

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 3/17/97

Referred: Today's Calendar

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

**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, 41, 49, 58,  
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska  
4 Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

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

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

12 (2) provide for reasonable, but not excessive, punitive damage awards against  
13 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not  
14 hampering a positive business environment by allowing excessive penalties;

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

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

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

11 (6) ensure that hospitals that comply with the disclosure requirements set out  
12 in this Act are not liable for the negligence of independent contractors; to this extent, this Act  
13 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

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

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

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

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

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

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

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

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

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

5                   **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the  
 6                   action is commenced within three years, a person may not bring an action upon a  
 7                   contract or liability, express or implied, except as provided in AS 09.10.040 or as  
 8                   otherwise provided by law.

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

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

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

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

23                   (b) This section does not apply if

24                                   (1) the personal injury, death, or property damage resulted from

25   (A) prolonged exposure to hazardous waste;

26   (B) an intentional act or gross negligence;

27   (C) fraud or fraudulent misrepresentation;

28   (D) breach of an express warranty or guarantee; or

29   (E) a defective product; in this subparagraph, "product" means  
 30                   an object that has intrinsic value, is capable of delivery as an assembled whole  
 31                   or as a component part, and is introduced into trade or commerce;

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

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

5 (4) the provisions of this section are waived by contract.

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

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

11 (a) **Except as otherwise provided by law, a** [A] person may not bring an  
12 action (1) for libel, slander, assault, battery, seduction, **or** false imprisonment, **(2)**  
13 **[OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the** rights  
14 of another not arising on contract and not specifically provided otherwise; **(3) for**  
15 **taking, detaining, or injuring personal property, including an action for its**  
16 **specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or**  
17 **(5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless**  
18 the action is commenced within two years **of the accrual of the cause of action.**

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

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

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

28 (c) In an action for personal injury or death of a person who was under the age  
29 of six years at the time of the injury or death, the time period before the person's sixth  
30 birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing  
31 the civil action.

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

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

7 (b) Except as provided under (c) of this section, the damages awarded by a  
8 court or a jury under (a) of this section for all claims of a person, including a loss of  
9 consortium claim, arising out of a single injury or death may not exceed \$300,000.

10 (c) In an action for personal injury, the damages awarded by a court or jury  
11 that are described under (b) of this section may not exceed \$500,000 when the  
12 claimant, as a result of the injury,

13 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent  
14 functional loss of one or more limbs resulting from injury to the spine or spinal cord;  
15 or

16 (2) has permanently impaired cognitive capacity and is incapable of  
17 making independent, responsible decisions.

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

20 \* **Sec. 10.** AS 09.17.020 is amended to read:

21 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in  
22 an action, whether in tort, contract, or otherwise, unless supported by clear and  
23 convincing evidence **of malice or conscious acts showing deliberate disregard of**  
24 **another person's rights by the person from whom the punitive damages are**  
25 **sought.**

26 \* **Sec. 11.** AS 09.17.020 is amended by adding new subsections to read:

27 (b) Except as provided under (c) of this section, the amount of punitive  
28 damages awarded by a court or jury under (a) of this section may not exceed three  
29 times the amount of compensatory damages awarded or \$300,000, whichever amount  
30 is greater.

31 (c) The amount of punitive damages awarded by a court or jury under (a) of

1 this section may not exceed four times the amount of compensatory damages awarded  
2 or \$600,000, whichever amount is greater, if

3 (1) the wrongful conduct or omission arose in connection with a  
4 commercial activity motivated by financial gain; and

5 (2) the likelihood of death or serious bodily injury from the commercial  
6 activity was previously known by the person responsible for making policy decisions  
7 relating to the commercial activity and the knowledge was gained from previous  
8 instances of death or serious bodily injury arising from the same wrongful conduct or  
9 omission, regardless of where the previous wrongful conduct or omission occurred.

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

14 \* **Sec. 12.** AS 09.17.040(a) is amended to read:

15 (a) In every case where damages for personal injury **or death** are awarded by  
16 the court or jury,

17 (1) the verdict shall be itemized between economic loss and  
18 noneconomic loss, if any, as follows:

19 (A) [(1)] past economic loss;

20 (B) [(2)] past noneconomic loss;

21 (C) [(3)] future economic loss;

22 (D) [(4)] future noneconomic loss; [AND]

23 (E) [(5)] punitive damages; **and**

24 (2) **the amount of damages awarded shall be reduced by the**  
25 **amount of federal and state income tax that would have been paid on damages**  
26 **contained in the verdict under tax rates in effect on the date of the injury or**  
27 **death; this paragraph does not apply to an award of damages if the damages are**  
28 **taxable under federal or state law.**

29 \* **Sec. 13.** AS 09.17.040(d) is amended to read:

30 (d) In an action to recover damages, the court shall, at the request of **a** [AN  
31 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor

1 for future damages **that exceed \$100,000** be paid to the maximum extent feasible by  
 2 periodic payments rather than by a lump-sum payment. **If a portion of the judgment**  
 3 **awarded is owed to an attorney under a contingent fee agreement, that portion**  
 4 **of the judgment shall be reduced to present value, if necessary, and paid in a**  
 5 **lump sum, and the remaining portion of the judgment shall be paid as provided**  
 6 **under this subsection.**

7 \* **Sec. 14.** AS 09.17.040(e) is amended to read:

8 (e) **Except as provided in this subsection, if a judgment is paid by**  
 9 **structured settlement type periodic payments, the [THE] court shall [MAY] require**  
 10 **security be posted in the form of United States government obligations [,] in order**  
 11 **to ensure that funds are available as periodic payments become due. The court may**  
 12 **not require security to be posted if the state, a self-insured municipality, or an**  
 13 **authorized insurer, as defined in AS 21.90.900, acknowledges to the court its**  
 14 **obligation to discharge the judgment, provided that an authorized insurer must be**  
 15 **rated by two nationally recognized independent rating agencies to be in the two**  
 16 **highest categories of quality and financial soundness. If a judgment is paid by**  
 17 **annuity type period payments, the court shall require the annuity be purchased**  
 18 **from an authorized insurer that is rated by two nationally recognized independent**  
 19 **rating agencies to be in the two highest categories of quality and financial**  
 20 **soundness. The injured party shall determine whether a structured settlement or**  
 21 **an annuity is the source of the periodic payments. The injured party may not be**  
 22 **required to accept a structured settlement or annuity from the defendant's or**  
 23 **other party's insurer or from any affiliated companies of the insurer.**

24 \* **Sec. 15.** AS 09.17.040(f) is amended to read:

25 (f) A judgment ordering payment of future damages **for personal injury or**  
 26 **death** by periodic payment shall specify the recipient, the dollar amount of the  
 27 payments, **including any increases in future payments for anticipated inflation,** the  
 28 interval between payments, and the number of payments or the period of time over  
 29 which payments shall be made. Payments may be modified only in the event of the  
 30 death of the judgment creditor, in which case payments may not be reduced or  
 31 terminated, but shall be paid to persons to whom the judgment creditor owed a duty

1 of support, as provided by law, immediately before death. In the event the judgment  
 2 creditor owed no duty of support to dependents at the time of the judgment creditor's  
 3 death, the money remaining shall be distributed in accordance with a will of the  
 4 deceased judgment creditor accepted into probate or under the intestate laws of the  
 5 state if the deceased had no will. **In this subsection, "inflation" means the change**  
 6 **in the consumer price index for United States city average, all urban consumers,**  
 7 **all items indices, compiled by the Bureau of Labor Statistics, United States**  
 8 **Department of Labor.**

9 \* **Sec. 16.** AS 09.17.070 is repealed and reenacted to read:

10 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal  
 11 injury or death may only recover damages that exceed amounts received by the  
 12 claimant, or that with reasonable probability will be received in the future by the  
 13 claimant, as compensation for the injuries from collateral sources, whether private,  
 14 group, or governmental, and whether contributory or noncontributory, except when

15 (1) the collateral source is a federally funded program that by law must  
 16 seek subrogation;

17 (2) the collateral source has a right of subrogation under federal law;

18 (3) the collateral source is the payment of a dependent child's medical  
 19 bills by the injured child's parent that does not result from insurance coverage;

20 (4) the benefit consists of death benefits paid under life insurance; or

21 (5) the benefit consists of workers' compensation benefits received  
 22 under AS 23.30.

23 (b) A person defending a claim may introduce into evidence at trial an amount  
 24 paid or payable as a benefit to the claimant as a result of the personal injury or death  
 25 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,  
 26 sickness, disability, accident, or income-disability insurance; insurance that provides  
 27 health benefits or income-disability coverage; and a contract or agreement of a group,  
 28 organization, partnership, or corporation, or other collateral source, to provide, pay for,  
 29 or reimburse the cost of medical, hospital, dental, or other health care services,  
 30 disability, or lost wages. However, evidence of a collateral source described under  
 31 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person

1 defending a claim elects to introduce evidence described in this subsection, the  
 2 claimant may introduce evidence of the amount that the claimant has paid or  
 3 contributed to secure the claimant's right to the collateral benefit, including the cost  
 4 to the claimant resulting from depleted or exhausted coverage.

5 (c) A person who provides a collateral benefit admissible under (b) of this  
 6 section may not recover an amount against the claimant as reimbursement for those  
 7 benefits and may not be subrogated to the rights of a claimant against a person  
 8 defending a claim.

9 \* **Sec. 17.** AS 09.17.080(a) is amended to read:

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

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

17 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO  
 18 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,  
 19 [AND] person who has been released from liability, **or other person responsible for**  
 20 **the damages to each claimant regardless of whether the other person, including**  
 21 **an employer, is or could have been named as a party to the action** [UNDER  
 22 AS 09.16.040].

23 \* **Sec. 18.** AS 09.17.080(b) is amended to read:

24 (b) In determining the percentages of fault, the trier of fact shall consider both  
 25 the nature of the conduct of each **person** [PARTY] at fault, and the extent of the  
 26 causal relation between the conduct and the damages claimed. [THE TRIER OF  
 27 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE  
 28 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE  
 29 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH  
 30 PERSON CANNOT BE DISTINGUISHED.]

31 \* **Sec. 19.** AS 09.17.080(c) is amended to read:

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

12 \* **Sec. 20.** AS 09.17.900 is amended to read:

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

21 \* **Sec. 21.** AS 09.20 is amended by adding a new section to read:

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

25 (1) a professional who is licensed in this state or in another state or  
 26 country;

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

29 (3) certified by a board recognized by the state as having acknowledged  
 30 expertise and training directly related to the particular field or matter at issue; however,  
 31 this paragraph does not apply if a board does not exist that could certify the witness

1 in the particular field or matter at issue.

2 \* **Sec. 22.** AS 09.30.065 is amended to read:

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

20 (1) if the **offer was served no later than 60 days after both parties**  
 21 **made the disclosures required by the Alaska Rules of Civil Procedure the offeree**  
 22 **shall pay 100 percent of the offeror's reasonable actual attorney fees** [OFFEREE  
 23 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE  
 24 REDUCED BY FIVE PERCENT A YEAR];

25 (2) if the **offer was served more than 60 days after both parties**  
 26 **made the disclosures required by the Alaska Rules of Civil Procedure but more**  
 27 **than 90 days before the trial began, the offeree shall pay 75 percent of the**  
 28 **offeror's reasonable actual attorney fees;**

29 (3) if the **offer was served 90 days or less but more than 10 days**  
 30 **before the trial began, the offeree shall pay 50 percent of the offeror's reasonable**  
 31 **actual attorney fees** [OFFEREE IS THE PARTY DEFENDING AGAINST THE

1 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A  
2 YEAR].

3 \* **Sec. 23.** AS 09.30.065 is amended by adding new subsections to read:

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

13 (c) If an offeror makes more than one offer of judgment, the last offer served  
14 on the adverse party shall be considered to be a revocation of any prior offer of  
15 judgment.

16 \* **Sec. 24.** AS 09.30.070(a) is amended to read:

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

25 \* **Sec. 25.** AS 09.30.070 is amended by adding a new subsection to read:

26 (c) Prejudgment interest may not be awarded for future economic damages,  
27 future noneconomic damages, or punitive damages.

28 \* **Sec. 26.** AS 09.50.280 is amended to read:

29 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is  
30 rendered for the plaintiff, it shall be for the legal amount found due from the state with  
31 [LEGAL] interest **as provided under AS 09.30.070** [FROM THE DATE IT BECAME

1 DUE] and without punitive damages.

2 \* **Sec. 27.** AS 09.55.440(a) is amended to read:

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

13 \* **Sec. 28.** AS 09.55.535(k) is amended to read:

14 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)  
15 apply to arbitrations under this section if they do not conflict with the provisions of  
16 this section; arbitrations under this section shall be conducted in accordance with  
17 procedures established by any rules of court which may be adopted and according to  
18 provisions of **AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560** [AS 09.55.540 -  
19 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

20 \* **Sec. 29.** AS 09.55.536(a) is amended to read:

21 (a) In an action for damages due to personal injury or death based upon  
22 the provision of professional services by a health care provider, **including a person**  
23 **providing services on behalf of a governmental entity**, when the parties have not  
24 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within  
25 20 days after filing of answer to a summons and complaint a three-person expert  
26 advisory panel unless the court decides that an expert advisory opinion is not necessary  
27 for a decision in the case. When the action is filed, the court shall, by order,  
28 determine the professions or specialties to be represented on the expert advisory panel,  
29 giving the parties the opportunity to object or make suggestions.

30 \* **Sec. 30.** AS 09.55.536(c) is amended to read:

31 (c) Not more than 30 days after selection of the panel, **the panel** [IT] shall

1 make a written report to the parties and to the court, answering the following questions  
 2 and other questions submitted to the panel by the court **in sufficient detail to explain**  
 3 **the case and the reasons for the panel's answers:**

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

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

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

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

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

17 (6) What specifically caused the medical injury?

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

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

22 \* **Sec. 31.** AS 09.55.536(f) is amended to read:

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

29 \* **Sec. 32.** AS 09.55.536 is amended by adding a new subsection to read:

30 (i) This section applies regardless of whether a party in the action or the health  
 31 care provider whose professional services are the subject of the action is a

1 governmental entity or in the public or private sector.

2 \* **Sec. 33.** AS 09.55.560(1) is amended to read:

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

18 \* **Sec. 34.** AS 09.55.560 is amended by adding new paragraphs to read:

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

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

25 \* **Sec. 35.** AS 09.60 is amended by adding a new section to read:

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



1 the emergency room physician has liability insurance coverage in the amount of at  
 2 least \$500,000 for each incident and the coverage is in effect and applicable to those  
 3 health care services offered by the emergency room physician that the hospital is  
 4 required to provide by law or by accreditation requirements.

5 (d) In this section,

6 (1) "emergency room physician" means a physician who provides health  
 7 care services in a hospital emergency room;

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

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

13 \* **Sec. 38.** AS 09.65.210 is repealed and reenacted to read:

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

19 (1) engaged in the commission of a felony, the person has been  
 20 convicted of the felony, including conviction based on a guilty plea or plea of nolo  
 21 contendere, and the felony substantially contributed to the personal injury or death;

22 (2) engaged in conduct that would constitute the commission of an  
 23 unclassified felony, a class A, or a class B felony for which the person was not  
 24 convicted and the conduct

25 (A) substantially contributed to the personal injury or death; and

26 (B) is proven by the defendant in the civil trial by clear and  
 27 convincing evidence;

28 (3) fleeing after the commission, by that person, of conduct that would  
 29 constitute an unclassified felony, a class A felony, or a class B felony or being  
 30 apprehended for conduct that would constitute an unclassified felony, a class A felony,  
 31 or a class B felony if the conduct

1 (A) during the flight or apprehension substantially contributed  
2 to the injury or death; and

3 (B) is proven by the defendant in the civil trial by clear and  
4 convincing evidence;

5 (4) operating a vehicle, aircraft, or watercraft while under the influence  
6 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was  
7 convicted, including conviction based on a guilty plea or plea of nolo contendere, and  
8 the conduct substantially contributed to the personal injury or death; or

9 (5) engaged in conduct that would constitute a violation of  
10 AS 28.35.030 for which the person was not convicted if the conduct substantially  
11 contributed to the personal injury or death and the conduct is proven by the defendant  
12 in the civil trial by clear and convincing evidence.

13 \* **Sec. 39.** AS 09.68 is amended by adding a new section to read:

14 **Sec. 09.68.130. Collection of settlement information.** (a) Except as  
15 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate  
16 information relating to the compromise or other settlement of all civil litigation. The  
17 information, including the case name and file number, a general description of the  
18 claims being settled, the dollar amount of the settlement, to whom the settlement was  
19 paid, and any nonmonetary terms, shall be collected on a form developed by the  
20 council for that purpose.

21 (b) The information received by the council under (a) of this section is  
22 confidential. This restriction does not prevent the disclosure of summaries and  
23 statistics in a manner that does not allow the identification of particular cases or  
24 parties.

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

27 (1) divorce and dissolution;

28 (2) adoption, custody, support, visitation, and emancipation of children;

29 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors  
30 cases under 47.12;

31 (4) domestic violence protective orders under AS 18.66.100 -

1 18.66.180;

2 (5) estate, guardianship, and trust cases filed under AS 13;

3 (6) small claims under AS 22.15.040.

4 \* **Sec. 40.** AS 21.06 is amended by adding a new section to read:

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

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

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

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

21 (e) The division may consult with the Alaska Judicial Council when  
22 determining what information to require to be reported under (a) - (c) of this section  
23 and when implementing the compilation required under (a) of this section.

24 \* **Sec. 41.** AS 21.89.100(d) is amended to read:

25 (d) If the insured selects independent counsel at the insurer's expense, the  
26 insurer may require that the independent counsel have at least four years of experience  
27 in civil litigation, including defense experience in the general subject area at issue in  
28 the civil action, and malpractice insurance. Unless otherwise provided in the insurance  
29 policy, the obligation of the insurer to pay the fee charged by the independent counsel  
30 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary  
31 course of business in the defense of a similar civil action in the community in which

1 the claim arose or is being defended. **In providing independent counsel, the insurer**  
 2 **is not responsible for the fees and costs of defending an allegation for which**  
 3 **coverage is properly denied and shall be responsible only for the fees and costs**  
 4 **to defend those allegations for which the insurer either reserves its position as to**  
 5 **coverage or accepts coverage. The independent counsel shall keep detailed**  
 6 **records allocating fees and costs accordingly.** A dispute between the insurer and  
 7 insured regarding attorney fees that is not resolved by the insurance policy or this  
 8 section shall be resolved by arbitration under AS 09.43.

9 \* **Sec. 42.** AS 21.89.100 is amended by adding a new subsection to read:

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

15 \* **Sec. 43.** AS 23.30.015(g) is amended to read:

16 (g) If the employee or the employee's representative recovers damages from  
 17 the third person, the employee or representative shall promptly pay to the employer the  
 18 total amounts paid by the employer under **(e)(1)(A) - (C)** [(e)(1)(A), (B), AND (C)]  
 19 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs  
 20 and expenses. Any excess recovery by the employee or representative shall be  
 21 credited against any amount payable by the employer thereafter. **If the employer is**  
 22 **allocated a percentage of fault under AS 09.17.080, the amount due the employer**  
 23 **under this subsection shall be reduced by an amount equal to the employer's**  
 24 **equitable share of damages assessed under AS 09.17.080(c).**

25 \* **Sec. 44.** AS 44.77.015(a) is amended to read:

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

1           **AS 09.10.053** [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

2           \* **Sec. 45.** Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

9                               (1) That the issues in the case have actually been joined;

10                              (2) That all parties have completed discovery or have a reasonable  
 11                   opportunity to do so within the next 60 days;

12                              (3) That the procedure for listing witnesses and exhibits and providing  
 13                   exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;

14                              (4) Whether trial by jury has been timely demanded;

15                              (5) The estimated number of days for the trial, including estimates for  
 16                   each party's case and for jury selection;

17                              (6) The names, addresses and telephone numbers of all attorneys and  
 18                   pro se parties who are responsible for the conduct of the litigation;

19                              (7) Which, if any, statute or rule entitles the case to preference on the  
 20                   trial calendar;

21                              (8) That the parties have complied with [PARAGRAPH] (k) of this  
 22                   rule.

23           \* **Sec. 46.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

24                   (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as  
 25                   soon as practicable after the exchange of initial disclosures required under Rule  
 26                   26(a)(1) and in any event at least 14 days before a scheduling conference is held or  
 27                   a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of  
 28                   their claims and defenses and the possibilities for a prompt settlement of the case and  
 29                   to develop a proposed discovery plan. The attorneys of record and all unrepresented  
 30                   parties that have appeared in the case are jointly responsible for arranging and being  
 31                   present or represented at the meeting, for attempting in good faith to agree on the

1 proposed discovery plan, and for submitting to the court within 10 days after the  
 2 meeting a written report outlining the proposed discovery plan. The proposed  
 3 discovery plan shall indicate the parties' views and proposals concerning

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

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

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

12 (4) whether a scheduling conference is unnecessary;

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

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

18 \* **Sec. 47.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new  
 19 paragraph to read:

20 (3) **Settlement Information.** If a voluntary dismissal under this rule  
 21 is the result of compromise or other settlement of the parties, the parties shall submit  
 22 to the Alaska Judicial Council the information required under AS 09.68.130. A notice  
 23 of dismissal made under (1)[a] of this subsection must be accompanied by a  
 24 certification signed by or on behalf of the plaintiff that the information required under  
 25 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of  
 26 dismissal made under (1)[b] of this subsection must be accompanied by a certification  
 27 signed by or on behalf of all parties who have appeared in the action. The  
 28 requirements of this paragraph do not apply to the types of cases listed in  
 29 AS 09.68.130(c).

30 \* **Sec. 48.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

31 (g) **Discovery.** Except by leave of court, no discovery may be conducted until

1 the report of the Panel has been filed or until **60** [80] days **after selection of the Panel**  
2 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first  
3 to occur, unless discovery is further stayed for good cause by order of the court.

4 \* **Sec. 49.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

5 (b) In addition to its authority under (a) of this rule and its power to punish  
6 for contempt, a court may, after reasonable notice and an opportunity to show cause  
7 to the contrary, and after hearing by the court, if requested, impose a fine not to  
8 exceed **\$10,000.00** [\$1,000.00] against any attorney who practices before it for failure  
9 to comply with these rules or any rules promulgated by the supreme court.

10 \* **Sec. 50.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new  
11 subsection to read:

12 (c) If the trier of fact determines that a party to a civil action has intentionally  
13 made a false statement of a material fact in connection with the prosecution or defense  
14 of a civil action, the court shall enter judgment against the party making the false  
15 statement on the issue to which the false statement relates. If the civil action involves  
16 multiple claims and the false statement does not apply to all claims, the judgment  
17 required under this subsection shall apply only to those claims to which the false  
18 statement relates.

19 \* **Sec. 51.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new  
20 subsection to read:

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

31 \* **Sec. 52.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

1     \* **Sec. 53.** AS 09.55.548 is repealed.

2     \* **Sec. 54.** AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending  
3 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain  
4 percentage of an award of punitive damages be deposited into the general fund.

5     \* **Sec. 55.** AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending  
6 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of  
7 damages by certain tax rates in effect on the date of injury or death if taxable.

8     \* **Sec. 56.** AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending  
9 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid  
10 periodically if requested by a party, with a lump sum payment for certain attorney fees.

11     \* **Sec. 57.** AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending  
12 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment  
13 is paid by periodic payments.

14     \* **Sec. 58.** AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending  
15 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any  
16 increases for future inflation.

17     \* **Sec. 59.** AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending  
18 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special  
19 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated  
20 among the claimants, defendants, third-party defendants, persons who have been released from  
21 liability, or other person who is responsible for the damages.

22     \* **Sec. 60.** AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending  
23 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person  
24 testifying as an expert witness.

25     \* **Sec. 61.** AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of  
26 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and  
27 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by  
28 eliminating provisions relating to interest and by providing that a subsequent offer revokes  
29 prior offers.

30     \* **Sec. 62.** AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending  
31 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be

1 awarded for future economic or noneconomic damages.

2 \* **Sec. 63.** ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this  
3 legislation to create a pilot alternative dispute resolution procedure within the existing civil  
4 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil  
5 disputes.

6 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement  
7 Association, review court sanctioned alternative dispute resolution programs in other states and  
8 in the federal court system, and make recommendations to assist the legislature and the Alaska  
9 Court System in the establishment of a pilot program for alternative dispute resolution within  
10 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the  
11 legislature and to the Alaska Supreme Court within six months after the effective date of this  
12 Act. The report must include specific types of programs, specific types of cases within each  
13 program that are amenable to alternative dispute resolution, the cost to the parties and to the  
14 Alaska Court System under these programs, and the qualifications of the neutral parties,  
15 including nonlawyers, who will provide dispute resolution services under the program.

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

18 \* **Sec. 64.** APPLICABILITY. This Act applies to all causes of action accruing on or after  
19 the effective date of this Act.

20 \* **Sec. 65.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the  
21 application of a provision of this Act to any person or circumstance is held invalid, the  
22 remainder of this Act and the application to other persons shall not be affected.