The bill should provide savings to public entities in the state.

PRESS RELEASE
FOR IMMEDIATE RELEASE
FOR FURTHER INFORMATION CONTACT:
SENATOR JOE P. JOSEPHSON
465-4525

10 February 1986
12:30 p.m.

Senator Joe Josephson (D.-Anchorage) today introduced SB 392 to help reduce the cost of insurance and make more insurance coverage available.

"My bill recognizes the real problems that exist today, and which cry out for change in certain cases of medical and dental malpractice, day care centers, and claims in which a minor has sustained personal injury", Senator Josephson said.

"In my judgment", he added, "proposals for wholesale changes in tort law will not be enacted at this session -- and should not pass without careful study and assurances that benefits to the public, in the form of better coverage and lower premiums, will follow from their passage.

"But we can make some changes that still preserve for victims of negligence the benefits of the common law of Alaska as it has developed over the years, case-by-case", Senator Josephson asserted.

SB 392 provides that in medical or dental malpractice cases, suits against day care providers, and claims in which a minor has sustained injury, if future damages are awarded in excess of $250,000, the defendant or the defendant's insurance carrier can provide an approved annuity plan for instalment payments instead of a lump sum payment. The annuity program would be available as a way of meeting the defendant's obligation to pay amounts in excess of $250,000 for future pain and suffering, future lost wages or earnings

(or other future economic losses), or future expenses for health care or rehabilitative services.

To protect judgment creditors, security for the payment of the instalments would be required; each annuity plan would require approval by the Director of Insurance; and lump sum payments could be ordered in a case of demonstrated hardship, failure to post required security, or failure to pay a scheduled instalment when due.

"Passage of SB 392 will help doctors, dentists, and day care centers obtain coverage at reasonable rates", Senator Josephson said.

"Moreover, SB 392 gives better protection to the rights of injured minors than can be assured under existing law. Today, the guardian of an injured minor obtains immediate control of the entire award, when the award is satisfied. Under SB 392, except in cases of hardship, a portion of the award for future damages will be paid in monthly instalments, and so enhance the minor's involvement in financial planning decisions as the minor moves towards or reaches adulthood. SB 392 thus assures that proceeds of an award are used for the minor's care and properly accounted for.

"SB 392 is not, of course, the total answer", the senator concluded. "In fact, I am preparing other legislation for introduction this week which, like SB 392, will be carefully designed to improve the climate for insurance buyers and premium payers without seeking what is unattainable in 1986 or without doing fundamental violence to the civil law as we know it today."

J. P. J.

Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

January 29, 1986

Tamara Cook, Esquire
Director
Division of Legal Services
Legislative Affairs Agency
P.O. Box Y
Juneau, Alaska 99811

Dear Ms. Cook:

This letter constitutes a drafting request which you will want to refer, probably, to whomever on your staff has the greatest familiarity with insurance legislation.

I ask that there be drafted for possible introduction by me a bill addressing certain problems in property/casualty insurance.

First, I wish to authorize local government entities, including school districts (and inclusive of REAAs) to establish pooling arrangements to be known as "joint insurance funds", which will serve as an alternative or supplement to various types of property or casualty insurance authorized or required by law.

AS 21.75 provides already for reciprocal insurance for local government entities, but does not provide for joint insurance funds. I wish to cure this apparent omission. I enclose materials from the State of New York which may help your draftsperson.

Second, I wish to repeal AS 21.36.190, which discourages the formation of groups for insurance purposes. It is now clear that group insurance policies in the existing environment should be encouraged, not discouraged.

Third, I have another idea I wanted pursued. In entering judgments in actions for medical or dental malpractice, in actions against day care centers, and in all tort situations where the recovery is for the benefit of a minor, I would afford to the defense an opportunity to request the trial judge, if the findings include future damages exceeding $250,000 (e.g., for future pain and

suffering, wage loss, and medical expense), for the opportunity to provide an annuity contract that will pay the remaining amounts of future damages exceeding $250,000 in periodic installments. The present value of the annuity contract would be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages. The period of time over which such periodic payments shall be made and the period used to calculate the present value of the annuity contract would be the period determined by the trier of fact in arriving at the itemized verdict, or, if the verdict is not itemized, by the court that is entering the judgment, except that the period shall not exceed ten years. The amount of the judgment should reflect the interest rate attributable to unpaid judgments in Alaska. Unless otherwise agreed, the annual sum arrived at would be paid in equal monthly installments payable in advance.

Any annuity contract provided would require approval by the Director of Insurance of the State of Alaska prior to acceptance by the Court and would be executed by a qualified insurer licensed to do business in the State.

If the security is not posted within 30 days, the Court on motion of the judgment creditor may order the judgment to be paid in lump sum.

Please see the enclosed materials from New York, which provide that no portion of any periodic payment allocable to loss of future earnings will be reduced or terminated by reason of the death of the judgment creditor, but would be paid to persons to whom the judgment creditor owed a duty of support immediately prior to his death to the extent that such duty of support exists.

Please also note section 5036 in the enclosure which provides that any time after entry of the judgment, a judgment creditor or successor in interest can seek to establish that the continued payment of the judgment in periodic installments will impose a hardship, in which case the court may order that payment of remaining payments, or a portion thereof, be made in lump sum.

Sincerely,

Joe P. Josephson

Joe P. Josephson
State Senator

Enclosures

STATE OF NEW YORK

6750

1985-1986 Regular Sessions

IN SENATE

June 28, 1985

Introduced by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the public health law, the civil practice law and rules, the education law, the insurance law, and the judiciary law, in relation to medical and dental malpractice, making an appropriation therefor and providing for the repeal of certain provisions added by this act upon their expiration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings and declaration. The legislature hereby finds and declares that a comprehensive reform of the medical and dental malpractice adjudication system is necessary in order to ensure the continued availability and affordability of quality health services in New York state. Escalating malpractice insurance premiums discourage physicians and dentists from initiating or continuing their practice in New York and contribute to the rising cost of health care as premium costs are passed along to the health care consumer. The legislature finds, therefore, that steps must be taken to reduce the cost of malpractice insurance and to restrain associated health care costs, while assuring the availability of compensation for persons injured as a result of malpractice. By expediting case resolution, discouraging frivolous claims and defenses, moderating attorney contingency fees, limiting the opportunity for double recoveries, and requiring the periodic payment of large future awards, the legislature intends to reduce the escalating cost of malpractice insurance and to improve the adjudication of malpractice claims. The legislature further finds that hospitals must enhance their efforts to reduce medical and dental malpractice through the establishment of medical and dental malpractice prevention programs and through greater scrutiny of physicians and dentists prior to granting hospital privileges and that increased resources should be devoted

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD11526-01-5

to the investigation and prosecution of professional misconduct. The legislature finds that the public interest further requires that premium levels for physicians and dentists must be restrained to the extent feasible in order to maintain high quality medical services for New York and to explore alternative long-term approaches to the malpractice issue.

§ 2. Paragraph (a) of subdivision one of section twenty-eight hundred three-e of the public health law, as amended by chapter one thousand five of the laws of nineteen hundred eighty-four, is amended to read as follows:

(a) Hospitals and other facilities approved pursuant to this article shall make a report or cause a report to be made within thirty days of the occurrence of any of the following: the suspension, restriction, termination or curtailment of the training, employment, association or professional privileges or the denial of the certification of completion of training of an individual licensed pursuant to the provisions of title eight of the education law or of a medical resident with such facility for reasons related in any way to alleged mental or physical impairment, incompetence, malpractice or misconduct or impairment of patient safety or welfare; the voluntary or involuntary resignation or withdrawal of association or of privileges with such facility to avoid the imposition of disciplinary measures; or the receipt of information which indicates that any professional licensee or medical resident has been convicted of a crime; the denial of staff privileges to a physician if the reasons stated for such denial are related to alleged mental or physical impairment, incompetence, malpractice, misconduct or impairment of patient safety or welfare.

§ 3. Such law is amended by adding two new sections twenty-eight hundred five-j and twenty-eight hundred five-k to read as follows:

§ 2805-j. Medical and dental malpractice prevention program. 1. Every hospital shall maintain a coordinated program for the identification and prevention of medical and dental malpractice. Such program shall include at least the following:

(a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical and dental care of patients and to prevent medical and dental malpractice. Such committee shall oversee and coordinate the medical and dental malpractice prevention program and shall insure that information gathered pursuant to the program is utilized to review and to revise hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity;

(b) A medical and dental staff privileges sanction procedure through which credentials, physical and mental capacity and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment and other events that may result in claims of medical or dental malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to paragraphs (a) through (e) of this subdivision concerning individual physicians and dentists within the physician's or dentist's personnel or credential file maintained by the hospital;

(g) Education programs dealing with patient safety, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients and causes of malpractice claims for staff personnel engaged in patient care activities;

(h) Continuing education programs for medical and dental staff in their areas of specialty; and

(i) Policies to ensure compliance with the reporting requirements of section twenty-eight hundred three-e of this article and subdivision eleven of section two hundred thirty of this chapter.

2. Any person who, in good faith and without malice, provides information to further the purposes of the medical and dental malpractice prevention program or who, in good faith and without malice, participates on the quality assurance committee shall not be subject to an action for civil damages or other relief as a result of such activity.

3. The commissioner shall make, adopt, promulgate and enforce such rules and regulations as he may deem appropriate to effectuate the purposes of this section.

§ 2805-k. Investigations prior to granting or renewing privileges. 1. Prior to granting or renewing professional privileges or association of any physician or dentist or hiring a physician or dentist, a hospital or facility approved pursuant to this article shall request from the physician or dentist and the physician or dentist shall be required to provide the following information:

(a) The name of any hospital or facility with or at which the physician or dentist had or has any association, employment, privileges or practice;

(b) Where such association, employment, privilege or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical or dental misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in such proceedings or actions, and any additional information concerning such proceedings or actions as the physician or dentist may deem appropriate;

(d) The substance of the findings in such actions or proceedings and any additional information concerning such actions or proceedings as the physician or dentist may deem appropriate;

(e) A waiver by the physician or dentist of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subdivision; and

(f) A verification by the physician or dentist that the information provided by the physician or dentist is true and accurate.

2. Prior to granting privileges or association to any physician or dentist, or hiring a physician or dentist, any hospital or facility approved pursuant to this article shall request from any hospital with or at which such physician or dentist had or has privileges, was associated, or was employed, the following information concerning such physician or dentist:

(a) Any pending professional medical conduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another; and

(c) Any information required to be reported by hospitals pursuant to section twenty-eight hundred three-e of this article.

3. If requested by the department, a hospital shall provide documentation that, prior to granting privileges, association or employing a physician or dentist, it has complied with the requirements of subdivisions one and two of this section and that, prior to renewing privileges, association or employment, it has complied with the requirements of subdivision one of this section. Copies of the information and documentation required pursuant to subdivisions one and two of this section shall be placed in the physician's or dentist's personnel or credentials file maintained by the hospital.

4. Any hospital which receives a request for information from another hospital pursuant to subdivision one or two of this section shall provide such information concerning the physician or dentist in question to the extent such information is known to the hospital receiving such a request, including the reasons for suspension, termination, curtailment of employment or privileges at the hospital. Any hospital or hospital employee providing such information in good faith shall not be liable in any civil action for the release of such information.

§ 4. Subdivision (d) of section thirty-one hundred one of the civil practice law and rules is amended to read as follows:

(d) [Material prepared for litigation. The following shall not be obtainable unless the court finds that the material can no longer be duplicated because of a change in conditions and that withholding it will result in injustice or undue hardship:

1. any opinion of an expert prepared for litigation; and

2. any writing or anything created by or for a party or his agent in preparation for litigation]

Trial preparation.

1. Experts. (i) Upon request, each party shall identify each person whom the party expects to call as an expert witness at trial and shall disclose in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify, the qualifications of each expert witness and a summary of the grounds for each expert's opinion. However, where a party for good cause shown retains an expert an insufficient period of time before the commencement of trial to give appropriate notice thereof, the party shall not thereupon be precluded from introducing the expert's testimony at the trial solely on grounds of noncompliance with this paragraph. In that instance, upon motion of any party, made before or at trial, or on its own initiative, the court may make whatever order may be just. In an action for medical or dental malpractice, a party, in responding to a request, may omit the names of medical or dental experts but shall be required to disclose all other information concerning such experts otherwise required by this paragraph.

(ii) Further disclosure concerning the expected testimony of any expert may be obtained only by court order upon a showing of special circumstances and subject to restrictions as to scope and provisions concerning fees and expenses as the court may deem appropriate. However, a party, without court order, may take the testimony of a person authorized to practice medicine or dentistry who is the party's treating

or retained expert, as described in paragraph three of subdivision (a) of this section, in which event any other party shall be entitled to the full disclosure authorized by this article with respect to that expert without court order.

2. Materials. Subject to the provisions of paragraph one of this subdivision, materials otherwise discoverable under subdivision (a) of this section and prepared in anticipation of litigation or for trial by or for another party, or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent), may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of the materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.

§ 5. Such law and rules is amended by adding a new rule thirty-four hundred six to read as follows:

Rule 3406. Mandatory filing and pre-calendar conference in dental and medical malpractice actions. (a) Mandatory filing. Not more than sixty days after issue is joined, the plaintiff in an action to recover damages for dental or medical malpractice shall file with the clerk of the court in which the action is commenced a notice of dental or medical malpractice action, on a form to be specified by the chief administrator of the courts. Together with such notice, the plaintiff shall file: (i) proof of service of such notice upon all other parties to the action; (ii) proof that, if demanded, authorizations to obtain medical, dental and hospital records have been served upon the defendants in the action; and (iii) such other papers as may be required to be filed by rule of the chief administrator of the courts. The time for filing a notice of dental or medical malpractice action may be extended by the court only upon a motion made pursuant to section two thousand four of this chapter.

(b) Pre-calendar conference. The chief administrator of the courts, in accordance with such standards and administrative policies as may be promulgated pursuant to section twenty-eight of article six of the constitution, shall adopt special calendar control rules for actions to recover damages for dental or medical malpractice. Such rules shall require a pre-calendar conference in such an action, the purpose of which shall include, but not be limited to, encouraging settlement, simplifying or limiting issues and establishing a timetable for disclosure, future conferences, and trial. The timetable for disclosure shall provide for the completion of disclosure not later than twelve months after the notice of dental or medical malpractice is filed and shall require that all parties be ready for the trial of the case not later than eighteen months after such notice is filed. The initial pre-calendar conference shall be held after issue is joined in a case but before a note of issue is filed and before a medical malpractice panel hearing, if any, is scheduled. To the extent feasible, the justice convening the pre-calendar conference shall hear and decide all subsequent pre-trial motions in the case and shall be assigned the trial of the case. The chief administrator of the courts also shall provide for the imposition of costs or other sanctions, including imposition of reasonable attorney's fees, dismissal of an action, claim, cross-claim, coun-

terclaim or defense, or rendering a judgment by default for failure of a party or a party's attorney to comply with these special calendar control rules or any order of a court made thereunder. The chief administrator of the courts, in the exercise of discretion, may provide for exemption from the requirement of a pre-calendar conference in any judicial district or a county where there exists no demonstrated need for such conferences.

§ 6. Subdivision (d) of rule forty-one hundred eleven of such law and rules, as added by chapter nine hundred fifty-five of the laws of nineteen hundred seventy-six, is amended to read as follows:

(d) Itemized verdict in medical or dental malpractice actions. In a medical or dental malpractice action the court shall instruct the jury that if the jury finds a verdict awarding damages it shall in its verdict specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. In a medical or dental malpractice action, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the verdict and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the jury shall set forth the period of years over which such amounts are intended to provide compensation. In computing said damages, the jury shall be instructed to award the full amount of future damages, as calculated, without reduction to present value.

§ 7. Subdivision (b) of section forty-two hundred thirteen of such law and rules, as amended by chapter seven hundred one of the laws of nineteen hundred eighty-four, is amended to read as follows:

(b) Form of decision. The decision of the court may be oral or in writing and shall state the facts it deems essential. In a medical or dental malpractice action or in an action against a public employer or a public employee who is subject to indemnification by a public employer with respect to such action or both, as such terms are defined in subdivision (b) of section forty-five hundred forty-five, for personal injury or wrongful death arising out of an injury sustained by a public employee while acting within the scope of his public employment or duties, a decision awarding damages shall specify the applicable elements of special and general damages upon which the award is based and the amount assigned to each element, including but not limited to medical expenses, dental expenses, loss of earnings, impairment of earning ability, and pain and suffering. In a medical or dental malpractice action, each element shall be further itemized into amounts intended to compensate for damages which have been incurred prior to the decision and amounts intended to compensate for damages to be incurred in the future. In itemizing amounts intended to compensate for future damages, the court shall set forth the period of years over which such amounts are intended to provide compensation. In computing said damages, the court shall award the full amount of future damages, as calculated, without reduction to present value.

§ 8. Subdivision (a) of section forty-five hundred forty-five of such law and rules, as added by chapter seven hundred one of the laws of nineteen hundred eighty-four, is amended to read as follows:

(a) Action for medical or dental malpractice. In any action for medical or dental malpractice where the plaintiff seeks to recover for the

cost of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss, evidence shall be admissible for consideration by the court to establish that any such past or future cost or expense was or will, with reasonable certainty, be replaced or indemnified, in whole or in part, from any collateral source such as insurance (except for life insurance), social security (except those benefits provided under title XVIII of the social security act), workers' compensation or employee benefit programs (except such collateral sources entitled by law to liens against any recovery of the plaintiff). If the court finds that any such cost or expense was or will, with reasonable certainty, be replaced or indemnified from any collateral source, it shall reduce the amount of the award by such finding, minus an amount equal to the premiums paid by the plaintiff for such benefits for the two-year period immediately preceding the accrual of such action and minus an amount equal to the projected future cost to the plaintiff of maintaining such benefits. In order to find that any future cost or expense will, with reasonable certainty, be replaced or indemnified by the collateral source, the court must find that the plaintiff is legally entitled to the continued receipt of such collateral source, pursuant to a contract or otherwise enforceable agreement, subject only to the continued payment of a premium and such other financial obligations as may be required by such agreement.

§ 9. Such law and rules is amended by adding a new article fifty-A to read as follows:

ARTICLE 50-A

PERIODIC PAYMENT OF

JUDGMENTS IN MEDICAL AND DENTAL MALPRACTICE ACTIONS

§ 5031. Basis for determining judgment to be entered. In order to determine what judgment is to be entered on a verdict in an action to recover damages for dental or medical malpractice under this article, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law, including set-offs, credits, comparative negligence pursuant to section fourteen hundred eleven of this chapter, additurs, and remittiturs, in calculating the respective amounts of past and future damages claimants are entitled to recover and defendants are obligated to pay.

(b) The court shall enter judgment in lump sum for past damages, for future damages not in excess of two hundred fifty thousand dollars, and for any damages, fees or costs payable in lump sum or otherwise under subdivisions (c) and (d) of this section. For the purposes of this section, any lump sum payment of a portion of future damages shall be deemed to include the elements of future damages in the same proportion as such elements comprise of the total award for future damages as determined by the trier of fact.

(c) Payment of litigation expenses and that portion of the attorney's fees related to past damages shall be payable in a lump sum. Payment of that portion of the attorney's fees related to future damages for which, pursuant to this article, the claimant is entitled to a lump sum payment shall also be payable in a lump sum. Payment of that portion of the attorney's fees related to the future periodically paid damages shall also be payable in a lump sum, based on the present value of the annuity contract purchased to provide payment of such future periodically paid damages pursuant to subdivision (a) of this section.

(d) Upon election of a subrogee or a lien holder, including an employer or insurer who provides workers' compensation, filed within the time permitted by rule of court, any part of future damages allocable to reimbursement of payments previously made by the subrogee or the lien holder shall be paid in lump sum to the subrogee or the lien holder in such amount as is calculable and determinable under the law in effect at the time of such payment.

(e) With respect to awards of future damages in excess of two hundred fifty thousand dollars in an action to recover damages for dental or medical malpractice, the court shall enter judgment as follows:

After making any adjustments prescribed by subdivisions (b), (c) and (d) of this section, the court shall enter a judgment for the amount of the present value of an annuity contract that will provide for the payment of the remaining amounts of future damages in periodic installments. The present value of such contract shall be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages, as calculated pursuant to this subdivision. The period of time over which such periodic payments shall be made and the period of time used to calculate the present value of the annuity contract shall be the period of years determined by the trier of fact in arriving at the itemized verdict; provided, however, that the period of time over which such periodic payments shall be made and the period of time used to calculate the present value for damages attributable to pain and suffering shall be ten years or the period of time determined by the trier of fact, whichever is less. The court, as part of its judgment, shall direct that the defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of such an annuity contract. Such annuity contract shall provide for the payment of the annual payments of such remaining future damages over the period of time determined pursuant to this subdivision. The annual payment for the first year shall be calculated by dividing the remaining amount of future damages by the number of years over which such payments shall be made and the payment due in each succeeding year shall be computed by adding four percent to the previous year's payment. Where payment of a portion of the future damages terminates in accordance with the provisions of this article, the four percent added payment shall be based only upon that portion of the damages that remains subject to continued payment. Unless otherwise agreed, the annual sum so arrived at shall be paid in equal monthly installments and in advance.

(f) With the consent of the claimant and any party liable, in whole or in part, for the judgment, the court shall enter judgment for the amount found for future damages attributable to said party as such are determinable without regard to the provisions of this article.

§ 5032. Form of security. Security authorized or required for payment of a judgment for periodic installments entered in accordance with this article must be in the form of an annuity contract, executed by a qualified insurer and approved by the superintendent of insurance pursuant to section five thousand thirty-nine of this article, and approved by the court.

§ 5033. Posting and maintaining security. (a) If the court enters a judgment for periodic installments, each party liable for all or a portion of such judgment shall separately or jointly with one or more others post security in an amount necessary to secure payment for the amount of the judgment for future periodic installments within thirty days after the date the judgment is entered. A liability insurer having a contractual obligation and any other person adjudged to have an obligation to pay all or part of a judgment for periodic installments on behalf of a judgment debtor is obligated to post security to the extent of its contractual or adjudged obligation if the judgment debtor has not done so.

(b) A judgment creditor or successor in interest and any party having rights may move that the court find that security has not been posted and maintained with regard to a judgment obligation owing to the moving party. Upon so finding, the court shall order that security complying with this article be posted within thirty days. If security is not posted within that time and subdivision (c) of this section does not apply, the court shall enter a judgment for the lump sum as such sum is determinable under the law without regard to this article.

(c) If a judgment debtor who is the only person liable for a portion of a judgment for periodic installments fails to post and maintain security, the right to lump sum payment described in subdivision (b) of this section applies only against that judgment debtor and the portion of the judgment so owed.

(d) If more than one party is liable for all or a portion of a judgment requiring security under this article and the required security is posted by one or more but fewer than all of the parties liable, the security requirements are satisfied and those posting security may proceed under subdivision (b) of this section to enforce rights for security or lump sum payment to satisfy or protect rights of reimbursement from a party not posting security.

§ 5034. Failure to make payment. If at any time following entry of judgment, a judgment debtor fails for any reason to make a payment in a timely fashion according to the terms of this article, the judgment creditor may petition the court which rendered the original judgment for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump sum judgment, the court shall total the remaining periodic payments due and owing to the judgment creditor, as calculated pursuant to subdivision (b) of section five thousand thirty-one of this article, and shall not convert these amounts to their present value. The court may also require the payment of interest on the outstanding judgment.

§ 5035. Effect of death of judgment creditor. (a) Unless otherwise agreed between the parties at the time security is posted pursuant to section five thousand thirty-three of this article, in all cases covered by this article [illegible]ich future damages are payable in periodic installments, the liabil[illegible]ayment of any installments for medical, dental or other costs of hea[illegible] care or noneconomic loss not yet due at the

death of the judgment creditor terminates upon the death of the judgment creditor.

(b) The portion of any periodic payment allocable to loss of future earnings shall not be reduced or terminated by reason of the death of the judgment creditor, but shall be paid to persons to whom the judgment creditor owed a duty of support immediately prior to his death to the extent that such duty of support exists under applicable law at the time of the death of the judgment creditor. Such payments to such persons shall continue for the remainder of the period as originally found by the jury or until such duty of support ceases to exist, whichever occurs first. In such cases, the court which rendered the original judgment may, upon petition of any party in interest, modify the judgment to award and apportion the future payments of such unpaid future damages in accordance with this subdivision which apportioned amounts shall be payable in the future as provided for in this article. In the event that the judgment creditor does not owe a duty of support to any person at the time of the death of the judgment creditor or such duty ceases to exist, the remaining payments shall be considered part of the estate of the judgment creditor. In such cases, the court which rendered the original judgment may, upon petition of any party in interest, convert those portions of such periodic payments allocable to the loss of future earnings to a lump sum by calculating the present value of such payments in order to assist in the settlement of the estate of the judgment creditor.

§ 5036. Adjustment of payments. (a) If, at any time after entry of judgment, a judgment creditor or successor in interest can establish that the continued payment of the judgment in periodic installments will impose a hardship, the court may, in its discretion, order that the remaining payments or a portion thereof shall be made to the judgment creditor in a lump sum. The court shall, before entering such an order, find that: (i) unanticipated and substantial medical, dental or other needs have arisen that warrant the payment of the remaining payments, or a portion thereof, in a lump sum; (ii) ordering such a lump sum payment would not impose an unreasonable financial burden on the judgment debtor or debtors; (iii) ordering such a lump sum payment will accommodate the future medical and other needs of the judgment creditor; and (iv) ordering such a lump sum payment would further the interests of justice.

(b) If a lump sum payment is ordered by the court, such lump sum shall be calculated on the basis of the present value of remaining periodic payments, or portions thereof, that are converted into a lump sum payment. The remaining future periodic payments, if any, shall be reduced accordingly.

§ 5037. Settlements. Nothing in this article shall be construed to limit the right of a plaintiff, defendant or defendants and any insurer to settle dental or medical malpractice claims as they consider appropriate and in their complete discretion.

§ 5038. Assignment of periodic installments. An assignment of or an agreement to assign any right to periodic installments for future damages contained in a judgment entered under this article is enforceable only as to amounts: (a) to secure payment of alimony, maintenance, or child support; (b) for the cost of products, services, or accommodations provided or to be provided by the assignee for medical, dental or other health care; or (c) for attorney's fees and other expenses of litigation incurred in securing the judgment.

§ 5039. Duties of superintendent of insurance. The superintendent of insurance shall establish rules and procedures for determining which insurers, self-insurers, plans or arrangements are financially qualified to provide the security required under this article and to be designated as qualified insurers.

§ 10. Such law and rules is amended by adding a new section eighty-three hundred three-a to read as follows:

§ 8303-a. Costs upon frivolous claims and counterclaims in dental and medical malpractice actions. (a) If in a dental or medical malpractice action, an action or claim is commenced or continued by a plaintiff or a counterclaim, defense or cross claim is commenced or continued by a defendant that is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs and reasonable attorney's fees not exceeding ten thousand dollars.

(b) The costs and fees awarded under subdivision (a) of this section shall be assessed either against the party bringing the action, claim, cross claim, defense or counterclaim or against the attorney for such party, or against both, as may be determined by the court, based upon the circumstances of the case. Such costs and fees shall be in addition to any other judgment awarded to the successful party.

(c) In order to find the action, claim, counterclaim, defense or cross claim to be frivolous under subdivision (a) of this section, the court must find one or more of the following:

(i) the action, claim, counterclaim, defense or cross claim was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another;

(ii) the action, claim, counterclaim, defense or cross claim was commenced or continued in bad faith without any reasonable basis in law or fact and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action, claim, counterclaim, defense or cross claim was promptly discontinued when the party or the attorney learned or should have learned that the action, claim, counterclaim, defense or cross claim lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

§ 11. Subdivision five of section sixty-five hundred nine of the education law is amended by adding a new paragraph (d) to read as follows:

(d) Having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state.

§ 12. Subdivision eleven of section sixty-five hundred nine of such law, as added by chapter three hundred forty of the laws of nineteen hundred eighty, is amended to read as follows:

(11) A violation of section twenty-eight hundred three-d or twenty-eight hundred five-k of the public health law.

§ 13. Section six thousand five hundred twenty-four of such law is amended by adding a new subdivision ten to read as follows:

(10) For every license or registration issued after the effective date of this subdivision, an additional fee of ninety dollars shall be paid and deposited in the general fund for the purpose of increasing expenditures made pursuant to section two hundred thirty of the public health law in relation to the operation of the office of professional medical conduct within the department of health. The amount of the funds expended as a result of such increase shall not be greater than such additional fees collected over the licensure period.

§ 14. Subdivision one of section one hundred forty-eight-a of the judiciary law, as amended by chapter ninety-five of the laws of nineteen hundred seventy-eight, is amended to read as follows:

1. Each appellate division of the supreme court shall establish within its judicial department a medical malpractice panel or panels to facilitate the disposition of medical malpractice actions, including malpractice actions where a hospital is a named defendant, in the supreme court; provided, however, the provisions of this section shall not apply to the disposition of such actions in the fifth judicial district or in the county of Suffolk. The number and locations of such panels and the rules governing the operation thereof shall be determined by the respective appellate divisions.

§ 15. Subdivisions two, three and four of section four hundred seventy-four-a of such law, as added by chapter nine hundred fifty-five of the laws of nineteen hundred seventy-six, are amended to read as follows:

2. Notwithstanding any inconsistent judicial rule, a contingent fee in a medical or dental malpractice action shall not exceed the amount of compensation provided for in [either of] the following [schedules] schedule:

[SCHEDULE A]

[50] 30 percent of the first [$1,000] $250,000 of the sum recovered;
[40] 25 percent of the next [$2,000] $250,000 of the sum recovered;
[35] 20 percent of the next [$22,000] $500,000 of the sum recovered;
[25] 15 percent of the next $250,000 of the sum recovered;
10 percent of any amount over [$25,000] $1,250,000 of the sum recovered[; or

SCHEDULE B

A percentage not exceeding thirty-three and one-third percent of the sum recovered, if the initial contractual arrangement between the client and the attorney so provides, in which event the procedure hereinafter provided for making application for additional compensation because of extraordinary circumstances shall not apply].

3. Such [percentage] percentages shall be computed on the net sum recovered after deducting from the amount recovered expenses and disbursements for expert testimony and investigative or other services properly chargeable to the enforcement of the claim or prosecution of the action. In computing the fee, the costs as taxed, including interest upon a judgment, shall be deemed part of the amount recovered. For the following or similar items there shall be no deduction in computing such percentages: liens, assignments or claims in favor of hospitals, for medical care, dental care and treatment by doctors and nurses, or of self-insurers or insurance carriers.

4. In the event that claimant's or plaintiff's attorney believes in good faith that the fee [schedules] schedule set forth in subdivision two of this section, because of extraordinary circumstances, will not give him adequate compensation, application for greater compensation may

be made upon affidavit with written notice and an opportunity to be heard to the claimant or plaintiff and other persons holding liens or assignments on the recovery. Such application shall be made to the justice of the trial part to which the action had been sent for trial; or, if it had not been sent to a part for trial, then to the justice presiding at the trial term calendar part of the court in which the action had been instituted; or, if no action had been instituted, then to the justice presiding at the trial term calendar part of the Supreme Court for the county in the judicial department in which the attorney has an office. Upon such application, the justice, in his discretion, if extraordinary circumstances are found to be present, and without regard to the claimant's or plaintiff's consent, may fix as reasonable compensation for legal services rendered an amount greater than that specified in the [schedules] schedule set forth in subdivision two of this section, provided, however, that such greater amount shall not exceed the fee fixed pursuant to the contractual arrangement, if any, between the claimant or plaintiff and the attorney. If the application is granted, the justice shall make a written order accordingly, briefly stating the reasons for granting the greater compensation; and a copy of such order shall be served on all persons entitled to receive notice of the application.

§ 16. The insurance law is amended by adding a new section two thousand three hundred forty-three to read as follows:

§ 2343. Medical malpractice insurance rates; special additional provisions regarding such rates. (a) Whereas the provisions of a chapter of the laws of nineteen hundred eighty-five regarding medical and dental malpractice will have both a prospective and retrospective effect upon the loss experience of physicians, dentists and hospitals professional liability insurers, including the medical malpractice insurance association, the superintendent is directed forthwith to review rates previously in effect for the period commencing July first, nineteen hundred eighty-four and ending June thirtieth, nineteen hundred eighty-five, and, where appropriate, require modification of such rates for such period.

(b) Any such modified rate shall remain in effect as a provisional rate for the period commencing July first, nineteen hundred eighty-five and ending on November thirtieth, nineteen hundred eighty-five. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. No insurer shall have the duty to file for final rates for the period commencing July first, nineteen hundred eighty-five prior to December first, nineteen hundred eighty-five.

(c) Notwithstanding any other provision of this chapter, no application for an order of rehabilitation or liquidation of a domestic insurer whose primary liability arises from the business of medical malpractice insurance, as that term is defined in subsection (b) of section five thousand five hundred one of this chapter, shall be made on the grounds specified in subsection (a) or (c) of section seven thousand four hundred two of this chapter at any time prior to December first, nineteen hundred eighty-five.

(d) The superintendent shall promulgate a regulation, which may be amended from time to time, establishing a physicians professional liability insurance merit rating plan which reflects an individual physician's or surgeon's experience with respect to incidents or occur-

rences of alleged medical malpractice. The regulation shall establish standards and limitations intended to insure that merit rating plans are reasonable and are not unfairly discriminatory, inequitable, violative of public policy or otherwise contrary to the best interests of the people of this state. Such regulation shall include:

(1) reasonable standards to be applied in arriving at premium rates, surcharges and discounts based on an evaluation of the hazards of the insured, geographical area, specialties of practice, past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, and the limited nature, if any, of the practice of the insured;

(2) rules for recognizing experience of individual risks;

(3) any other factors deemed relevant in a system of merit rating for the purpose of establishing equitable merit rates.

The superintendent shall also consider, in establishing such regulation, whether premium rates unfairly burden physicians who are initiating their practice, those who are transitioning to retirement or those who practice part-time or hold academic positions.

Insurers shall review merit rating plans which were approved by the superintendent prior to the promulgation of the regulation required by this subsection and shall, before January first, nineteen hundred eighty-six, file with the superintendent statements that their merit rating plans conform with the regulation, or file an appropriate plan or amendments to their existing plans which will bring them into compliance with the standards of the regulation. Any such amendments shall become effective upon approval by the superintendent.

§ 17. Such law is amended by adding a new section three thousand four hundred thirty-seven to read as follows:

§ 3437. Insurance contracts for medical malpractice; availability of additional coverages. (a) Every authorized insurer which issues a policy of medical or dental malpractice insurance with primary levels of insurance in an amount equal to or greater than one million dollars for each claimant under that policy and three million dollars for all claimants under that policy in any one year must make available, and, if requested by the policyholder, provide coverage of at least one million dollars per claimant and three million dollars for all claimants in excess of such primary levels of insurance. Such insurers shall, subject to the approval of the superintendent, make available and, if requested by the policyholder, provide additional excess coverage in an amount requested by such policyholder.

(b) With respect to the excess coverage and additional excess coverage required to be made available on and after July first, nineteen hundred eighty-five by subsection (a) of this section, the superintendent shall establish and promulgate provisional rates to be charged for such excess coverage and additional excess coverage. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for such excess coverage and additional excess coverage for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. No insurer shall have the duty to file for final rates for such excess coverage or additional excess coverage for the period commencing July first, nineteen hundred eighty-five prior to December first, nineteen hundred eighty-five.

§ 18. Paragraph one of subsection (e) of section five thousand five hundred two of such law is amended to read as follows:

(1) To issue, or to cause to be issued, policies of insurance to physician applicants subject to primary limits specified in the plan of operation not in excess of one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one year, and excess coverage as provided in this paragraph. Each applicant shall be entitled to purchase a policy providing primary limits not to exceed one million dollars for each claimant and three million dollars for all claimants in any one year. In addition, any applicant insured by the association in an amount equal to or greater than one million dollars for each claimant and three million dollars for all claimants in any one year, or any other applicant covered under a policy or policies providing such primary levels of insurance against liability for medical or dental malpractice that is issued by an authorized insuror, shall be entitled to purchase a policy from the association providing excess coverage of at least one million dollars per claimant and three million dollars for all claimants in any one year. The association shall, subject to the approval of the superintendent, make available, and if requested by the applicant, provide additional excess coverage in an amount requested by such applicant. With respect to the coverage required to be made available on and after July first, nineteen hundred eighty-five by this paragraph, the superintendent shall establish and promulgate provisional rates to be charged for such excess coverage and additional excess coverage. The superintendent, subsequent to December first, nineteen hundred eighty-five, shall approve final rates for such excess coverage for the period commencing July first, nineteen hundred eighty-five and ending June thirtieth, nineteen hundred eighty-six. The association shall not have the duty to file for final rates for such excess coverage and additional excess coverage for the period commencing July first, nineteen hundred eighty-five and prior to December first, nineteen hundred eighty-five.

§ 19. Every general hospital which maintains facilities for providing emergency medical care shall purchase a policy for excess insurance coverage, as authorized by paragraph one of subsection e of section five thousand five hundred two and section three thousand four hundred thirty-seven of the insurance law, or shall provide equivalent excess coverage in a form approved by the superintendent of insurance, for medical or dental malpractice occurrences between July first, nineteen hundred eighty-five and June thirtieth, nineteen hundred eighty-six for physicians or dentists requesting such coverage and having professional privileges in such hospital who, from time to time, provide emergency medical or dental care in such hospital to persons who require such care, provided, however, that such physicians or dentists must have in force an individual policy, from an insuror licensed in this state of primary malpractice insurance coverage in amounts of no less than one million dollars for each claimant and three million dollars for all claimants under that policy during the period of such excess coverage for such occurrences. During such period, such policy for excess coverage must, when combined with the physician's or dentist's primary malpractice insurance coverage, total an aggregate level of two million dollars for each claimant and six million dollars for all claimants from all such policies with respect to occurrences in such year. In the event that a physician or dentist has professional privileges in more than one hospital, such excess coverage shall be purchased or provided by the hospital designated by such physician or dentist as the hospital with which the physician or dentist is primarily affiliated.

§ 20. Notwithstanding the provisions of subdivision five of section twenty-eight hundred seven-a of the public health law, the commissioner of health or his designees shall adjust the inpatient revenue cap for those general hospitals which are required to purchase a policy for excess insurance coverage for medical malpractice occurrences or who provide equivalent excess insurance coverage pursuant to section nineteen of this act. An adjustment shall be made to the inpatient revenue cap of such hospitals to reflect the cost of such excess coverage for the period of July first, nineteen hundred eighty-five to December thirty-first, nineteen hundred eighty-five. Such adjustment shall be made by the commissioner of health within sixty days of submission of adequate evidence of costs incurred for such excess coverage.

§ 21. Notwithstanding the provisions of article twenty-eight of the public health law relating to rate adjustment, the commissioner of health or his designee shall adjust the established rate for those general hospitals which are required to purchase a policy for excess insurance coverage for medical malpractice occurrences or who provide equivalent excess coverage pursuant to section nineteen of this act. An adjustment effective January first, nineteen hundred eighty-six, shall be made to the established rate to reflect the cost of such excess coverage for the period January first, nineteen hundred eighty-six to June thirtieth, nineteen hundred eighty-six and shall not be carried forward.

§ 22. The chief administrator of the courts shall conduct a study of the impact of section fourteen of this act upon the disposition of medical malpractice actions in the fifth judicial district and in the county of Suffolk, as compared to medical malpractice actions in the seventh judicial district and in the county of Nassau. On or before January first, nineteen hundred eighty-eight, the chief administrator shall prepare and transmit to the legislature, the governor and the chief judge of the court of appeals a report of his findings, including but not limited to numbers of actions brought, the speed with which cases reached final disposition, and the impact of the panels on the adjudication of the action, together with any appropriate recommendations.

§ 23. Severability. If any provision of any section of this act shall be held void or unconstitutional, all other provisions and all other sections of this act which are not expressly held to be void or unconstitutional shall continue in full force and effect.

§ 24. Appropriation. The sum of two million dollars ($2,000,000), or so much thereof as may be necessary, is hereby appropriated to the department of health from any moneys in the state treasury in the general fund to the credit of the state purposes account not otherwise appropriated, to improve and expand the operations of the office of professional medical conduct. Such sum shall be payable on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner of health, or his duly designated representative in the manner prescribed by law.

§ 25. This act shall take effect July first, nineteen hundred eighty-five; provided, however, that: section four of this act shall be applicable to any actions commenced on or after such date; sections five, six, seven, eight, nine and ten of this act shall be applicable to any action for dental or medical malpractice commenced on or after such date; section fourteen of this act shall apply to medical malpractice actions for which a medical malpractice panel hearing has not been conducted by such date; section fifteen of this act shall be applicable to any retainer agreement executed on or after such date; section three

thousand four hundred thirty-seven of the insurance law, as added by section seventeen of this act, shall be of no further force or effect on and after July first, nineteen hundred eighty-six when upon such date such section of the insurance law shall be deemed repealed; the amendment made by section eighteen of this act to paragraph one of subsection (e) of section five thousand five hundred two of the insurance law shall be of no further force or effect on and after July first, nineteen hundred eighty-six when upon such date the provisions of paragraph one of subsection (e) of section five thousand five hundred two of the insurance law as they existed immediately before the effective date of section eighteen of this act shall be deemed revived and in full force or effect on and after such date; section nineteen of this act shall be of no further force or effect on and after July first, nineteen hundred eighty-six; section twenty of this act shall be of no further force or effect on and after December thirty-first, nineteen hundred eighty-five; and except that section twenty-one of this act shall take effect on January first, nineteen hundred eighty-six and shall be of no further force or effect on and after July first, nineteen hundred eighty-six.

Alaska State Legislature
Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 21, 1986

The Honorable Fred Zharoff
Chairman
Senate Labor and Commerce
Committee
P.O. Box V
Juneau, Alaska 99811

Dear Chairman Zharoff:

All legislators realize the insurance problems of our constituents across Alaska.

Many of us are reluctant, however, to adopt wholesale changes in the law of torts. The principles of torts have evolved through judicial decisions, here and elsewhere in our country, over the centuries. Personally, I am hesitant to support any abrupt changes that would represent legislative intervention into a process of case-by-case development of the law.

That is especially true inasmuch as we do not know whether changes in tort law will have significant effects upon the insurance market place.

At the same time, I do believe we can make certain changes that may ameliorate the problems of insurance premium-payers today.

That is why I have offered SB 392, now before your Committee. I believe that the changes proposed in SB 392 would be productive, and that the Legislature could monitor its effects in the market place.

SB 392 would apply in certain actions for mental or dental malpractice, or where personal injuries are sustained by a minor who recovers a verdict, or where day care facilities or nurseries are defendants.

I have selected these particular areas because the problems of the health care community are well known; some

doctors are giving up their specialties or practices, or are practicing with no insurance at all. These trends are not good for the public.

The day care business is often only marginally profitable in the first place. The effects, therefore, of a dramatic rise in insurance premiums, resulting from a few well-publicized cases of child sexual abuse elsewhere in the country, are extremely serious. Like medical and dental care, day care is of critical importance to our economy and quality of life.

Lump sum payments when a minor has suffered a severe personal injury are often not in the minor's best interests. The proceeds of a judgment or recovery pursuant to settlement may not be used for the benefit of the minor. By the time the minor attains the age of majority, or maturity, important choices have already been made that will control the minor's financial destiny. Thus, by allowing a payment of a portion of the recovery to be paid in instalments, through approved, secured, annuity plans, SB 329 would often inure to the benefit of the injured person, while reducing the costs of the judgment debtor and the judgment debtor's insurance carrier.

I believe the bill is well balanced. It allows for the defendant to request that a portion of itemized damages for future loss to be paid through an approved annuity contract that is interest-bearing. The director of insurance would have to approve the annuity contract before it could be accepted by the court. If any instalment is not paid when due, the judgment creditor may obtain an order requiring that all outstanding payments be remitted by lump sum, without discount to present value.

On the other hand, if the judgment creditor can show genuine hardship, the court may order a lump sum satisfaction of the judgment.

If the judgment creditor dies, the liability to pay for future pain and suffering, or health care costs, terminates. However, the dependents or heirs of the judgment creditor would be entitled to receive after the judgment creditor's death money representing lost future earnings.

In summary, this bill calls for using the "structured settlement" approach in certain cases, and is limited to actions where the recovery for future loss exceeds $250,000. It will save defendants and insurance carriers money, but it

will not involve any changes to the law of negligence or tort liability, since it reaches only to the question of how verdicts are to be itemized and how a judgment is to be paid.

It is not a perfect answer to the issues before the legislature, but it is a sound piece that deserves, I think, discussion and consideration.

I look forward to discussing the bill with the Committee at its earliest opportunity.

With best wishes, I am

Sincerely,

Joe P. Josephson
State Senator

JPJ:rak

PROGRAM BILL # 118

AN ACT

to amend the general municipal law, the insurance law, the education law and the local finance law, in relation to making available to municipalities a system of self-insurance, reciprocal insurance, joint insurance funding, and making certain conforming changes in relation thereto, the cancellation and renewal of commercial risk, municipal risk and professional liability insurance policies, the issuance of property/casualty insurance on a group basis for commercial risks, municipal risks and professional liability; and to amend the civil practice law and rules, in relation to limiting the li-

ability of public entities and public employees and periodic payment by public entities and public employees of certain judgments against them; and repealing sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of the insurance law relating to the termination of product liability and professional liability insurance policies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature finds that recent increases in the cost of commercial insurance for municipalities has made it difficult to obtain adequate protection at reasonable cost.

The legislature finds that the state can take several steps that would provide alternatives for local officials faced with increasing costs for insurance, improve the municipal insurance information system to accurately reflect local government risk, and recognize the impact of pressures within the marketplace on questions of cost and availability of coverage.

One important step is state authorization for local governments to form and participate in insurance pools. Properly managed insurance pools can result in both cost savings and cost stability. Provisions contained in this act provide for minimum standards that are intended as a prerequisite that will facilitate proper management and operating practices.

The legislature also finds that a reciprocal insurer form of organization is well suited to achieve the objectives of cost containment and availability of coverage for municipalities. In order to provide an environment which will help local officials to obtain adequate protection at reasonable cost, the legislature hereby enacts the following provisions.

§ 2. Section six-n of the general municipal law, as added by chapter six hundred eighty-four of the laws of nineteen hundred seventy-nine, paragraph d of subdivision nine as amended by chapter eight hundred five of the laws of nineteen hundred eighty-four and subdivision eleven as amended by chapter three hundred seventy-seven of the laws of nineteen hundred eighty-four, is amended to read as follows:

§ 6-n. [Liability and casualty reserve fund] Self-insurance reserve fund; self-insurance by municipal corporations. 1. a. "Municipal corporations", as used in this section, shall mean a municipal corporation, as defined in section two of this chapter, school district[,] [except a school district in a city with a population of one hundred twenty-five thousand or more], board of cooperative educational services, fire district, a district corporation, a special district and a special improvement district governed by a separate board of [commissioner] commissioners.

b. "Judgments", "actions" and "claims", as used in this section, shall mean those judgments, actions and claims against the municipal corporation [that are founded upon tort or that arise out of any acts or omissions of officers or employees of the municipal corporation that result in personal injuries or property damage if such officers or employees, at the time the damages were sustained, were executing or performing, or in good faith purporting to exercise or perform, their powers and duties] involving those types of protection for which a municipal corporation has elected to self-insure pursuant to subdivision two of this section.

2. Notwithstanding any provision of law to the contrary, the governing board of a municipal corporation which is otherwise authorized or required by general, special or local law, charter, rule or regulation to obtain and maintain any type of insurance as described in section one thousand one hundred thirteen of the insurance law, except those specified in paragraphs one, two, three, eighteen and twenty-three of subsection (a) of such section, for municipal, school or fire purposes, from any insurance company created by or under the laws of this state or any insurance company authorized by law to transact business in this state,

is hereby authorized to elect to act as a self-insurer either in whole or in part for any or all types of protection it is otherwise authorized or required to obtain and maintain from any such insurance company.

3. The governing board of any municipal corporation which is, or shall hereafter become, a self-insurer pursuant to subdivision two of this section may establish a reserve fund to be known as [a liability and casualty reserve fund] the self-insurance reserve fund of such municipal corporation, provided, however, no municipal corporation shall establish a reserve fund pursuant to this section for any type of coverage authorized in subdivision two of this section if such municipal corporation has already established a reserve fund for such purpose under any other provision of law.

[3] 4. There may be paid into such fund:

a. Such amounts as may be provided by budgetary appropriations;

b. Amounts from any other fund authorized by this chapter by resolution subject to permissive referendum; and

c. Such other funds as may be legally appropriated.

[4] 5. The cash balance of such fund at the end of any fiscal year shall not exceed the greater of one hundred thousand dollars or five per centum of the total budget for such fiscal year. The amount paid into such fund during any fiscal year shall not exceed the greater of thirty-three thousand dollars or [one and two-thirds] three per centum of the total budget for such fiscal year.

[5] 6. The moneys in such fund shall be deposited in one or more of the banks or trust companies designated in the manner provided by law as depositories of the funds of such municipal corporation. The governing board, or the chief fiscal officer or officer having custody of such

money of such municipal corporation, if the governing board shall delegate such duty to him, may invest the moneys in such fund in obligations specified in section six-f of this chapter; provided, however, that moneys of school districts and boards of cooperative educational services may be invested in obligations specified in section seventeen hundred twenty-three-a of the education law. Any interest earned or capital gain realized on the money so deposited or invested shall accrue to and become part of such fund.

[6] 7. The chief fiscal officer shall account for this fund separate and apart from all other funds of the municipal corporation. Such accounting shall show: the source, date and amount of each sum paid into the fund; the interest earned by such fund; capital gains or losses resulting from the sale of investments of this fund; and for each type of protection the order, source thereof, date and amount of each payment from this fund; the assets of the fund, indicating cash balance and a schedule of investments. The chief fiscal officer, within sixty days of the end of each fiscal year, shall furnish a detailed report of the operation and condition of this fund to the governing board.

[7. Notwithstanding any provision of law to the contrary, municipal corporations, shall not have the power to enter into agreements, among themselves or one for the other, to pool their reserve fund established pursuant to subdivision two of this section for the payment of judgments, actions and claims.]

8. The chief fiscal officer shall also keep a separate account within the self-insurance reserve fund for each type of protection the municipal corporation elects to self-insure pursuant to subdivision two of this section.

9. Any action or claim shall be compromised or settled by the governing board, officer or employee of the municipal corporation authorized to settle or compromise actions or claims on behalf of the municipal corporation.

[9] 10. An expenditure may be made from this fund for the payment of all or part of the cost, including interest, of:

a. Judgments;

b. Actions that have been compromised or settled and that have been approved by the court in which the action or proceeding is pending;

c. Claims that have been settled or compromised and that have been approved by a justice of the supreme court of the judicial district in which the municipal corporation is located;

d. The uninsured portion of any loss to property owned by a municipal corporation if such loss is one for which insurance is authorized pursuant to paragraphs four, five, six, nine, ten, twelve and subparagraph (A) of paragraph seven of subsection (a) of section one thousand one hundred thirteen of the insurance law.

e. Expert or professional services rendered in connection with the investigation, adjustment or settlement of claims, actions or judgments.

f. Any or all of the contribution required to subscribe to a reciprocal insurer, as defined in subsection (a) of section one hundred seven of the insurance law, or to participate in a joint insurance fund, as defined in section one hundred nineteen-ooo of this chapter.

[10] 11. The order of the court or the justice approving such settlement or compromise may be granted upon motion of the body, officer or employee of the municipal corporation authorized to do so, supported by an affidavit setting forth the cause of action or claim against the municipal corporation and also such other information which, in its or

his opinion, will enable the court or justice to arrive at a determination that such compromise or settlement is just, reasonable and to the interest of the municipal corporation. Such body, officer or employee may also present the affidavit of other persons in support of such motion. The court or the justice, in order to arrive at such a determination, may require such body, officer or employee to present additional information by a supplementary affidavit or affidavits or may require other persons to present additional information by their affidavits.

[11] 12. Notwithstanding subdivisions [eight] nine and [nine] ten of this section, the governing body of any municipal corporation may [make] approve an expenditure from this fund, without judicial approval, for the compromise or settlement of any action or claim when such municipal corporation is a subscriber to a reciprocal insurer, as defined in subsection (a) of section one hundred seven of the insurance law, or is a participant in a joint insurance fund, as defined in section one hundred nineteen-ooo of this chapter, or where the amount of such settlement or compromise does not exceed [ten] twenty-five thousand dollars.

[12] 13. The members of the governing board shall be guilty of a misdemeanor if they:

a. Authorize a withdrawal from this fund for any purpose except as provided in this section; or

b. Expend any money withdrawn from this fund for a purpose other than as provided in this section.

[13] 14. If, after the establishment of such fund, the municipality determines that such fund is no longer needed, the moneys remaining in such fund may be transferred to any other reserve fund of the municipal corporation authorized by this chapter that is comprised of moneys which were raised on the same tax base as the moneys in the reserve fund esta-

blished under this section or section thirty-six hundred fifty-one of the education law, only to the extent that the moneys in this fund shall exceed the sum sufficient to pay all liabilities incurred or accrued against it. Prior to the discontinuance of such fund, the fiscal and legal officers of such municipal corporation shall certify to the governing board thereof the amount that may be necessary to retain in such fund to satisfy all liabilities incurred or accrued against it and such sum shall be retained in the fund for payment of such amounts or until later certified that such funds are no longer needed.

15. Notwithstanding any provision of law to the contrary, municipal corporations shall have the power to enter into agreements, among themselves, individually or through a plan sponsored by their respective statewide association, to pool their reserve funds established pursuant to subdivision three of this section with any other contributions of funds, from appropriations or any other source, and to make expenditures therefrom, and perform functions one for the other related thereto, for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law, or to organize and/or join a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter.

§ 3. Such law is amended by adding a new section ninety-nine-p to read as follows:

§ 99-p. Reciprocal insurer and joint insurance fund. Any "municipal corporation" as used in this section meaning municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district

governed by a separate board of commissioners, may become a subscriber to a reciprocal insurer formed under article sixty-one of the insurance law, or become a participant of a joint insurance fund formed under article five-G of this chapter.

§ 4. Section one hundred nineteen-n of such law is amended by adding a new subdivision f to read as follows:

f. With respect to a joint insurance fund created pursuant to section one hundred nineteen-ooo of this article, the following terms shall mean:

1. "Municipal corporation". A municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners.

2. "Governing body". The governing body of a municipal corporation participating in a joint insurance fund.

3. "Cooperative agreement". A written agreement entered into by two or more municipal corporations pursuant to the provisions of this article for the purpose of establishing or participating in a joint insurance fund.

4. "Board of directors". The board provided for in a cooperative agreement to administer a joint insurance fund.

5. "Administrative expenses". Expenses of operation of a joint insurance fund including but not limited to: compensation of employees, costs of office equipment and supplies, rental of facilities, and utility costs.

6. "Administrator". An officer of a joint insurance fund appointed by the board of directors who shall also be charged with care, custody, and control of funds of a joint insurance fund. Statewide associations representing municipal corporations may also be designated as the administrator, including but not limited to: the New York state association of counties, the New York state conference of mayors, association of towns of New York, and the New York school boards association.

7. "Fund". A joint insurance fund created pursuant to this article.

8. "Adjustment expenses". Expenses for investigative, processing, legal, actuarial, arbitration, and settlement services incurred in the adjustment of losses, claims, or benefits.

§ 5. Subdivision one of section one hundred nineteen-o of such law, as amended by chapter four hundred seven of the laws of nineteen hundred seventy-two, is amended to read as follows:

1. In addition to any other general or special powers vested in municipal corporations and districts for the performance of their respective functions; powers or duties on an individual, cooperative, joint or contract basis, municipal corporations and districts shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service or a joint water, sewage or drainage project or for a joint insurance fund. Any agreement entered into hereunder shall be approved by each participating municipal corporation or district by a majority vote of the voting strength of its governing body. Where the authority of any municipal corporation or district to perform by itself any function, power and duty or to provide by itself any facility, service, activity, project or undertaking or the financing

thereof is, by any other general or special law, subject to a public hearing, a mandatory or permissive referendum, consents of governmental agencies, or other requirements applicable to the making of contracts, then its right to participate in an agreement hereunder shall be similarly conditioned.

§ 6. Such law is amended by adding a new section one hundred nineteen-ooo to read as follows:

§ 119-ooo. Joint insurance fund. 1. In addition to any other powers granted under this article, municipal corporations shall have the power to enter into a cooperative agreement for the purpose of establishing or operating or participating in a joint insurance fund. The term "joint insurance fund" means a joint fund created from the pooling of contributions of funds, from appropriations or any other source, by municipal corporations which collectively agree to assume risks from a loss or losses on a group basis or to purchase coverage on a group basis. Such fund may be established for any kind of insurance as described in section one thousand one hundred thirteen of the insurance law, except those specified in paragraphs one, two, three, eighteen and twenty-three of subsection (a) of such section. Such fund shall be an alternative or supplement to any policy or contract of insurance authorized or required by law. A joint insurance fund herein provided for shall not be considered insurance for the purpose of any other law of this state and shall not be subject to the regulations of the state insurance department except as provided herein. Any joint insurance fund established pursuant to this section to provide the kinds of insurance specified in paragraphs thirteen, fourteen, nineteen, twenty and twenty-one of subsection (a) of section one thousand one hundred thirteen of the insurance law

shall be subject to the provisions of section three thousand four hundred twenty of such law.

2. The cooperative agreement shall provide for the proper operation of the fund, and include provision for:

a. Administration of the fund by a board of directors, and specifying the number of members of such board and all other requirements necessary for the proper functioning of the board;

b. Appointment of an administrator and any other persons as may be necessary for the proper functioning of the fund;

c. Organization of the fund, including a roster of all participating municipal corporations and the names of all members of the board of directors;

d. Procedures to establish and promote an aggressive risk management program among fund members to include, but not limited to: identifying and reducing those risks which can be reduced through the implementation of better safety technologies, improved work techniques and sounder procedures, enforce the collection of any contributions or payment in default; for the addition to the fund of new municipal corporations or the withdrawal from the fund of municipal corporations, and for termination of the fund and disposition of its assets;

e. An annual determination by a casualty actuary who is a member of the American academy of actuaries that procedures for establishing reserves for losses are actuarially sound;

f. The method of apportioning costs and disposition, if any, of excess contributions;

g. An annual independent audit conducted in accordance with generally accepted auditing standards that shall include a review of the actuarial assumptions and adequacy of reserves and certification from a casualty

actuary who is a member of the American academy of actuaries that the actuarial assumptions continue to be sound and the level of reserves are adequate;

h. A method of accounting that is in conformance with generally accepted goverment accounting principles;

i. Provision for transmission of financial statements and audit reports of the fund to participating municipal corporations; and

j. Notice to each prospective participant that the fund is not subject to the insurance law except as provided herein, is not regulated by the superintendent of insurance, and is not covered by the property/casualty insurance security fund set forth in article seventy-six of the insurance law.

3. The cooperative agreement may authorize the board of directors to enter into contracts with any person, firm, or corporation for services necessary to perform the functions of a joint insurance fund; provided, however, that any such person, firm or corporation performing such functions must be licensed if the insurance law so requires.

4. The cooperative agreement may authorize the board of directors to adopt rules and regulations not inconsistent with law for the fair and equitable administration of the fund.

5. The cooperative agreement may delegate to the board of directors, or may authorize delegation by the board to an attorney or claims adjuster, or any other person or group, the power to compromise, arbitrate or otherwise settle claims.

6. The cooperative agreement may authorize the board of directors to purchase excess or catastrophe insurance on behalf of the fund. The cost of such insurance shall be apportioned in the manner specified in the cooperative agreement. Such insurance shall only be purchased from an

insurer authorized to do business in this state, or an unauthorized insurer if placed through a licensed excess lines broker.

7. There may be paid into a joint insurance fund (a) such amounts as may be contributed by participating municipal corporations through budgetary appropriation and/or from transfers from a self-insurance reserve fund created pursuant to section six-n of this chapter, (b) such amounts as may be contributed by officers and employees of participating municipal corporations pursuant to an employee benefit plan and (c) all amounts collected by the fund through subrogation of a claim paid by the fund to a participating municipal corporation.

8. An expenditure may be made from a joint insurance fund only to pay claims, losses, or benefits, including interest thereon, if any, and the administrative and adjustment expenses incurred in connection therewith, involving those types of protection for which the fund provides coverage as specified in the cooperative agreement.

9. Nothwithstanding any provisions of law to the contrary, a cause of action shall accrue to the fund for reimbursement in such sum or sums paid to a participating municipal corporation as against any third party against whom the participating municipal corporation shall have a cause of action for loss or injuries.

10. The administrator shall keep this fund separate and apart from any and all other funds of a participating municipal corporation. For each type of protection offered by the fund, the method of accounting shall show the order, source thereof, date and amount of each payment from this fund. The administrator, within sixty days of the end of the fiscal year, shall furnish a detailed report of the operation and condition of the fund to the board of directors, the superintendent of insurance, and the secretary of state. The report furnished to the sup-

erintendent of insurance and the secretary of state shall be available for public inspection.

11. Any moneys held by a joint insurance fund as reserves and any moneys not needed for day-to-day operations may be invested: (a) in special time deposit accounts in, or certificates of deposit issued by, a bank or trust company located and authorized to do business in this state, provided, however, that such time deposit account or certificate of deposit shall be payable within such time as the proceeds shall be needed to meet expenditures for which such moneys were obtained and provided further that such time deposit account or certificates of deposit be secured by a pledge of direct or guaranteed obligations of the United States of America or its agencies or obligations of the state of New York or obligations of any municipal corporation, school district or district corporation of the state of New York if such obligations are not in default as to principal or interest and are payable, as to both principal and interest, from (i) taxes levied or by law required to be levied upon all taxable property or all taxable income within the jurisdiction of such governmental unit or (ii) adequate special revenues pledged or otherwise appropriated or required to be provided for the purpose of such payment, excluding obligations payable solely out of special assessments on properties benefited by local improvements; or (b) in obligations of the federal government or obligations of the state of New York. Such obligations, unless registered or inscribed in the name of the joint insurance fund for which such investment is made, shall be purchased through, delivered to and held in the custody of a bank or trust company in this state and shall be sold or presented for redemption or payment only by such bank or trust company or dealer in obligations upon receipt of written instructions from the board of

directors or the administrator if the board of directors shall have delegated the duty of making investments to him. Such obligations shall be purchased only if they are payable or redeemable at the option of the holder within such time as the proceeds shall be needed to meet expenditures for which moneys so invested were obtained.

12. Notwithstanding subdivision two of this section, no fund shall be terminated unless the administrator shall certify that an amount of money sufficient to pay all expenditures, both accrued and contingent, has been placed in a fully collateralized escrow account.

13. Copies of the cooperative agreement shall be filed with the superintendent of insurance and the secretary of state at least sixty days prior to the effective date of the agreement. Such agreement shall be available for public inspection.

14. The authority contained in this section is intended to confirm and supplement authority already possessed by municipal corporations, as defined in subdivision a of section one hundred nineteen-n of this article, to enter into cooperative agreements to self-insure through a joint insurance fund. To the extent, however, that the provisions of this section may be inconsistent with other provisions of this article, the provisions of this section shall prevail. The authority contained in this section shall be in addition to and not in substitution for or a limitation of a municipal corporation's authority to participate in a county self-insurance plan established pursuant to article five of the workers' compensation law.

§ 7. Section one hundred nineteen-u of such law is amended by adding two new subdivisions i and j to read as follows:

i. The term "municipality" shall also mean a municipal corporation, as defined in section two of this chapter, school district (except a school

district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, when a comprehensive study and report is prepared for the consideration of a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, or reciprocal insurer, as defined in subsection (a) of section one hundred seven of the insurance law.

j. The term "local agency" as defined in subdivision e of this section shall also mean the New York state association of counties, New York state conference of mayors, association of towns of the state of New York, and the New York school boards association for the purpose of conducting comprehensive studies and reports on reciprocal insurers and joint insurance funds.

§ 8. The opening paragraph of subdivision one and subdivision three of section two hundred thirty-nine-n of such law, as amended by chapter two hundred three of the laws of nineteen hundred eighty-three, are amended to read as follows:

Any county outside the city of New York, city, town, village, school district, board of cooperative educational services, or fire district or any combination thereof, or for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, any municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, spe-

cial district and a special improvement district governed by a separate board of commissioners, may create by agreement an intergovernmental relations council to strengthen local governments and to promote efficient and economical provision of local governmental services within or by such participating municipalities, and to that end such council shall have power to:

3. The board of supervisors of a county, the appropriate officials of a city, the governing body of a school district, board of cooperative educational services or fire district, the board of trustees of a village, or the town board of a town, or for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, the governing body of a municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, is hereby authorized to include annually in the budget and raise by taxation in such county, city, school district, village or town or for the purpose of organizing and/or participating in a reciprocal insurer as defined in subsection (a) of section one hundred seven of the insurance law or to organize and/or participate in a joint insurance fund as defined in section one hundred nineteen-ooo of this chapter, such municipal corporation, school district, board of cooperative educational services, fire district, district corporation, special district and special improvement district a sum to meet all or an appropriate share of the

actual and necessary expenses of establishing, maintaining and continuing such intergovernmental relations council.

§ 9. Subdivision one of section four hundred sixty-one of such law, as added by chapter eight hundred fifty-nine of the laws of nineteen hundred fifty-seven, is amended to read as follows:

1. (a) The term "public agency" shall mean any county, city, town, village, school district, improvement district or district corporation of the state of New York; and any local governmental unit, subdivision, or special district of another state.

(b) The term "public agency" shall mean any municipal corporation, as defined in section two of this chapter, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, when an agreement entered into pursuant to this article is for the purpose found in subparagraph twenty-four of paragraph (a) of subdivision one of section four hundred sixty-two of this article.

§ 10. Subparagraph twenty-three of paragraph (a) of subdivision one of section four hundred sixty-two of such law, as added by chapter seven hundred forty-one of the laws of nineteen hundred sixty-nine, is amended to read as follows:

(23) Roads and highways[.]

§ 11. Paragraph (a) of subdivision one of section four hundred sixty-two of such law is amended by adding a new subparagraph twenty-four to read as follows:

(24) Organization or participating in a reciprocal insurer or a joint insurance fund.

§ 12. Paragraph thirty-seven of subsection (a) of section one hundred seven of the insurance law is amended to read as follows:

(37) "Reciprocal insurer" means any aggregation of persons, municipal corporations as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts, and special improvement districts governed by separate boards of commissioners, firms or corporations, called "subscribers" in article sixty-one of this chapter, who or which under a common name engage in the business of inter-insurance or exchanging contracts of insurance on the reciprocal plan through an attorney-in-fact having authority to obligate the subscribers severally, within such limits as may lawfully be specified in the subscriber's agreement, on contracts of insurance made with any subscriber as a policyholder through such attorney-in-fact acting on behalf of all other subscribers. Such term includes any reciprocal or inter-insurance exchange, by whatever name known, and any reference thereto as an insurer shall be deemed to mean any such aggregation of inter-insurers operating through an attorney-in-fact individually and collectively as an insurance organization for the benefit of its policyholders.

§ 13. Such law is amended by adding a new section three hundred thirty-five to read as follows:

§ 335. Reports of claims for municipal liability. (a) As used in this section:

(1) The term "municipal liability insurance" means insurance issued or delivered in this state insuring against liability of a municipal corporation, as defined in section two of the general municipal law, school

district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by a separate board of commissioners, for damages for personal injury, death or property damages.

(2) This section shall apply to all new and renewal policies written to become effective on or after the effective date of this section.

(b) Each insurance company engaged in issuing municipal liability insurance in this state as defined in this section shall file with the superintendent semi-annual reports of all claims for municipal liability made against any of its insureds and received by it during the preceding six month period, and all claims paid during that period.

(c) Such reports shall be in writing on a form prescribed by the superintendent and shall contain such information as the superintendent shall prescribe.

(d) Such reports shall be made to the superintendent on dates determined by the superintendent.

(e) Any report on the information contained therein, furnished or compiled pursuant to the provisions of this section shall be deemed to be a confidential communication and shall not be open for review or subject to a subpoena except by a public agency or authority of this state.

(f) The superintendent shall furnish not later than the first day of June, nineteen hundred eighty-seven, to the governor and the legislature a report containing (1) a summary of the data collected, (2) an assessment of the status of municipal liability insurance costs, and (3) recommendations, if appropriate, for statutory or administrative changes designed to reduce or contain such costs.

§ 14. Subsection (b) of section two thousand three hundred five of such law is amended by adding a new paragraph twelve to read as follows:

(12) municipal liability insurance, as such term is defined in section three hundred thirty-five of this chapter, when such insurance is written by a licensed insurer which is owned by, or whose membership or subscribers is principally comprised of municipal corporations as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts and special improvement districts governed by separate boards of commissioners.

§ 15. Such law is amended by adding a new section three thousand four hundred twenty-six to read as follows:

§ 3426. Commercial risk insurance policies; municipal risk insurance policies; professional liability policies; cancellation and renewal provisions. (a) Definitions:

(1) "Commercial risk policy" means a contract of insurance issued or issued for delivery in this state, on a risk located in this state, arising from the conduct of an association, business, corporation or other organization, insuring any of the following contingencies:

(A) loss of or damage to real property not used for residential purposes;

(B) loss of or damage to real property used for residential purposes which consists of more than four dwelling units;

(C) loss of or damage to personal property;

(D) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for business purposes;

(E) liabilities of persons acting as officers or directors; or

(F) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(2) "Municipal risk policy" means a contract of insurance issued to a public entity as defined in paragraph five of this subsection.

(3) "Product liability" means liability of the insured for damages for personal injury, death or property damage, where liability is based upon negligence, implied warranty or strict liability, arising out of a design, inspection, testing or manufacturing defect, or any other defect in a product, or is based upon any failure to warn, or to properly instruct in the use of a product or for any liability for any damage arising out of the handling or use of any product manufactured, sold, handled or distributed by the insured or work completed by or on behalf of the insured.

(4) "Professional liability policy" means a contract of insurance covering liability arising out of the practice of any profession for which a license is required by the education department, the health department, or any other governmental authority of this state, or out of the operation of a duly certified hospital with respect to the treatment of patients.

(5) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college or community college or university;

(D) a fire district, public improvement or special district or district corporation;

(E) a public authority, commission, agency or public benefit corporation; or

(F) any other public corporation or other governmental instrumentality or unit in the state of New York.

(6) "Required policy period" means a period of one year from the date as of which a commercial risk, municipal risk or professional liability policy is first issued or renewed.

(7) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely, if made within fifteen days after the mailing to the insured of a notice of cancellation for nonpayment of premium.

(8) "Renewal" or "to renew" means the issuance and delivery by an insurer, at the end of the policy period, of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance or delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than one year shall, for the purpose of this section, be considered as if written for a policy period or term of one year, or any policy with no fixed expiration date, shall, for the purpose of this section, be considered as if written for successive policy periods or terms of one year.

(9) "Administrative suspension" means a temporary suspension of a driver's license pending a hearing, prosecution or investigation or an indefinite suspension of a driver's license because of the failure of the person suspended to perform an act, which suspension will be terminated by the performance of the act by the person suspended.

(b) During the first sixty days a commercial risk, municipal risk or professional liability policy is in effect, no notice of cancellation shall be issued or be effective unless it states or is accompanied by a statement of the specific reason or reasons for such cancellation.

(c) After a commercial risk, municipal risk or professional liability policy has been in effect for sixty days, or upon the effective date if the policy is a renewal, no notice of cancellation shall be issued to become effective unless such cancellation is based on one or more of the following:

(1) With respect to all commercial risk, municipal risk and professional liability policies:

(A) nonpayment of premium;

(B) discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;

(C) discovery of willful or reckless acts or omissions increasing the hazard insured against, or a willful violation of any policy conditi

(D) physical changes in the property insured occurring after issuance or last annual renewal anniversary date of the policy which result in the property becoming uninsurable in accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed;

(E) required pursuant to a program approved by the superintendent as necessary because a continuation of the present premium volume of an in-

surer would be hazardous to the interests of policyholders of the insurer, its creditors or the public; or

(F) a determination by the superintendent that the continuation of the policy would violate or would place the insurer in violation of this chapter.

(2) With respect to commercial automobile insurance policies, in addition to the bases for cancellation set forth in paragraph one of this subsection, suspension or revocation during the required policy period of the driver's license of any person who customarily operates an automobile insured under the policy, other than a suspension issued pursuant to subdivision one of section five hundred ten-b of the vehicle and traffic law or one or more administrative suspensions arising from the same incident which has or have been terminated prior to the effective date of cancellation.

(3) With respect to professional liability policies, in addition to the bases for cancellation set forth in paragraph one of this subsection, revocation or suspension of the insured's license to practice his profession, or, if the insured is a hospital, it no longer possesses a valid operating certificate under section twenty-eight hundred one-a of the public health law.

(d) (1) Unless the insurer, at least sixty days in advance of the end of the required policy period in the case of commercial risk and professional liability insurance policies, or one hundred twenty days in advance of the end of the required policy period in the case of municipal risk policies, mails or delivers to the named insured, at the address shown in the policy, a written notice of its intention not to renew such policy, or to condition its renewal upon change of limits, elimination of any coverages or change in the type of coverage provided, the named

insured shall be entitled to renew the policy upon timely payment of the premium billed to the insured for the renewal. The specific reason or reasons for nonrenewal or conditioned renewal shall be stated in or shall accompany the notice. This paragraph shall not apply when the named insured, an agent or broker authorized by the named insured, or another insurer of the named insured, has mailed or delivered written notice that the policy has been replaced or is no longer desired.

(2) A copy of each notice of cancellation, nonrenewal and conditioned renewal issued on a municipal risk policy shall be mailed or delivered to the superintendent concurrent with its mailing or delivery to the named insured.

(e) This section shall not apply to policies issued pursuant to a plan established under article fifty-three, fifty-four or fifty-five of this chapter.

§ 16. Sections three thousand four hundred twenty-six and three thousand four hundred twenty-seven of such law are REPEALED.

§ 17. Section three thousand four hundred thirty-five of such law is renumbered section three thousand four hundred thirty-nine and a new section three thousand four hundred thirty-five is added to read as follows:

§ 3435. Group property/casualty insurance; commercial risk policies.

(a) Definitions:

(1) "Commercial risk policy" means a contract of insurance issued or issued for delivery in this state, on a risk located in this state, arising from the conduct of an association, business, corporation or other organization, insuring any of the following contingencies:

(A) loss of or damage to real property not used for residential purposes;

(B) loss of or damage to real property used for residential purposes which consists of more than four dwelling units;

(C) loss of or damage to personal property;

(D) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for business purposes;

(E) liabilities of persons acting as officers or directors; or

(F) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(2) "Municipal risk policy" means a contract of insurance issued to a public entity as defined in paragraph five of this subsection, arising from the conduct or activities of a public entity, insuring any of the following contingencies:

(A) loss of or damage to real property not used for residential purposes;

(B) loss of or damage to real property used for residential purposes which consists of more than four dwelling units;

(C) loss of or damage to personal property;

(D) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for business purposes;

(E) liabilities of persons acting as officers or directors; or

(F) other liabilities, including product liability, for loss of, damage to, or injury to persons or property.

(3) "Product liability" means liability of the insured for damages for personal injury, death or property damage, where liability is based upon negligence, implied warranty or strict liability, arising out of a design, inspection, testing or manufacturing defect, or any other defect in a product, or is based upon any failure to warn, or to properly instruct in the use of a product or for any liability for any damage aris-

ing out of the handling or use of any product manufactured, sold, handled or distributed by the insured or work completed by or on behalf of the insured.

(4) "Professional liability policy" means a contract of insurance covering liability arising out of the practice of any profession for which a license is required by the education department, the health department, or any other governmental authority of this state, or out of the operation of a duly certified hospital with respect to the treatment of patients.

(5) "Public entity" means:

(A) the state of New York;

(B) a county, city, town, village or any other political subdivision or civil department or division of the state;

(C) a school district, board of cooperative educational services or any other governmental entity or combination or association of governmental entities operating a public school, college or community college or university;

(D) a fire district, public improvement or special district or district corporation;

(E) a public authority, commission, agency or public benefit corporation; or

(F) any other public corporation or other governmental instrumentality or unit in the state of New York.

(b) Notwithstanding any other provision of this chapter, commercial risk policies and professional liability policies providing group coverage to members of commercial or professional associations and organizations whose membership is of a homogeneous nature, and municipal risk policies providing group coverage, may be approved subject to regula-

tions to be promulgated by the superintendent for the kinds of insurance set forth in subsection (c) of this section.

(c) Group commercial risk policies may be written pursuant to this section for any of the kinds of insurance authorized by subsection (a) of section one thousand one hundred thirteen of this chapter except the kinds of insurance authorized by paragraphs one, two, three, sixteen, seventeen, eighteen, twenty-one, twenty-two and twenty-three of such subsection.

(d) Policies of insurance approved pursuant to this section shall not be eligible for the filing exemptions specified in section six thousand three hundred one of this chapter.

§ 18. Subsection (a) of section six thousand one hundred two of such law is amended to read as follows:

(a) Twenty-five or more persons, firms [and], corporations, or, in the alternative, municipal corporations as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts and special improvement districts governed by separate boards of commissioners, each having the qualifications of subscribers as prescribed in this article, may organize a reciprocal insurer to do any one or more of the basic kinds of insurance set forth in subsection (a) of section four thousand one hundred one of this chapter. However, any reciprocal insurer authorized to do the business of workers' compensation insurance shall be deemed to be a mutual carrier within the meaning of the definition of that term in section one hundred six of the workers' compensation law and shall be subject to the provisions of article six-A of such law.

§ 19. Section six thousand one hundred two of such law is amended by adding a new subsection (j) to read as follows:

(j) Any reciprocal insurer organized pursuant to this section and whose membership is limited to municipal corporations, as defined in section two of the general municipal law, school districts (except school districts in cities with a population of one hundred twenty-five thousand or more), boards of cooperative educational services, fire districts, district corporations, special districts and special improvement districts governed by separate boards of commissioners, shall be required to comply with all the applicable provisions of this chapter including the provisions of article seventy-six of this chapter, and with such additional standards as the superintendent shall prescribe by regulation. Such reciprocal insurer shall establish and promote an aggressive risk management program among subscribers to include, but not limited to: identifying and reducing those risks which can be reduced through the implementation of better safety technologies, improved work technologies and sounder procedures.

§ 20. Paragraph one of subsection (a) of section six thousand one hundred four of such law is amended to read as follows:

(1) No authorized reciprocal insurer shall make any new agreement for insurance containing a provision for contingent liability of subscribers with any person, firm [or], private corporation, municipal corporation, as defined in section two of the general municipal law, school district (except a school district in a city with a population of one hundred twenty-five thousand or more), board of cooperative educational services, fire district, district corporation, special district and a special improvement district governed by separate boards of commissioners who or which does not have assets in his, their or its own right in an