

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(RLS) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Amended: 4/16/97

Offered: 4/16/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

SENATORS Pearce, Sharp, Kelly, Miller

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 26, 41, 49,
3 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and
4 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of
5 Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."**

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

7 * Section 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this
8 legislature as a matter of public policy to

**9 (1) encourage the efficiency of the civil justice system by discouraging
10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
12 compensation for tortious injuries caused by others;**

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

3 (3) encourage individual savings and economic growth by fostering an
4 environment likely to control the increase of liability insurance rates to individuals and
5 businesses resulting in a savings to the state, municipalities, and private businesses that are
6 self-insured;

7 (4) encourage the traditionally recognized Alaska values of self-reliance and
8 independence by underscoring the need for personal responsibility in making choices and
9 personal accountability for the consequences of those choices;

10 (5) alleviate the high cost of malpractice insurance premiums that discourage
11 physicians, architects, engineers, attorneys, and other professionals from rendering needed
12 services to the public;

13 (6) ensure that hospitals that comply with the disclosure requirements set out
14 in this Act are not liable for the negligence of emergency room physicians who are acting as
15 independent contractors; to this extent, this Act is intended to overrule *Jackson v. Powers*, 743
16 P.2d 1376 (Alaska 1987);

17 (7) ensure that one of several tortfeasors is not held responsible for the
18 negligence of an employer; to this extent, this Act is intended to overrule *Lake v. Construction*
19 *Machinery, Inc.*, 787 P.2d 1027 (Alaska 1990);

20 (8) enact a statute of repose that meets the tests set out in *Turner Construction*
21 *Co., Inc. v. Scales*, 752 P.2d 467 (Alaska 1988);

22 (9) ensure that in actions involving the fault of more than one person, the fault
23 of each claimant, defendant, third-party defendant, person who has been released from
24 liability, or other person responsible for the damages and available as a litigant be determined
25 and awards be allocated in accordance with the fault of each, thereby modifying *Benner v.*
26 *Wichman*, 874 P.2d 949 (Alaska 1994);

27 (10) reduce the amount of litigation proceeding to trial by modifying the
28 allocation of attorney fees and court costs based on the offer of judgment and the final court
29 award, thereby providing a financial incentive to both parties to settle the dispute; and

30 (11) ensure that this Act does not apply to or in any way have an effect on
31 existing litigation or a civil cause of action that accrues before the effective date of this Act;

1 it is the specific intent of the legislature that this Act not apply to or in any way have an
 2 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
 3 now or in the future.

4 * **Sec. 2.** AS 06.05.473(h) is amended to read:

5 (h) After the payment of all other claims, including interest at the rate **of 10.5**
 6 **percent a year** [ESTABLISHED UNDER AS 09.30.070], the department shall pay
 7 claims that are otherwise valid but that were not filed within the time prescribed.

8 * **Sec. 3.** AS 09.10.050 is repealed and reenacted to read:

9 **Sec. 09.10.050. Certain property actions to be brought in six years.** Unless
 10 the action is commenced within six years, a person may not bring an action for waste
 11 or trespass upon real property.

12 * **Sec. 4.** AS 09.10 is amended by adding a new section to read:

13 **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the
 14 action is commenced within three years, a person may not bring an action upon a
 15 contract or liability, express or implied, except as provided in AS 09.10.040, the
 16 provisions of this section may be waived by contract, or as otherwise provided by law.

17 * **Sec. 5.** AS 09.10.055 is repealed and reenacted to read:

18 **Sec. 09.10.055. Statute of repose of 10 years.** (a) Notwithstanding the
 19 disability of minority described under AS 09.10.140(a), a person may not bring an
 20 action for personal injury, death, or property damage unless commenced within 10
 21 years of the earlier of the date of

22 (1) substantial completion of the construction alleged to have caused
 23 the personal injury, death, or property damage; however, the limitation of this
 24 paragraph does not apply to a claim resulting from an intentional or reckless disregard
 25 of specific project design plans and specifications or building codes; in this paragraph,
 26 "substantial completion" means the date when construction is sufficiently completed
 27 to allow the owner or a person authorized by the owner to occupy the improvement
 28 or to use the improvement in the manner for which it was intended; or

29 (2) the last act alleged to have caused the personal injury, death, or
 30 property damage.

31 (b) This section does not apply if

- 1 (1) the personal injury, death, or property damage resulted from
 2 (A) prolonged exposure to hazardous waste;
 3 (B) an intentional act or gross negligence;
 4 (C) fraud or misrepresentation;
 5 (D) breach of an express warranty or guarantee;
 6 (E) a defective product; in this subparagraph, "product" means
 7 an object that has intrinsic value, is capable of delivery as an assembled whole
 8 or as a component part, and is introduced into trade or commerce; or
 9 (F) breach of trust or fiduciary duty;

10 (2) the facts that would give notice of a potential cause of action are
 11 intentionally concealed;

12 (3) a shorter period of time for bringing the action is imposed under
 13 another provision of law;

14 (4) the provisions of this section are waived by contract; or

15 (5) the facts that would constitute accrual of a cause of action of a
 16 minor are not discoverable in the exercise of reasonable care by the minor's parent or
 17 guardian.

18 (c) The limitation imposed under (a) of this section is tolled during any period
 19 in which there exists the undiscovered presence of a foreign body that has no
 20 therapeutic or diagnostic purpose or effect in the body of the injured person and the
 21 action is based on the presence of the foreign body.

22 * **Sec. 6.** AS 09.10.070(a) is amended to read:

23 (a) **Except as otherwise provided by law, a** [A] person may not bring an
 24 action (1) for libel, slander, assault, battery, seduction, **or** false imprisonment, (2)
 25 [OR] for **personal** [ANY] injury **or death,** [TO THE PERSON] or **injury to the** rights
 26 of another not arising on contract and not specifically provided otherwise; (3) **for**
 27 **taking, detaining, or injuring personal property, including an action for its**
 28 **specific recovery;** (4) [(2)] upon a statute for a forfeiture or penalty to the state; or
 29 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless
 30 the action is commenced within two years **of the accrual of the cause of action.**

31 * **Sec. 7.** AS 09.10.140(a) is amended to read:

(a) **Except as provided under (c) of this section, if** [IF] a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

* **Sec. 8.** AS 09.10.140 is amended by adding a new subsection to read:

(c) In an action for personal injury of a person who was under the age of eight years at the time of the injury, the time period before the person's eighth birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing the civil action.

* **Sec. 9.** AS 09.17.010 is repealed and reenacted to read:

Sec. 09.17.010. Noneconomic damages. (a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

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

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

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

* **Sec. 10.** AS 09.17.020 is repealed and reenacted to read:

Sec. 09.17.020. Punitive damages. (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine,

concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

(1) was outrageous, including acts done with malice or bad motives;
or

(2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

(1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;

(2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;

(3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;

(4) the duration of the conduct and any intentional concealment of the conduct;

(5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

(d) At the conclusion of the separate proceeding under (c) of this section, the fact finder shall determine the amount of punitive damages to be awarded, and the court shall enter judgment for that amount.

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under

(c)(3) or (6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) and (b) of this section. The court may issue orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section available for production immediately at the close of the initial trial in order to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.

(f) Except as provided in (g) and (h) of this section, an award of punitive damages may not exceed the greater of

(1) three times the amount of compensatory damages awarded to the plaintiff in the action; or

(2) the sum of \$500,000.

(g) Except as provided in (h) of this section, if the fact finder determines that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct were actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

(1) four times the amount of compensatory damages awarded to the plaintiff in the action;

(2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or

(3) the sum of \$7,000,000.

(h) Notwithstanding any other provision of law, in an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed

(1) \$200,000 if the employer has less than 100 employees in this state;

(2) \$300,000 if the employer has 100 or more but less than 200 employees in this state;

(3) \$400,000 if the employer has 200 or more but less than 500 employees in this state; and

(4) \$500,000 if the employer has 500 or more employees in this state.

(i) Subsection (h) of this section may not be construed to allow an award of punitive damages against the state or a person immune under another provision of law.

In (h) of this section, "employees" means persons employed in each of 20 or more calendar weeks in the current or preceding calendar year.

(j) If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

* **Sec. 11.** AS 09.17.080(a) is amended to read:

(a) In all actions involving fault of more than one **person** [PARTY TO THE ACTION], including third-party defendants and persons who have **settled or otherwise** been released [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault [OF ALL OF THE PARTIES TO EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant, [AND] person who has been released from liability, **or other person responsible for the damages unless the person was identified as a potentially responsible person, the person is not a person protected from a civil action under AS 09.10.055, and the parties had a sufficient opportunity to join that person in the action but chose not to; in this paragraph, "sufficient opportunity to join" means the person is**

(A) within the jurisdiction of the court;

(B) not precluded from being joined by law or court rule;

and

(C) reasonably locatable [UNDER AS 09.16.040].

* **Sec. 12.** AS 09.17.080(b) is amended to read:

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each **person** [PARTY] at fault, and the extent of the

causal relation between the conduct and the damages claimed. [THE TRIER OF FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH PERSON CANNOT BE DISTINGUISHED.]

* **Sec. 13.** AS 09.17.080(c) is amended to read:

(c) The court shall determine the award of damages to each claimant in accordance with the findings [, SUBJECT TO A REDUCTION UNDER AS 09.16.040,] and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault as determined under (a) of this section. Except as provided under AS 23.30.015(g), an assessment of a percentage of fault against a person who is not a party may only be used as a measure for accurately determining the percentages of fault of a named party. Assessment of a percentage of fault against a person who is not a party does not subject that person to civil liability in that action and may not be used as evidence of civil liability in another action.

* **Sec. 14.** AS 09.17.900 is amended to read:

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, or intentional toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

* **Sec. 15.** AS 09.20 is amended by adding a new section to read:

Sec. 09.20.185. Expert witness qualification. (a) In an action based on professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness is

(1) a professional who is licensed in this state or in another state or

country;

(2) trained and experienced in the same discipline or school of practice as the defendant or in an area directly related to a matter at issue; and

(3) certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue.

(b) The provisions of (a) of this section do not apply if the state has not recognized a board that has certified the witness in the particular field or matter at issue.

* **Sec. 16.** AS 09.30.065 is amended to read:

Sec. 09.30.065. Offers of judgment. At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn, and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is at least five percent less [NOT MORE] favorable to the offeree than the offer, or if there are multiple defendants at least 10 percent less favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made, [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

(1) if the offer was served no later than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE

REDUCED BY FIVE PERCENT A YEAR];

(2) if the offer was served more than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure but more than 90 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay 30 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A YEAR].

* **Sec. 17.** AS 09.30.065 is amended by adding a new subsection to read:

(b) If an offeror receives costs and reasonable actual attorney fees under (a) of this section, that offeror shall be considered the prevailing party for purposes of an award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska Rules of Civil Procedure is greater than a party would receive under (a) of this section, the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of this section. A party who receives attorney fees under this section may not also receive attorney fees under the Alaska Rules of Civil Procedure.

* **Sec. 18.** AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* **Sec. 19.** AS 09.30.070 is amended by adding a new subsection to read:

(c) Prejudgment interest may not be awarded for future economic damages,

future noneconomic damages, or punitive damages.

* **Sec. 20.** AS 09.50.280 is amended to read:

Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with [LEGAL] interest **as provided under AS 09.30.070** [FROM THE DATE IT BECAME DUE] and without punitive damages.

* **Sec. 21.** AS 09.55.440(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment must include interest at the rate **of 10.5 percent a year** [SET OUT IN AS 09.30.070] on the amount finally awarded **that** [WHICH] exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

* **Sec. 22.** AS 09.55.536(a) is amended to read:

(a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider, **including a person providing services on behalf of a governmental entity**, when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

* **Sec. 23.** AS 09.55.536(c) is amended to read:

(c) Not more than 30 days after selection of the panel, **the panel** [IT] shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court **in sufficient detail to explain**

the case and the reasons for the panel's answers:

(1) **Why did the claimant seek** [WHAT WAS THE DISORDER FOR WHICH THE PLAINTIFF CAME TO] medical care?

(2) **Was a correct diagnosis made? If not, what was incorrect about the diagnosis** [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME WITHOUT MEDICAL CARE]?

(3) Was the treatment **or lack of treatment** [SELECTED] appropriate? **If not, what was inappropriate about the treatment or lack of treatment** [FOR THE CASE]?

(4) **Was the claimant injured during the course of evaluation or treatment or by failure to diagnose or treat** [DID AN INJURY ARISE FROM THE MEDICAL CARE]?

(5) **If the answer to question 4 is "yes," what** [WHAT] is the nature and extent of the medical injury?

(6) What specifically caused the medical injury?

(7) Was the medical injury caused by unskillful care? **Explain.**

(8) If a medical injury had not occurred, **what would have been the likely outcome of the medical case** [HOW WOULD THE PLAINTIFF'S CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

* **Sec. 24.** AS 09.55.536(f) is amended to read:

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received **or 60 days after selection of the panel, whichever occurs first**. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant **the panel** [IT] an additional 30 days.

* **Sec. 25.** AS 09.55.536 is amended by adding a new subsection to read:

(i) This section applies regardless of whether a party in the action or the health care provider whose professional services are the subject of the action is a governmental entity or in the public or private sector.

* **Sec. 26.** AS 09.55.560(1) is amended to read:

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

* **Sec. 27.** AS 09.55.560 is amended by adding new paragraphs to read:

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

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

* **Sec. 28.** AS 09.60 is amended by adding a new section to read:

Sec. 09.60.080. Contingent fee agreements. If an attorney contracts for or collects a contingency fee in connection with an action for personal injury, death, or property damage and the damages awarded by a court or jury include an award of punitive damages, the contingent fee due the attorney shall be calculated before that portion of punitive damages due the state under AS 09.17.020(j) has been deducted from the total award of damages.

* **Sec. 29.** AS 09.65 is amended by adding a new section to read:

Sec. 09.65.085. Civil liability of electric utility. (a) A utility offering

1 electrical service to the public for compensation under a certificate of public
 2 convenience and necessity issued by the Alaska Public Utilities Commission under
 3 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
 4 injury resulting from an act or omission of the utility relating to the production,
 5 delivery, or sale of electricity.

6 (b) This section does not preclude liability for civil damages that are the result
 7 of an intentional, reckless, or negligent act or omission.

8 * **Sec. 30.** AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 10 hospital is not liable for civil damages as a result of an act or omission by an
 11 emergency room physician who is not an employee or actual agent of the hospital if
 12 the hospital provides notice that the emergency room physician is an independent
 13 contractor and the emergency room physician is insured as described under (c) of this
 14 section. The hospital is responsible for exercising reasonable care in granting
 15 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 16 and for taking appropriate steps to revoke or restrict privileges in appropriate
 17 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 18 emergency room physician who is an independent contractor. The notice required by
 19 this subsection must (1) be posted conspicuously in all admitting areas of the hospital;
 20 (2) consist of a sign at least two feet high and two feet wide, with print at least two
 21 inches high; (3) be published at least annually in a newspaper of general circulation
 22 in the area; and (4) be in substantially the following form:

23 Notice to Hospital Users and

24 Notice of Limited Liability

25 (Name of hospital) may not be responsible for the actions of
 26 emergency room physicians in (name of hospital's emergency
 27 room). The following emergency room physicians are
 28 independent contractors and are not employees of the hospital:

29 (List specific emergency room physicians)

30 (b) This section does not preclude liability for civil damages that are the
 31 proximate result of the hospital's negligence or intentional misconduct.

(c) A hospital is not immune from liability under (a) of this section for an act or omission of an emergency room physician who is an independent contractor unless the emergency room physician has liability insurance coverage in the amount of at least \$500,000 for each incident and \$1,500,000 for all incidents in a year, and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

(d) In this section,

(1) "emergency room physician" means a physician who does not have an ongoing physician-patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room;

(2) "hospital" has the meaning given in AS 18.20.130 and includes a governmentally owned or operated hospital;

(3) "independent contractor" means an emergency room physician who is not an employee or actual agent of the hospital in connection with the rendition of the health care services.

* **Sec. 31.** AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs. A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the felony substantially contributed to the personal injury or death;

(2) engaged in conduct that would constitute the commission of an unclassified felony, a class A, or a class B felony for which the person was not convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the felonious conduct substantially contributed to the personal injury or death;

(3) fleeing after the commission, by that person, of conduct that would constitute an unclassified felony, a class A felony, or a class B felony or being apprehended for conduct that would constitute an unclassified felony, a class A felony, or a class B felony if the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the conduct during the flight or apprehension substantially contributed to the injury or death;

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the conduct substantially contributed to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS 28.35.030 for which the person was not convicted if the party defending against the claim proves by clear and convincing evidence

(A) the violation of AS 28.35.030; and

(B) that the conduct substantially contributed to the personal injury or death.

* **Sec. 32.** AS 09.68 is amended by adding a new section to read:

Sec. 09.68.130. Collection of settlement information. (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate information relating to the compromise or other resolution of all civil litigation. The information shall be collected on a form developed by the council for that purpose and must include

(1) the case name and file number;

(2) a general description of the claims being settled;

(3) if the case is resolved by way of settlement,

(A) the gross dollar amount of the settlement;

- 1 (B) to whom the settlement was paid;
- 2 (C) the dollar amount of advanced costs and attorney fees that
- 3 were deducted from the gross dollar amount of the settlement before
- 4 disbursement to the claimant;
- 5 (D) the net amount actually disbursed to the claimant;
- 6 (E) the total costs and attorney fees paid by or owed by all
- 7 parties; and
- 8 (F) any nonmonetary terms, including whether the attorney fees
- 9 incurred by the claimant were based on a contingent fee agreement or upon an
- 10 hourly rate; if a contingent fee was paid, the percentage of the total settlement
- 11 represented by the fee must be included; or, if an hourly rate, the hourly rate
- 12 paid;
- 13 (4) if the case is resolved by dismissal, summary judgment, trial, or
- 14 otherwise,
- 15 (A) the gross dollar amount of the judgment;
- 16 (B) the amount of attorney fees awarded and to which party;
- 17 (C) the amount of costs awarded and to which party;
- 18 (D) the net amount, after deduction of (B) and (C) of this
- 19 paragraph, for which the prevailing party has judgment;
- 20 (E) the dollar amount of advanced costs and attorney fees that
- 21 were deducted from the gross dollar amount of the judgment before distribution
- 22 to the claimant;
- 23 (F) the total costs and attorney fees paid by defending parties;
- 24 and
- 25 (G) any nonmonetary terms, including whether the attorney fees
- 26 incurred by the claimant were based on a contingent fee agreement or upon an
- 27 hourly rate; if a contingent fee was paid, the percentage of the total settlement
- 28 represented by the fee must be included; or, if an hourly rate, the hourly rate
- 29 paid.
- 30 (b) The information received by the council under (a) of this section is
- 31 confidential. This restriction does not prevent the disclosure of summaries and

1 statistics in a manner that does not allow the identification of particular cases or
2 parties.

3 (c) The requirements of (a) of this section do not apply to the following types
4 of cases:

- 5 (1) divorce and dissolution;
- 6 (2) adoption, custody, support, visitation, and emancipation of children;
- 7 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
8 cases under 47.12;
- 9 (4) domestic violence protective orders under AS 18.66.100 -
10 18.66.180;
- 11 (5) estate, guardianship, and trust cases filed under AS 13;
- 12 (6) small claims under AS 22.15.040.

13 * **Sec. 33.** AS 21.06 is amended by adding a new section to read:

14 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
15 and shall compile information necessary to evaluate the effect of the measures enacted
16 in this Act on the availability and cost of insurance in the state.

17 (b) Information described in (a) of this section shall be provided by all insurers
18 doing business in this state in the format specified by the director and must include
19 factual information stating premiums, claims, losses, expenses, and solvency of the
20 company as a whole. Information shall be compiled by the division in a way that
21 protects the identity of individual insureds.

22 (c) The director shall adopt regulations to implement and interpret this section,
23 including requiring insurers doing business in the state to provide information
24 necessary for the division to carry out its responsibilities under (a) and (b) of this
25 section. If there are indications of market disruption, the director may waive all or
26 part of the reporting requirements in this section.

27 (d) Beginning June 1, 2000, the information compiled under (a) of this section
28 shall be reported annually to the governor and the judiciary committees of both houses
29 of the legislature.

30 (e) The division may consult with the Alaska Judicial Council when
31 determining what information to require to be reported under (a) - (c) of this section

1 and when implementing the compilation required under (a) of this section.

2 * **Sec. 34.** AS 21.89.100(d) is amended to read:

3 (d) If the insured selects independent counsel at the insurer's expense, the
 4 insurer may require that the independent counsel have at least four years of experience
 5 in civil litigation, including defense experience in the general subject area at issue in
 6 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 7 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 8 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 9 course of business in the defense of a similar civil action in the community in which
 10 the claim arose or is being defended. **In providing independent counsel, the insurer**
 11 **is not responsible for the fees and costs of defending an allegation for which**
 12 **coverage is properly denied and shall be responsible only for the fees and costs**
 13 **to defend those allegations for which the insurer either reserves its position as to**
 14 **coverage or accepts coverage. The independent counsel shall keep detailed**
 15 **records allocating fees and costs accordingly.** A dispute between the insurer and
 16 insured regarding attorney fees that is not resolved by the insurance policy or this
 17 section shall be resolved by arbitration under AS 09.43.

18 * **Sec. 35.** AS 21.89.100 is amended by adding a new subsection to read:

19 (h) When an insured is represented by independent counsel, the insurer may
 20 settle directly with the plaintiff if the settlement includes all claims based upon the
 21 allegations for which the insurer previously reserved its position as to coverage or
 22 accepted coverage, regardless of whether the settlement extinguishes all claims against
 23 the insured.

24 * **Sec. 36.** AS 23.30.015(g) is amended to read:

25 (g) If the employee or the employee's representative recovers damages from
 26 the third person, the employee or representative shall promptly pay to the employer the
 27 total amounts paid by the employer under **(e)(1)(A) - (C)** [(e)(1)(A), (B), AND (C)]
 28 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 29 and expenses. Any excess recovery by the employee or representative shall be
 30 credited against any amount payable by the employer thereafter. **If the employer is**
 31 **allocated a percentage of fault under AS 09.17.080, the amount due the employer**

under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080(c).

* **Sec. 37.** AS 44.77.015(a) is amended to read:

(a) For the purposes of filing claims for medical services provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1) within six months after the date of service, or as provided in (b) of this section, if there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from **AS 09.10.053** [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

* **Sec. 38.** Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

(c) **Motion to Set Trial and Certificate.** **Unless otherwise ordered by the court, a** [A] motion to set trial may not be filed until **after the meeting of parties under (n) of this rule has occurred and the scheduling order under Rule 16(b) has been issued** [105 DAYS AFTER SERVICE OF THE SUMMONS AND COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to set trial together with a certificate, signed by counsel, stating:

- (1) That the issues in the case have actually been joined;
- (2) That all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;
- (3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- (4) Whether trial by jury has been timely demanded;
- (5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;
- (6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;
- (7) Which, if any, statute or rule entitles the case to preference on the trial calendar;
- (8) That the parties have complied with [PARAGRAPH] (k) of this rule.

1 * **Sec. 39.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

2 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
 3 soon as practicable after the exchange of initial disclosures required under Rule
 4 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
 5 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
 6 their claims and defenses and the possibilities for a prompt settlement of the case and
 7 to develop a proposed discovery plan. The attorneys of record and all unrepresented
 8 parties that have appeared in the case are jointly responsible for arranging and being
 9 present or represented at the meeting, for attempting in good faith to agree on the
 10 proposed discovery plan, and for submitting to the court within 10 days after the
 11 meeting a written report outlining the proposed discovery plan. The proposed
 12 discovery plan shall indicate the parties' views and proposals concerning

13 (1) what changes should be made in the timing or forms of subsequent
 14 disclosures under the rules, including a statement as to when the disclosures required
 15 under Rule 26(a) were made;

16 (2) the subjects on which discovery may be needed, when discovery
 17 should be completed, and whether discovery should be conducted in phases or be
 18 limited to or focused upon particular issues;

19 (3) what changes should be made in the limitations on discovery
 20 imposed under these rules and what other limitations should be imposed;

21 (4) whether a scheduling conference is unnecessary;

22 (5) whether there will be dispositive or partially dispositive motions
 23 filed in the case and whether other deadlines should be set aside pending resolution of
 24 the dispositive or partially dispositive motions by the court; and

25 (6) any other orders that should be entered by the court under Civil
 26 Rule 16(b) and (c).

27 * **Sec. 40.** Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new
 28 subsection to read:

29 (g) **Limited Discovery; Expedited Calendaring.** In a civil action for personal
 30 injury or property damage involving less than \$100,000 in claims the parties shall limit
 31 discovery to that allowed under Rule 1(a)(1), District Court Rules, and shall avail

1 themselves of the expedited calendaring procedures allowed under Rule 4, District
2 Court Rules.

3 * **Sec. 41.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
4 paragraph to read:

5 (3) **Settlement Information.** If a voluntary dismissal under this rule
6 is the result of compromise or other settlement of the parties, the parties shall submit
7 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
8 of dismissal made under (1)[a] of this subsection must be accompanied by a
9 certification signed by or on behalf of the plaintiff that the information required under
10 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
11 dismissal made under (1)[b] of this subsection must be accompanied by a certification
12 signed by or on behalf of all parties who have appeared in the action. The
13 requirements of this paragraph do not apply to the types of cases listed in
14 AS 09.68.130(c).

15 * **Sec. 42.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

16 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
17 the report of the Panel has been filed or until **60** [80] days **after selection of the Panel**
18 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
19 to occur, unless discovery is further stayed for good cause by order of the court.

20 * **Sec. 43.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

21 (b) In addition to its authority under (a) of this rule and its power to punish
22 for contempt, a court may, after reasonable notice and an opportunity to show cause
23 to the contrary, and after hearing by the court, if requested, impose a fine not to
24 exceed **\$50,000.00** [\$1,000.00] against any attorney who practices before it for failure
25 to comply with these rules or any rules promulgated by the supreme court.

26 * **Sec. 44.** Rule 1(a)(1), District Court Rules of Civil Procedure, is amended to read:

27 (1) The procedure in civil actions and proceedings before district judges
28 and magistrates shall be governed by the rules governing the procedure in the superior
29 court to the extent that such rules are applicable. **However, in a civil action for**
30 **personal injury or property damage, unless otherwise agreed by all parties or**
31 **permitted by order of the court in exceptional cases and for good cause shown,**

discovery shall be limited to the disclosures required under Civil Rule 26(a) and to the taking by each party of the deposition of one or more opposing parties and of one additional person who is not a party.

* **Sec. 45.** Rule 4, District Court Rules of Civil Procedure, is amended by adding a new subsection to read:

(b) In a civil action for personal injury or property damage, unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The memorandum shall contain a certification that each party has exchanged the information described in Rule 26(a), Alaska Rules of Civil Procedure, and may state their separate positions if they do not agree concerning information or estimates to be provided in the memorandum. After the court satisfies itself that the information described in Rule 26(a), Alaska Rules of Civil Procedure, has been disclosed, the court shall set the case for trial as soon as practicable, but no sooner than 30 days after the court makes the determination regarding disclosure.

* **Sec. 46.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new subsection to read:

(e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the result of compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A dismissal by agreement under (a) of this rule must be accompanied by a certification signed by the attorneys of record for all parties that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the appellant or petitioner made under (b) of this rule must be accompanied by a certification signed by the appellant's or petitioner's attorney of record. The requirements of this subsection do not apply to the types of cases listed in AS 09.68.130(c).

* **Sec. 47.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

* **Sec. 48.** AS 09.17.020(e), as enacted in sec. 10 of this Act, has the effect of amending Rule 26, Alaska Rules of Civil Procedure, by limiting discovery in certain actions.

1 * **Sec. 49.** AS 09.17.020(j), as enacted by sec. 10 of this Act, has the effect of amending
 2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
 3 percentage of an award of punitive damages be deposited into the general fund.

4 * **Sec. 50.** AS 09.17.080(a), as amended by sec. 11 of this Act, has the effect of amending
 5 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
 6 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
 7 among the claimants, defendants, third-party defendants, persons who have been released from
 8 liability, or other person who is potentially responsible for the damages.

9 * **Sec. 51.** AS 09.20.185, enacted by sec. 15 of this Act, has the effect of amending
 10 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
 11 testifying as an expert witness.

12 * **Sec. 52.** AS 09.30.065, as amended by secs. 16 and 17 of this Act, has the effect of
 13 amending Rules 68 and 82, Alaska Rules of Civil Procedure, by requiring the offeree to pay
 14 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
 15 eliminating provisions relating to interest and by changing provisions related to attorney fee
 16 awards.

17 * **Sec. 53.** AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending
 18 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
 19 awarded for future economic or noneconomic damages or punitive damages.

20 * **Sec. 54.** ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
 21 legislation to create an alternative dispute resolution procedure within the existing civil
 22 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
 23 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
 24 alternative dispute resolution procedure not later than July 1, 1998.

25 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
 26 Association, review court sanctioned alternative dispute resolution programs in other states and
 27 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
 28 System regarding the establishment of a program for alternative dispute resolution within the
 29 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
 30 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
 31 or rule change and report must include specific types of programs, specific types of cases

1 within each program that are amenable to alternative dispute resolution, the cost to the parties
2 and to the Alaska Court System under these programs, and the qualifications of the neutral
3 parties, including nonlawyers, who will provide dispute resolution services under the program.
4 The work required under this section shall be completed for the amount of money appearing
5 on the fiscal note submitted by the Alaska Judicial Council dated March 17, 1997.

6 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
7 and early neutral evaluation.

8 * **Sec. 55. APPLICABILITY.** This Act applies to all causes of action accruing on or after
9 the effective date of this Act.

10 * **Sec. 56. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
11 application of a provision of this Act to any person or circumstance is held invalid, the
12 remainder of this Act and the application to other persons shall not be affected.