

SENATE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/13/97

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; providing for related insurance reports;
2 amending Alaska Rules of Civil Procedure 16.1, 26, 41, 49, 68, 72.1, 95, and
3 100; amending District Court Rules of Civil Procedure 1 and 4; amending
4 Alaska Rule of Appellate Procedure 511; and providing for an effective date."

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

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

7 (1) reduce the time and costs associated with civil litigation;

8 (2) improve access to justice for individuals and small businesses;

9 (3) provide for fair but not excessive compensation for persons injured through
10 the fault of others;

11 (4) increase the predictability of case outcomes to reduce inappropriate
12 litigation and settlement behavior; and

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

1 * **Sec. 2.** AS 09.10.050 is repealed and reenacted to read:

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

5 * **Sec. 3.** AS 09.10 is amended by adding a new section to read:

6 **Sec. 09.10.065. Contract actions to be brought in three years.** Unless an
7 action is commenced within three years, a person may not bring an action upon a
8 contract or liability, express or implied, excepting those described in AS 09.10.040 or
9 as otherwise provided by law.

10 * **Sec. 4.** AS 09.10.070(a) is amended to read:

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

18 * **Sec. 5.** AS 09.17.010(c) is amended to read:

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

21 * **Sec. 6.** AS 09.17.020 is repealed and reenacted to read:

22 **Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of
23 punitive damages is presented to the fact finder, the fact finder shall determine,
24 concurrent with all other issues presented, whether punitive damages shall be allowed
25 by using the standards set out in (b) of this section. If punitive damages are allowed,
26 a separate proceeding under (c) of this section shall be conducted before the same fact
27 finder to determine the amount of punitive damages to be awarded.

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

30 (1) was outrageous;

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

1 or

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

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

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

7 (2) the degree of the defendant's awareness of that likelihood;

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

10 (4) the duration of the misconduct and any intentional concealment of
11 it;

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

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

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

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

22 (e) Unless that evidence is relevant to another issue in the case, discovery of
23 evidence that is relevant to the amount of punitive damages to be determined under
24 (c)(3) or (c)(6) of this section may not be conducted until after the fact finder has
25 determined that an award of punitive damages is allowed under (a) and (b) of this
26 section. The court may issue such orders as necessary, including directing the parties
27 to have the information relevant to the amount of punitive damages to be determined
28 under (c)(3) or (c)(6) of this section available for production immediately at the close
29 of the initial trial, so as to minimize the delay between the initial trial and the separate
30 proceeding to determine the amount of punitive damages.

31 (f) Except as provided in (g) or (h) of this section or otherwise provided by

1 law, an award of punitive damages may not exceed the greater of

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

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

5 (g) Except as provided in (h) of this section or otherwise provided by law, if
6 the fact finder finds that the conduct proven under (b) of this section was motivated
7 by financial gain, it may award an amount of punitive damages not to exceed the
8 greatest of

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

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

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

14 (h) Notwithstanding (g) of this section and except as otherwise provided by
15 law, if the fact finder finds that the conduct proven under (b) of this section was
16 employment-related, an award of punitive damages may not exceed

17 (1) the amount calculated under the limitations of (f) of this section,
18 if the conduct of the employer affected only one employee; or

19 (2) the greater of the amounts calculated under the limitations of (f) or
20 (g) of this section, if the employer engaged in a pattern or practice affecting more than
21 one employee.

22 (i) Punitive damages may not be awarded against a person or an entity that is
23 immune by law from an award of punitive damages.

24 (j) In this section, "employment-related" includes conduct of hiring, firing,
25 transferring, promoting, demoting, or terminating an employee by an employer.

26 * **Sec. 7.** AS 09.17.900 is amended to read:

27 **Sec. 09.17.900. Definition.** In this chapter "fault" includes acts or omissions
28 that are in any measure negligent, [OR] reckless, or intentional toward the person or
29 property of the actor or others, or that subject a person to strict tort liability. The term
30 also includes breach of warranty, unreasonable assumption of risk not constituting an
31 enforceable express consent, misuse of a product for which the defendant otherwise

1 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
 2 Legal requirements of causal relation apply both to fault as the basis for liability and
 3 to contributory fault.

4 * **Sec. 8.** AS 09.30.065 is amended to read:

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

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

20 **(A) if the offer was served no later than 30 days after both**
 21 **parties made the disclosures required by Alaska Rule of Civil Procedure**
 22 **26(a)(1), the interest rate shall be reduced by five percent;**

23 **(B) if the offer was served more than 30 days after both**
 24 **parties made the disclosures required by Alaska Rule of Civil Procedure**
 25 **26(a)(1), but more than 90 days before the trial began, the interest rate**
 26 **shall be reduced by three percent;**

27 **(C) if the offer was served 90 days or less but more than**
 28 **10 days before the trial began, the interest rate shall be reduced by two**
 29 **percent [REDUCED BY FIVE PERCENT A YEAR];**

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

1 (A) if the offer was served no later than 30 days after both
 2 parties made the disclosures required by Alaska Rule of Civil Procedure
 3 26(a)(1), the interest rate shall be increased by five percent;

4 (B) if the offer was served more than 30 days after both
 5 parties made the disclosures required by Alaska Rule of Civil Procedure
 6 26(a)(1), but more than 90 days before the trial began, the interest rate
 7 shall be increased by three percent;

8 (C) if the offer was served 90 days or less but more than 10
 9 days before the trial began, the interest rate shall be increased by two
 10 percent [INCREASED BY FIVE PERCENT A YEAR].

11 * **Sec. 9.** AS 09.30.070(a) is amended to read:

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

19 * **Sec. 10.** AS 09.30.070 is amended by adding a new subsection to read:

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

29 * **Sec. 11.** AS 09 is amended by adding a new chapter to read:

30 **Chapter 42. Alternative Dispute Resolution.**

31 **Sec. 09.42.010. Findings; purpose.** The legislature finds that providing a

1 formalized program of alternative dispute resolution procedures within the existing
 2 civil litigation system can promote the timely and efficient resolution of many civil
 3 disputes. The purpose of this chapter is to provide for an initial pilot program of
 4 alternative dispute resolution of certain civil cases filed in the superior court on or
 5 after January 1, 1998.

6 **Sec. 09.42.020. Pilot program for alternative dispute resolution.** (a) The
 7 supreme court shall provide for a pilot program under this chapter for the submission
 8 of civil cases filed in the superior court, third judicial district, to alternative dispute
 9 resolution procedures. The program shall begin January 1, 1998 and operate for at
 10 least five years.

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

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

21 **Sec. 09.42.030. Structure of pilot program.** (a) The supreme court shall
 22 provide criteria for the screening of covered cases under the program to determine if
 23 the cases are appropriate for referral to alternative dispute resolution. The criteria shall
 24 be constructed so that at least 50 percent of the estimated number of covered cases
 25 filed in a calendar year are referred to alternative dispute resolution.

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

30 (c) For a case referred under the program, the parties may mutually agree to
 31 select any person to conduct the alternative dispute resolution procedure regardless of

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

8 (d) Fees and costs to conduct an alternative dispute resolution procedure under
 9 this chapter shall be shared equally among the parties to the case being referred, unless
 10 the court finds a party indigent and orders payment at public expense. The supreme
 11 court shall establish guidelines for the determination of indigency under the program.
 12 Fees and costs borne at public expense under this subsection constitute a lien on any
 13 recovery in the case 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. 09.42.040. 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. 09.42.050. Definitions.** In this chapter,

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

3 (2) "covered cases" means civil cases described in AS 09.42.020(a) and
4 not excluded from participation in the program by AS 09.42.020(b);

5 (3) "program" means the alternative dispute resolution pilot program
6 established in AS 09.42.020.

7 * **Sec. 12.** 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. 13.** AS 09.55.536(a) is amended to read:

13 (a) In an action for damages due to personal injury or death based upon the
14 provision of professional services by a health care provider, **including a person**
15 **providing services on behalf of a governmental entity**, when the parties have not
16 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
17 20 days after filing of answer to a summons and complaint a three-person expert
18 advisory panel unless the court decides that an expert advisory opinion is not necessary
19 for a decision in the case. When the action is filed the court shall, by order, determine
20 the professions or specialties to be represented on the expert advisory panel, giving the
21 parties the opportunity to object or make suggestions.

22 * **Sec. 14.** AS 09.55.536(c) is amended to read:

23 (c) Not more than 30 days after selection of the panel, **the panel** [IT] shall
24 make a written report to the parties and to the court, answering the following questions
25 and other questions submitted to the panel by the court **in sufficient detail to explain**
26 **the case and the reasons for the panel's answers:**

27 (1) **Why did the claimant come** [WHAT WAS THE DISORDER FOR
28 WHICH THE PLAINTIFF CAME] to medical care?

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

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

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

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

9 (6) What specifically caused the medical injury?

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

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

14 * **Sec. 15.** AS 09.55.536(f) is amended to read:

15 (f) Discovery may not be undertaken in a case until the report of the expert
 16 advisory panel is received **or 60 days after selection of the panel, whichever first**
 17 **occurs.** However, the court may relax this prohibition upon a showing of good cause
 18 by any party. If the panel has not completed its report within the 30-day period
 19 prescribed in (c) of this section, the court may, upon application, grant it an additional
 20 30 days.

21 * **Sec. 16.** AS 09.55.536 is amended by adding a new subsection to read:

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

25 * **Sec. 17.** AS 09.65.210 is repealed and reenacted to read:

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

30 (1) was engaged in the commission of a felony, and the person has
 31 been convicted of the felony, including conviction based on a guilty plea or plea of

1 nolo contendere, and the felony substantially contributed to a personal injury or death;

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

5 (A) the conduct substantially contributed to the injury or death;

6 and

7 (B) the conduct is proven by the defendant in the civil trial by
8 clear and convincing evidence; or

9 (3) was fleeing after the commission, by that person, of conduct that
10 would constitute an unclassified felony or a class A or class B felony, or being
11 apprehended for conduct that would constitute an unclassified felony or class A or
12 class B felony, if

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

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

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

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

21 * **Sec. 18.** AS 09.68 is amended by adding a new section to read:

22 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
23 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
24 information relating to the compromise or other settlement of all civil litigation. The
25 information, including the case name and file number, a general description of the
26 claims being settled, the dollar amount of the settlement, to whom it is to be paid, and
27 any nonmonetary terms, shall be collected on a form developed by the council for that
28 purpose.

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

1 parties.

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

4 (1) divorce and dissolution;

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

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

8 (4) domestic violence protective orders under AS 18.66.100 -
9 18.66.180;

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

11 (6) small claims under AS 22.15.040.

12 * **Sec. 19.** AS 22.15.030(a) is amended to read:

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

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

18 (2) for the recovery of specific personal property, when the value of
19 the property claimed and the damages for the detention do not exceed \$100,000
20 [\$50,000];

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

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

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

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

31 (7) for the foreclosure of a lien when the amount in controversy does

1 not exceed \$100,000 [\$50,000];

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

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

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

9 * **Sec. 20.** AS 21.06 is amended by adding a new section to read:

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

12 (1) the impact of the measures enacted in this Act on the availability
13 and cost of insurance in the state; and

14 (2) the financial health and profitability of insurers doing business in
15 the state.

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

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

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

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

30 * **Sec. 21.** Alaska Rule of Civil Procedure 16.1(c) is amended to read:

31 (c) **Motion to Set Trial and Certificate.** Unless otherwise ordered by the

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

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

19 * **Sec. 22.** Alaska Rule of Civil Procedure 16.1(n) is repealed and reenacted to read:

20 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
 21 soon as practicable after the exchange of initial disclosures required under Rule
 22 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
 23 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
 24 their claims and defenses and the possibilities for a prompt settlement or resolution of
 25 the case and to develop a proposed discovery plan. The attorneys of record and all
 26 unrepresented parties that have appeared in the case are jointly responsible for
 27 arranging and being present or represented at the meeting, for attempting in good faith
 28 to agree on the proposed discovery plan, and for submitting to the court within 10 days
 29 after the meeting a written report outlining the proposed discovery plan. The proposed
 30 discovery plan shall indicate the parties' views and proposals concerning:

- 31 (1) what changes should be made in the timing or forms of subsequent

1 disclosures under the rules including a statement as to when the disclosures required
2 under Rule 26(a) were made;

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

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

8 (4) whether a scheduling conference is unnecessary;

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

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

14 * **Sec. 23.** Alaska Rule of Civil Procedure 41(a) is amended by adding a new paragraph
15 to read:

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

26 * **Sec. 24.** Alaska Rule of Civil Procedure 68 is repealed and reenacted to read:

27 **Rule 68. Offer of Judgment.** (a) At any time more than 10 days before the
28 trial begins, either the party making a claim or the party defending against a claim may
29 serve upon the adverse party an offer to allow judgment to be entered in complete
30 satisfaction of the claim for the money or property or to the effect specified in the
31 offer, with costs then accrued. The offer may not be revoked in the 10-day period

1 following service of the offer. If within 10 days after service of the offer, the adverse
2 party serves written notice that the offer is accepted, either party may then file the
3 offer and notice of acceptance together with proof of service, and the clerk shall enter
4 judgment. An offer not accepted within 10 days is considered withdrawn and evidence
5 of the offer is not admissible except in a proceeding to determine costs. The fact that
6 an offer is made but not accepted does not preclude a subsequent offer.

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

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

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

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

17 (1) if the offeree is the party making the claim, the court shall adjust
18 its award of attorney's fees to the offeree as follows:

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

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

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

28 (2) if the offeree is the party defending against the claim, the court
29 shall adjust its award of attorney's fees to the offeror 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), the attorney's fees

1 award shall be increased by 50 percent;

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

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

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

14 * **Sec. 25.** Alaska Rule of Civil Procedure 72.1(g) is amended to read:

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

19 * **Sec. 26.** Alaska Rule of Civil Procedure 95(b) is amended to read:

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

25 * **Sec. 27.** District Court Civil Rule 1(a)(1) is amended to read:

26 (1) The procedure in civil actions and proceedings before district judges
27 and magistrates shall be governed by the rules governing the procedure in the superior
28 court to the extent that such rules are applicable. **However, unless otherwise agreed**
29 **by all parties or permitted by order of the court in exceptional cases and for good**
30 **cause shown, discovery shall be limited to the disclosures required under Rule**
31 **26(a) and to the taking by each party of the deposition of one or more opposing**

1 **parties and of one additional person who is not a party.**

2 * **Sec. 28.** District Court Civil Rule 4 is amended by adding a new subsection to read:

3 (b) Unless otherwise permitted by order of the court in exceptional cases and
4 for good cause shown, all parties shall file a memorandum to set the case for trial, as
5 set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on
6 all parties to the case. The parties shall submit a joint memorandum to set the case
7 for trial, which may state their separate positions if they do not agree concerning the
8 information or estimates to be provided in the memorandum. The court shall set the
9 trial to commence on a date no less than 30 and no more than 90 days after the filing
10 of the memorandum to set the case for trial, unless a continuance is granted by the
11 court pursuant to Civil Rule 40(e).

12 * **Sec. 29.** Alaska Rule of Appellate Procedure 511 is amended by adding a new subsection
13 to read:

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

24 * **Sec. 30.** Alaska Rule of Civil Procedure 16.1(k)(4) is repealed.

25 * **Sec. 31.** AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 6 of this
26 Act, have the effect of amending

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

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

1 * **Sec. 32.** AS 09.30.065, as amended by sec. 8 of this Act, has the effect of amending
2 Alaska Rule of Civil Procedure 68 by altering the manner in which interest under
3 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the
4 offeree than the offer.

5 * **Sec. 33.** AS 09.42, as enacted by sec. 11 of this Act, has the effect of amending Alaska
6 Rule of Civil Procedure 100 by making the mediation process mandatory for certain civil
7 cases in the superior court, third judicial district, and by expanding the scope of the rule to
8 include other forms of alternative dispute resolution in addition to mediation.

9 * **Sec. 34.** AS 09.55.536(f), as amended by sec. 15 of this Act, has the effect of amending
10 Alaska Rule of Civil Procedure 72.1(g) by changing the duration of the stay on further
11 discovery when an expert advisory panel is appointed to evaluate a health care provider
12 malpractice claim.

13 * **Sec. 35. APPLICABILITY.** (a) Sections 1, 8, 13 - 16, 19, 21, 22, 24 -28, and 30 of this
14 Act apply to all civil actions filed on or after the effective date of those sections.

15 (b) Sections 2 - 7, 9, 10, 12, and 17 of this Act apply to all causes of action accruing
16 on or after the effective date of those sections.

17 (c) Section 11 of this Act applies to those civil actions covered by the pilot program
18 for alternative dispute resolution established under the provisions of AS 09.42 as enacted by
19 sec. 11 of this Act filed on or after January 1, 1998.

20 (d) Sections 18, 23, and 29 of this Act apply to all voluntary dismissals of civil
21 actions filed with the state court on or after January 1, 1998.

22 (e) Section 20 of this Act applies to all insurers doing business in this state on or after
23 the effective date of that section.

24 * **Sec. 36. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
25 application of a provision of this Act to any person or circumstance is held invalid, the
26 remainder of this Act and the application to other persons shall not be affected.

27 * **Sec. 37.** (a) AS 09.17.020 (a), (c), (d), and (e), as repealed and reenacted by sec. 6 of
28 this Act, take effect only if sec. 31 of this Act receives the two-thirds majority vote of each
29 house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (b) AS 09.42, as enacted by sec. 11 of this Act, takes effect only if sec. 33 of this Act
31 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution

1 of the State of Alaska.

2 (c) The amendments or the repeal of the following court rules take effect only if all
3 amendments and the repeal listed in this subsection receive the two-thirds majority vote of
4 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

5 (1) Alaska Rule of Civil Procedure 16(c), as amended by sec. 21 of this Act;

6 (2) Alaska Rule of Civil Procedure 16.1(n), as amended by sec. 22 of this Act;

7 (3) Alaska Rule of Civil Procedure 16.1(k)(4), repealed by sec. 30 of this Act.

8 (d) AS 09.68.130, as enacted by sec. 18 of this Act, takes effect only if secs. 23 and
9 29 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. 38.** Sections 23 and 29 of this Act take effect January 1, 1998.

12 * **Sec. 39.** Except as provided in sec. 38 of this Act, this Act takes effect immediately
13 under AS 01.10.070(c).