

CS FOR SENATE BILL NO. 15(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/13/97
Referred: Finance

Sponsor(s): SENATOR TAYLOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to motor vehicle liability insurance and
2 bonds; amending Rules 16.1, 26, 41, 49, 72.1, 79(b), 82(b), 95, and 100, Alaska
3 Rules of Civil Procedure; amending Rules 1 and 4, Alaska District Court Rules
4 of Civil Procedure; amending Rule 511, Alaska Rules of Appellate Procedure; and
5 repealing Rule 72.1, Alaska Rules of Civil Procedure; and providing for an
6 effective date."

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

8 * **Section 1.** PURPOSE. It is the purpose of this Act to

- 9 (1) reduce the time and costs associated with civil litigation;
10 (2) improve access to justice for individuals and small businesses;
11 (3) provide for fair but not excessive compensation for persons injured through
12 the fault of others;
13 (4) increase the predictability of case outcomes to reduce inappropriate

1 litigation and settlement behavior; and

2 (5) collect information on the civil justice system and on the insurance industry
3 to inform the public policy debate on tort reform related issues.

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8 * **Sec. 3.** AS 09.10.050 is repealed and reenacted to read: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. 09.10.065. Contract actions to be brought in three years.** Unless an
14 action is commenced within three years, a person may not bring an action upon a
15 contract or liability, express or implied, excepting those described in AS 09.10.040 or
16 as otherwise provided by law.

17 * **Sec. 5.** AS 09.10.070(a) is amended to read:

18 (a) A person may not bring an action (1) for libel, slander, assault, battery,
19 seduction, false imprisonment, or for any injury to the person or rights of another not
20 arising on contract and not specifically provided otherwise; (2) **for taking, detaining,**
21 **or injuring personal property, including an action for its specific recovery;** (3)
22 upon a statute for a forfeiture or penalty to the state; or (4) [(3)] upon a liability
23 created by statute, other than a penalty or forfeiture; unless the action is commenced
24 within two years.

25 * **Sec. 6.** AS 09.17.010(c) is amended to read:

26 (c) The limit under (b) of this section does not apply to damages for **severe**
27 disfigurement or severe physical impairment.

28 * **Sec. 7.** AS 09.17.020 is repealed and reenacted to read:

29 **Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of
30 punitive damages is presented to the fact finder, the fact finder shall determine,
31 concurrent with all other issues presented, whether punitive damages shall be allowed

1 by using the standards set out in (b) of this section. If punitive damages are allowed,
2 a separate proceeding under (c) of this section shall be conducted before the same fact
3 finder to determine the amount of punitive damages to be awarded.

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

6 (1) was outrageous;

7 (2) was the result of malicious or hostile feelings toward the plaintiff;

8 or

9 (3) evidenced reckless indifference to the rights or safety of others.

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

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

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

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

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

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

22 (6) the financial condition of the defendant; and

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

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

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

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

8 (f) Except as provided in (g) of this section or otherwise provided by law, an
 9 award of punitive damages may not exceed the greater of

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

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

13 (g) Except as otherwise provided by law, if the fact finder finds that the
 14 conduct proven under (b) of this section was motivated by financial gain, it may award
 15 an amount of punitive damages not to exceed the greatest of

16 (1) the amount calculated under the limitation in (f) of this section;

17 (2) the average net annual income earned by the defendant for the five
 18 years before the date the trial began; or

19 (3) two times the amount of financial gain that the defendant received
 20 or expected to receive as a result of the defendant's misconduct.

21 (h) Punitive damages may not be awarded against a person that is immune by
 22 law from an award of punitive damages.

23 * **Sec. 8.** AS 09.17.900 is amended to read:

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

1 * **Sec. 9.** AS 09.30.065 is amended to read:

2 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
3 the trial begins, either the party making a claim or the party defending against a claim
4 may serve upon the adverse party an offer to allow judgment to be entered in complete
5 satisfaction of the claim for the money or property or to the effect specified in the
6 offer, with costs then accrued. If within 10 days after the service of the offer the
7 adverse party serves written notice that the offer is accepted, either party may then file
8 the offer and notice of acceptance together with proof of service, and the clerk shall
9 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
10 evidence of that offer is not admissible except in a proceeding to determine the form
11 of judgment after verdict. If the judgment finally entered on the claim as to which an
12 offer has been made under this section is not more favorable to the offeree than the
13 offer, the interest awarded under AS 09.30.070 and accrued up to the date judgment
14 is entered shall be adjusted as follows:

15 (1) if the offeree is the party making the claim, the interest rate shall
16 be **adjusted as follows:**

17 **(A) if the offer was served no later than 30 days after both**
18 **parties made the disclosures required by Rule 26(a)(1), Alaska Rules of**
19 **Civil Procedure, the interest rate shall be reduced by five percent;**

20 **(B) if the offer was served more than 30 days after both**
21 **parties made the disclosures required by Rule 26(a)(1), Alaska Rules of**
22 **Civil Procedure, but more than 90 days before the trial began, the interest**
23 **rate shall be reduced by three percent;**

24 **(C) if the offer was served 90 days or less but more than 10**
25 **days before the trial began, the interest rate shall be reduced by two**
26 **percent; this subparagraph does apply if the offer is also subject to (A) of**
27 **this paragraph** [REDUCED BY FIVE PERCENT A YEAR];

28 (2) if the offeree is the party defending against the claim, the interest
29 rate shall be **adjusted as follows:**

30 **(A) if the offer was served no later than 30 days after both**
31 **parties made the disclosures required by Rule 26(a)(1), Alaska Rules of**

1 **Civil Procedure, the interest rate shall be increased by five percent;**

2 **(B) if the offer was served more than 30 days after both**
 3 **parties made the disclosures required by Rule 26(a)(1), Alaska Rules of**
 4 **Civil Procedure, but more than 90 days before the trial began, the interest**
 5 **rate shall be increased by three percent;**

6 **(C) if the offer was served 90 days or less but more than 10**
 7 **days before the trial began, the interest rate shall be increased by two**
 8 **percent; this subparagraph does not apply if the offer is also subject to (A)**
 9 **of this paragraph** [INCREASED BY FIVE PERCENT A YEAR].

10 * **Sec. 10.** AS 09.30.070(a) is amended to read:

11 (a) **Notwithstanding AS 45.45.010, the** [THE] rate of interest on judgments
 12 and decrees for the payment of money, **including prejudgment interest, shall be**
 13 **determined in accordance with (c) of this section** [IS 10.5 PERCENT A YEAR],
 14 except that a judgment or decree founded on a contract in writing, providing for the
 15 payment of interest until paid at a specified rate not exceeding the legal rate of interest
 16 for that type of contract, bears interest at the rate specified in the contract if the
 17 interest rate is set out in the judgment or decree.

18 * **Sec. 11.** AS 09.30.070 is amended by adding a new subsection to read:

19 (c) Except as otherwise provided in (a) of this section, the rate of interest on
 20 judgments and decrees for the payment of money is the rate for a five-year constant
 21 maturity United States Treasury note published in the applicable Federal Reserve H.15
 22 Statistical Release, plus one and one-half percent. This rate is the rate in effect as of
 23 the first business day of the month during which prejudgment interest begins to accrue
 24 on a claim under (b) of this section and remains constant with respect to the claim
 25 until the judgment or decree is satisfied. This rate of interest shall be determined as
 26 of the first business day of every month by the administrative director of the Alaska
 27 Court System.

28 * **Sec. 12.** AS 09.43 is amended by adding a new article to read:

29 **Article 3. Alternative Dispute Resolution.**

30 **Sec. 09.43.310. Findings; purpose.** The legislature finds that providing a
 31 formalized program of alternative dispute resolution procedures within the existing

1 civil litigation system can promote the timely and efficient resolution of many civil
 2 disputes. The purpose of AS 09.43.310 - 09.43.390 is to provide for an initial pilot
 3 program of alternative dispute resolution of certain civil cases filed in the superior
 4 court on or after January 1, 1998.

5 **Sec. 09.43.320. Pilot program for alternative dispute resolution.** (a) The
 6 supreme court shall provide for a pilot program under AS 09.43.310 - 09.43.390 for
 7 the submission of civil cases filed in the superior court, Third Judicial District, to
 8 alternative dispute resolution procedures. The program shall begin January 1, 1998,
 9 and operate for at least five years.

10 (b) The following types of cases may not be included in the pilot program:

- 11 (1) divorce and dissolution;
- 12 (2) adoption, custody, support, visitation, and emancipation of children;
- 13 (3) children in need of aid cases under AS 47.10 or delinquent minors
 14 cases under AS 47.12;
- 15 (4) domestic violence protective orders under AS 18.66.100 -
 16 18.66.180;
- 17 (5) estate, guardianship, and trust cases filed under AS 13;
- 18 (6) cases when no answer to the complaint or petition is filed by any
 19 party to the case with the court.

20 **Sec. 09.43.330. Structure of pilot program.** (a) The supreme court shall
 21 provide criteria for the screening of covered cases under the program to determine if
 22 the cases are appropriate for referral to alternative dispute resolution. The criteria shall
 23 be constructed so that at least 50 percent of the estimated number of covered cases
 24 filed in a calendar year are referred to alternative dispute resolution.

25 (b) The supreme court shall establish minimum qualifications for a person to
 26 be listed to conduct alternative dispute resolution procedures under AS 09.43.310 -
 27 09.43.390. The supreme court shall establish a list of persons determined to meet
 28 those qualifications and the current schedule of fees charged by the person listed.

29 (c) For a case referred under the program, the parties may mutually agree to
 30 select a person to conduct the alternative dispute resolution procedure regardless of
 31 whether the person appears on the list established under (b) of this section or whether

1 the person meets the minimum qualifications to be selected for the list. If an
 2 agreement cannot be reached, the trial court judge assigned the case shall appoint a
 3 person from the list. A person selected or appointed under this subsection has judicial
 4 immunity for conducting the alternative dispute procedure to the same extent as a
 5 judge and shall abide by applicable rules of confidentiality related to alternative dispute
 6 resolution procedures established by the supreme court.

7 (d) Fees and costs to conduct an alternative dispute resolution procedure under
 8 AS 09.43.310 - 09.43.390 shall be shared equally among the parties to the case being
 9 referred unless the court finds a party wholly or partially indigent and orders total or
 10 partial payment at public expense. The supreme court shall establish guidelines for the
 11 determination of total or partial indigency under the program. Fees and costs borne
 12 at public expense under this subsection constitute a lien on any recovery in the case
 13 by that party and shall be paid first from the recovery.

14 (e) The superior court shall establish standards for the timely referral to and
 15 the conclusion of the alternative dispute resolution procedure required under this
 16 program. The standards must include that the alternative dispute resolution procedure

17 (1) shall terminate no more than 100 days after the defendant's answer
 18 is served unless the trial court grants a time extension in an exceptional case and for
 19 good cause shown; and

20 (2) be limited to no more than 12 hours for the procedure unless the
 21 parties mutually agree to a longer period.

22 **Sec. 09.43.340. Evaluation of pilot program.** (a) The Alaska Judicial
 23 Council shall evaluate annually the efficacy of the pilot program. Among other
 24 factors, the evaluation shall address the speed with which cases are resolved, the
 25 satisfaction of the parties to the cases, the expenditures made by the parties to the
 26 cases, and the expenditure of court resources.

27 (b) The council shall work with the court system to create a system for
 28 efficient collection of information needed to evaluate the program. The council shall
 29 report the results of its evaluation to the governor and legislature each year by
 30 March 31.

31 **Sec. 09.43.390. Definitions.** In AS 09.43.310 - 09.43.390,

1 (1) "alternative dispute resolution procedure" includes mediation and
2 early neutral evaluation;

3 (2) "covered cases" means civil cases described in AS 09.43.320(a) and
4 not excluded from participation in the program by AS 09.43.320(b);

5 (3) "program" means the alternative dispute resolution pilot program
6 established in AS 09.43.320.

7 * **Sec. 13.** AS 09.50.280 is amended to read:

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

12 * **Sec. 14.** AS 09.55.440(a) is amended to read:

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

23 * **Sec. 15.** AS 09.55.535 is repealed and reenacted to read:

24 **Sec. 09.55.535. Mandatory arbitration.** (a) A person who files an action for
25 personal injury, death, or property damage shall also submit the claim to the court for
26 arbitration unless the action is excluded under (b) of this section.

27 (b) A person is not required to comply with (a) of this section if the

28 (1) amount in controversy, excluding interest, costs, and attorney fees,
29 exceeds \$100,000;

30 (2) parties have, under a written agreement made before the accrual of
31 the action, agreed to submit the claim to arbitration; or

- 1 (3) action
- 2 (A) is a class action;
- 3 (B) seeks equitable or declaratory relief;
- 4 (C) concerns the title to real property;
- 5 (D) is a probate action;
- 6 (E) is an appeal from a court of limited jurisdiction;
- 7 (F) involves divorce or domestic relations;
- 8 (G) is an appeal from action by an administrative agency;
- 9 (H) is subject to the alternative dispute resolution procedure
- 10 under AS 09.43.320;
- 11 (I) is a small claims action.

12 (c) When a claim is submitted as required by (a) of this section, the court shall

13 appoint an arbitrator to review the claim. The arbitrator appointed to review the claim

14 shall interview the parties and examine all records or materials relating to the claim

15 and may compel the attendance of witnesses, interview the parties, or consult with

16 medical specialists.

17 (d) An arbitrator appointed under this section shall conduct a prehearing

18 settlement conference within 30 days after the appointment. The arbitrator shall

19 establish a period for discovery and a date for a hearing. The hearing date may not

20 be more than 120 days after the settlement conference.

21 (e) An arbitrator shall render a decision within 30 days after hearing a claim

22 under (d) of this section. The decision must contain findings of fact and conclusions

23 of law. The decision of the arbitrator may be rejected by a party.

24 (f) If the decision of the arbitrator is rejected by a party, the action may

25 proceed in the appropriate court. The arbitrator's decision is admissible in that action

26 to the extent allowed under the Alaska Rules of Evidence and may be used by a party

27 to support or oppose a claim of damages. If a party rejects the decision of the

28 arbitrator and litigates the action in court but is not the prevailing party in the action,

29 the court shall award actual costs and attorney fees to the opposing party.

30 (g) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)

31 apply to an arbitration under this section to the extent the provisions do not conflict

1 with the provisions of this section.

2 * **Sec. 16.** AS 09.65.210 is repealed and reenacted to read:

3 **Sec. 09.65.210. Damages resulting from the commission of a felony or**
 4 **other conduct that would constitute a felony.** (a) Except as provided in (b) of this
 5 section, a person who suffers personal injury or death may not recover damages for
 6 the personal injury or death if the injury or death occurred while the person was

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

10 (2) engaged in conduct that would constitute the commission of an
 11 unclassified felony or a class A or class B felony for which the person was not
 12 convicted and if the conduct

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

14 (B) is proven by the defendant in the civil trial by clear and
 15 convincing evidence; or

16 (3) fleeing after the commission, by that person, of conduct that would
 17 constitute an unclassified felony or a class A or class B felony, or being apprehended
 18 for conduct that would constitute an unclassified felony or class A or class B felony
 19 if

20 (A) the conduct during the flight or apprehension substantially
 21 contributed to the injury or death; and

22 (B) the conduct that would constitute a felony is proven by the
 23 defendant in the civil trial by clear and convincing evidence.

24 (b) If the person is acquitted of all unclassified, class A, and class B felonies
 25 arising from the conduct, this section does not preclude the person from recovering
 26 damages for those injuries or death.

27 (c) This section does not affect a right of action under 42 U.S.C. 1983.

28 * **Sec. 17.** AS 09.68 is amended by adding a new section to read:

29 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
 30 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
 31 information relating to the compromise or other settlement of all civil litigation. The

1 information, including the case name and file number, a general description of the
 2 claims being settled, the dollar amount of the settlement, to whom it is to be paid, and
 3 any nonmonetary terms, shall be collected on a form developed by the council for that
 4 purpose.

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

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

11 (1) divorce and dissolution;

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

13 (3) children in need of aid cases under AS 47.10 or delinquent minors
 14 cases under AS 47.12;

15 (4) domestic violence protective orders under AS 18.66.100 -
 16 18.66.180;

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

18 (6) small claims under AS 22.15.040.

19 * **Sec. 18.** AS 18.80 is amended by adding a new section to read:

20 **Sec. 18.80.225. Punitive damages for unlawful employment practices.** (a)

21 In an action against an employer to recover damages for an unlawful employment
 22 practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the
 23 court or jury may not exceed

24 (1) \$50,000 if the employer has less than 101 employees;

25 (2) \$100,000 if the employer has more than 100 but less than 201
 26 employees;

27 (3) \$200,000 if the employer has more than 200 but less than 501
 28 employees;

29 (4) \$300,000 if the employer has more than 500 employees.

30 (b) This section may not be construed to allow an award of punitive damages
 31 against the state.

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

3 * **Sec. 19.** AS 21.06 is amended by adding a new section to read:

4 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
 5 and shall compile information necessary to evaluate

6 (1) the effect of the measures enacted in this Act on the availability and
 7 cost of insurance in the state; and

8 (2) the financial health and profitability of insurers doing business in
 9 the state.

10 (b) Information described in (a) of this section shall be provided by all insurers
 11 doing business in this state in the format specified by the director and must include
 12 factual information stating premiums, claims, expenses, and an allocation of investment
 13 profits or losses by line of business written in this state. Information shall be compiled
 14 by the division in a way that protects the identity of individual insureds.

15 (c) The director shall adopt regulations to implement and interpret this section,
 16 including requiring insurers doing business in the state to provide information
 17 necessary for the division of insurance to carry out its responsibilities under (a) and
 18 (b) of this section.

19 (d) Beginning June 1, 1999, the information compiled under (a) of this section
 20 shall be reported to the governor and the legislature annually.

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. 20.** AS 21.36 is amended by adding a new section to read:

25 **Sec. 21.36.128. Civil action for claim settlement practices.** (a) A person
 26 who alleges a violation of AS 21.36.125 or a violation of a trade practice or claim
 27 settlement regulation adopted by the director may bring a civil action for damages.
 28 Notwithstanding any other provision of law, a person bringing an action under this
 29 section may not be required to prove that the violation occurred with a frequency that
 30 indicates a general business practice.

31 (b) Before filing a civil action under (a) of this section, the person filing the

1 action shall give at least 60 days written notice to the person who committed the
2 violation. Notice required under this subsection must include

3 (1) a copy of the statute or regulation that the person is claimed to have
4 violated;

5 (2) the facts and circumstances giving rise to the violation;

6 (3) the name of any individual involved in the violation;

7 (4) reference to any policy that is relevant to the violation; this
8 paragraph does not apply if the person bringing the civil action is a third party
9 claimant unless the insurer has provided the person bringing the civil action with a
10 copy of the policy; and

11 (5) a statement that the notice is given in compliance with this
12 subsection.

13 (c) If, within 60 days after notice required under (b) of this section is received
14 by the insurer, the insurer pays the damages claimed by the person bringing the action
15 or corrects the settlement practice giving rise to the action, a person may not bring an
16 action under (a) of this section.

17 (d) If an insurer receives a notice described under (b) of this section or settles
18 an alleged violation as provided under (c) of this section, the insurer shall provide a
19 copy of the notice to the director or notify the director of the settlement within 30 days
20 after receiving the notice or settling the matter.

21 (e) Upon mailing or delivering the notice required under (b) of this section,
22 the applicable time limit for commencing an action under (a) of this section shall be
23 tolled for 65 days.

24 (f) If the person filing an action under (a) of this section is a prevailing party,
25 the person may recover

26 (1) costs and reasonable attorney fees; and

27 (2) damages that are foreseeable as a result of the violation, including
28 damages in excess of applicable insurance policy limits.

29 (g) Notwithstanding any other provision of law, a person filing an action under
30 (a) of this section may recover punitive damages if the act or omission giving rise to
31 the violation is

- 1 (1) wilful, wanton, or malicious; or
 2 (2) in reckless disregard of the rights of the person filing the civil
 3 action.

4 (h) The rights provided under this section are in addition to other rights
 5 provided by law.

6 * **Sec. 21.** AS 22.10.020(i) is amended to read:

7 (i) The superior court is the court of original jurisdiction over all causes of
 8 action arising under the provisions of AS 18.80. A person who is injured or aggrieved
 9 by an act, practice, or policy **that** [WHICH] is prohibited under AS 18.80 may apply
 10 to the superior court for relief. The person aggrieved or injured may maintain an
 11 action on behalf of that person or on behalf of a class consisting of all persons who
 12 are aggrieved or injured by the act, practice, or policy giving rise to the action. In an
 13 action brought under this subsection, the court may grant relief as to any act, practice,
 14 or policy of the defendant **that** [WHICH] is prohibited by AS 18.80, regardless of
 15 whether each act, practice, or policy, with respect to which relief is granted, directly
 16 affects the plaintiff, so long as a class or members of a class of which the plaintiff is
 17 a member are or may be aggrieved or injured by the act, practice, or policy. The court
 18 may enjoin any act, practice, or policy **that** [WHICH] is illegal under AS 18.80 and
 19 may, **subject to AS 18.80.225**, order any other relief, including the payment of money,
 20 that is appropriate.

21 * **Sec. 22.** AS 22.15.030(a) is amended to read:

22 (a) The district court has jurisdiction of civil cases, including foreign
 23 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170,
 24 as follows:

25 (1) for the recovery of money or damages when the amount claimed
 26 exclusive of costs, interest, and attorney fees does not exceed **\$100,000** [\$50,000];

27 (2) for the recovery of specific personal property [,] when the value of
 28 the property claimed and the damages for the detention do not exceed **\$100,000**
 29 [\$50,000];

30 (3) for the recovery of a penalty or forfeiture, whether given by statute
 31 or arising out of contract, not exceeding **\$100,000** [\$50,000];

1 (4) to give judgment without action upon the confession of the
2 defendant for any of the cases specified in this section, except for a penalty or
3 forfeiture imposed by statute;

4 (5) for establishing the fact of death or cause and manner of death of
5 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

6 (6) for the recovery of the possession of premises in the manner
7 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage
8 to the property does not exceed \$100,000 [\$50,000];

9 (7) for the foreclosure of a lien when the amount in controversy does
10 not exceed \$100,000 [\$50,000];

11 (8) for the recovery of money or damages in motor vehicle tort cases
12 when the amount claimed exclusive of costs, interest, and attorney fees does not
13 exceed \$100,000 [\$50,000];

14 (9) over civil actions for taking utility service and for damages to or
15 interference with a utility line filed under AS 42.20.030;

16 (10) over cases involving protective orders for domestic violence under
17 AS 18.66.100 - 18.66.180.

18 * **Sec. 23.** AS 28.22 is amended by adding a new section to read:

19 **Sec. 28.22.150. Required medical payment policy provision.** If the
20 insurance carrier denies coverage for a claim for medical treatment by the insured
21 under a motor vehicle liability policy that contains medical coverage and the claim is
22 later determined to be covered under the policy, the insurance carrier shall pay the
23 insured's

24 (1) actual costs, plus interest from the date the claim is received by the
25 insurer; and

26 (2) actual attorney fees or an amount equal to 50 percent of the
27 disputed claim, whichever is greater; actual attorney fees awarded under this paragraph
28 may not exceed \$250 per hour of work performed.

29 * **Sec. 24.** AS 28.22.201(a) is amended to read:

30 (a) The uninsured and underinsured motorists coverage required under this
31 chapter

1 (1) **applies** [DOES NOT APPLY] to bodily injury, sickness, disease,
 2 or death of an insured or damage to or destruction of property of an insured **even if**
 3 [UNTIL] the limits of liability bonds and policies that apply have **not** been used up
 4 by payments or judgments or settlements; **however, the insurer shall, in each**
 5 **instance, receive a credit against the insured's total damages for amounts actually**
 6 **received by the insured for covered claims from other sources, including liability**
 7 **bonds, other insurance policies, judgments, or settlements;**

8 (2) must be a single combined coverage; and

9 (3) may be rejected by the insured in writing; if the insured has rejected
 10 uninsured or underinsured coverage, the coverage may not be included in a
 11 supplemental, renewal, or replacement policy unless the insured subsequently requests
 12 uninsured or underinsured coverage in writing.

13 * **Sec. 25.** Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

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

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

23 (3) That the procedure for listing witnesses and exhibits and providing
 24 exhibit copies, as set forth in paragraph (d) of this rule has been completed;

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

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

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

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

1 (8) That the parties have complied with paragraph (k) of this rule.

2 * **Sec. 26.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

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

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

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

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

22 (4) whether a scheduling conference is unnecessary;

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

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

28 * **Sec. 27.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
 29 paragraph to read:

30 (3) **Settlement Information.** If a voluntary dismissal under this rule is
 31 the result of compromise or other settlement of the parties, the parties shall submit to

1 the Alaska Judicial Council the information required under AS 09.68.130. A notice
 2 of dismissal made under (1)[a] of this subsection must be accompanied by a
 3 certification signed by or on behalf of the plaintiff that the information required under
 4 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
 5 dismissal made under (1)[b] of this subsection must be accompanied by such a
 6 certification signed by or on behalf of all parties who have appeared in the action.
 7 The requirements of this paragraph do not apply to the types of cases listed in
 8 AS 09.68.130(c).

9 * **Sec. 28.** Rule 68, Alaska Rules of Civil Procedure, is repealed and reenacted to read:

10 **Rule 68. Offer of Judgment.** (a) At any time more than 10 days before the
 11 trial begins, either the party making a claim or the party defending against a claim may
 12 serve upon the adverse party an offer to allow judgment to be entered in complete
 13 satisfaction of the claim for the money or property or to the effect specified in the
 14 offer, with costs then accrued. The offer may not be revoked in the 10-day period
 15 following service of the offer. If, within 10 days after service of the offer, the adverse
 16 party serves written notice that the offer is accepted, either party may then file the
 17 offer and notice of acceptance together with proof of service, and the clerk shall enter
 18 judgment. An offer not accepted within 10 days is considered withdrawn, and
 19 evidence of the offer is not admissible except in a proceeding to determine costs. The
 20 fact that an offer is made but not accepted does not preclude a subsequent offer.

21 (b) If the judgment finally rendered by the court is not more favorable to the
 22 offeree than the offer, the prejudgment interest accrued up to the date judgment is
 23 entered shall be adjusted as follows:

24 (1) if the offeree is the party making the claim, the interest rate will be
 25 reduced by the amount specified in AS 09.30.065;

26 (2) if the offeree is the party defending against the claim, the interest
 27 rate will be increased by the amount specified in AS 09.30.065.

28 (c) If the judgment finally rendered by the court is not more favorable to the
 29 offeree than the offer, the court's award of attorney's fees under Rule 82 shall be
 30 adjusted as follows:

31 (1) if the offeree is the party making the claim, the court shall adjust

1 its award of attorney's fees to the offeree as follows:

2 (A) if the offer was served no later than 30 days after both
3 parties made the disclosures required by Rule 26(a)(1), the attorney's fees
4 award shall be reduced by 50 percent;

5 (B) if the offer was served more than 30 days after both parties
6 made the disclosures required by Rule 26(a)(1) but more than 90 days before
7 the trial began, the attorney's fees award shall be reduced by 30 percent;

8 (C) if the offer was served 90 days or less but more than 10
9 days before the trial began, the attorney's fees award shall be reduced by 20
10 percent;

11 (2) if the offeree is the party defending against the claim, the court
12 shall adjust its award of attorney's fees to the offeror as follows:

13 (A) if the offer was served no later than 30 days after both
14 parties made the disclosures required by Rule 26(a)(1), the attorney's fees
15 award shall be increased by 50 percent;

16 (B) if the offer was served more than 30 days after both parties
17 made the disclosures required by Rule 26(a)(1) but more than 90 days before
18 the trial began, the attorney's fees award shall be increased by 30 percent;

19 (C) if the offer was served 90 days or less but more than 10
20 days before the trial began, the attorney's fees award shall be increased by 20
21 percent.

22 (d) When the liability of one party to another has been determined by verdict,
23 order, or judgment, but the amount or extent of the liability remains to be determined
24 by further proceedings, the party adjudged liable may make an offer of judgment,
25 which shall have the same effect as an offer made 90 days or less but more than 10
26 days before trial begins, if it is served not less than 10 days before the commencement
27 of hearings to determine the amount or extent of liability.

28 * **Sec. 29.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

29 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
30 the report of the panel has been filed or until **60 days after selection of the panel** [80
31 DAYS HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever

1 is first to occur, unless discovery is further stayed for good cause by order of the court.

2 * **Sec. 30.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

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

8 * **Sec. 31.** Rule 1(a)(1), District Court Rules of Civil Procedure is amended to read:

9 (1) The procedure in civil actions and proceedings before district judges
10 and magistrates shall be governed by the rules governing the procedure in the superior
11 court to the extent that such rules are applicable. **However, unless otherwise agreed**
12 **by all parties or permitted by order of the court in exceptional cases and for good**
13 **cause shown, discovery shall be limited to the disclosures required under Civil**
14 **Rule 26(a) and to the taking by each party of the deposition of one or more**
15 **opposing parties and of one additional person who is not a party.**

16 * **Sec. 32.** Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
17 subsection to read:

18 (b) Unless otherwise permitted by order of the court in exceptional cases and
19 for good cause shown, all parties shall file a memorandum to set the case for trial, as
20 set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all
21 parties to the case. The parties shall submit a joint memorandum to set the case for
22 trial, which may state their separate positions if they do not agree concerning the
23 information or estimates to be provided in the memorandum. The court shall set the
24 trial to commence on a date not less than 30 and not more than 90 days after the filing
25 of the memorandum to set the case for trial, unless a continuance is granted by the
26 court under Civil Rule 40(e).

27 * **Sec. 33.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
28 subsection to read:

29 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
30 result of compromise or other settlement between the parties, the parties shall submit
31 to the Alaska Judicial Council the information required under AS 09.68.130. A

1 dismissal by agreement under (a) of this rule must be accompanied by a certification
2 signed by the attorneys of record for all parties that the information required under
3 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
4 appellant or petitioner made under (b) of this rule must be accompanied by such a
5 certification signed by the appellant's or petitioner's attorney of record. The
6 requirements of this subsection do not apply to the types of cases listed in
7 AS 09.68.130(c).

8 * **Sec. 34.** AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.560(2), and
9 09.55.560(3) are repealed.

10 * **Sec. 35.** AS 28.20.445(c), 28.20.445(h); AS 28.22.211, and AS 28.40.100(a)(22) are
11 repealed.

12 * **Sec. 36.** Rules 16.1(k)(4) and 72.1, Alaska Rules of Civil Procedure, are repealed.

13 * **Sec. 37.** AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of this
14 Act, have the effect of amending

15 (1) Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to conduct
16 a separate proceeding for the determination of a punitive damages award after it has
17 determined that punitive damages are allowed in a case; and

18 (2) Rule 26(b) and (d), Alaska Rules of Civil Procedure, by affecting the
19 scope, limits, timing, and sequence of discovery allowed in a case.

20 * **Sec. 38.** AS 09.30.065, as amended by sec. 9 of this Act, has the effect of amending
21 Rule 68, Alaska Rules of Civil Procedure, by altering the manner in which interest under
22 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the
23 offeree than the offer.

24 * **Sec. 39.** AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, has the effect of
25 amending Rule 100, Alaska Rules of Civil Procedure, by making the mediation process
26 mandatory for certain civil cases in the superior court, Third Judicial District, and by
27 expanding the scope of the rule to include other forms of alternative dispute resolution in
28 addition to mediation.

29 * **Sec. 40.** AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending
30 Rule 79(b), Alaska Rule of Civil Procedure, by allowing the award of actual costs in certain
31 actions.

1 * **Sec. 41.** AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending
2 Rule 82(b), Alaska Rule of Civil Procedure, by allowing the award of actual attorney fees in
3 certain actions.

4 * **Sec. 42.** AS 28.22.150(2), enacted by sec. 23 of this Act, amends Rule 82(b), Alaska
5 Rules of Civil Procedure, by providing for attorney fee awards in certain cases that may differ
6 from those awarded under Rule 82(b).

7 * **Sec. 43.** APPLICABILITY. (a) Sections 1, 9, 15, 18, 20, 22, 25, 26, 28 - 32, 34, and
8 35 of this Act apply to all civil actions filed on or after the effective date of those sections.

9 (b) Sections 3 - 8, 10, 11, 13, 16, and 21 of this Act apply to all causes of action
10 accruing on or after the effective date of those sections.

11 (c) Section 12 of this Act applies only to those civil actions covered by the pilot
12 program for alternative dispute resolution established under the provisions of AS 09.43.310 -
13 09.43.390, as enacted by sec. 11 of this Act, filed on or after January 1, 1998.

14 (d) Sections 17, 27, and 33 of this Act apply only to all voluntary dismissals of civil
15 actions filed with the state court on or after January 1, 1998.

16 (e) Sections 19, 23, 24, and 35 of this Act apply to all insurers doing business in this
17 state on or after the effective date of those sections.

18 * **Sec. 44.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
19 application of a provision of this Act to any person or circumstance is held invalid, the
20 remainder of this Act and the application to other persons shall not be affected.

21 * **Sec. 45.** REVISOR'S INSTRUCTION. Due to the addition of AS 09.43.310 - 09.43.390
22 in sec. 12 of this Act, in AS 21.89.100(d), the revisor of statutes shall substitute
23 "AS 09.43.010 - 09.43.220" for "AS 09.43."

24 * **Sec. 46.** (a) AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of
25 this Act, take effect only if sec. 37 of this Act receives the two-thirds majority vote of each
26 house required by art. IV, sec. 15, Constitution of the State of Alaska.

27 (b) AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, takes effect only if
28 sec. 38 of this Act receives the two-thirds majority vote of each house required by art. IV,
29 sec. 15, Constitution of the State of Alaska.

30 (c) The amendments or the repeal of the following court rules takes effect only if all
31 amendments and the repeal listed in this subsection receive the two-thirds majority vote of

1 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

2 (1) Rule 16.1(c), Alaska Rules of Civil Procedure, as amended by sec. 25 of
3 this Act;

4 (2) Rule 16.1(n), Alaska Rules of Civil Procedure, as amended by sec. 26 of
5 this Act;

6 (3) Rule 16.1(k)(4), Alaska Rules of Civil Procedure, repealed by sec. 36 of
7 this Act.

8 (d) AS 09.68.130, as enacted by sec. 17 of this Act, takes effect only if secs. 27 and
9 33 both receive the two-thirds majority vote of each house required by art. IV, sec. 15,
10 Constitution of the State of Alaska.

11 * **Sec. 47.** Sections 1 - 8, 10 - 16, 18 - 24, 34, 35, and 37 - 46 of this Act take effect
12 immediately under AS 01.10.070(c).