

CONFERENCE  
COMMITTEE  
SB 140

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y. STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1986

SUBJECT: Comparative section by section analysis of House and Senate versions of SB 140, an Act relating to rights of the terminally ill (HCS CSSB 140 (Jud) am H and CSSB 140 (HESS) am)

TO: Representative Don Clocksin

FROM: George Utermohle *GU*  
Legislative Counsel

As per your request, the following is a comparative section by section analysis of House and Senate versions of SB 140, an Act relating to rights of the terminally ill. For the purposes of this analysis, the Senate version is CSSB 140 (HESS) am and the House version is HCS CSSB 140 (Jud) am H.

Section 1 Rights of the Terminally Ill

AS 18.12.010(a) BOTH VERSIONS: Any person who is legally competent and who is at least 18 years old may complete a declaration indicating that person's intent that life sustaining procedures be withdrawn in certain circumstances. The declaration is effective only if the declarant is unable to make treatment decisions and the declarant has a terminal medical condition.

SENATE VERSION: The declaration must be signed by the declarant, or at his direction, and witnessed by two persons. The witnesses must be at least 18 years old and not related to the declarant by blood or marriage.

The physician or health care provider who receives a declaration may presume that the declaration is valid unless there is evidence to the contrary. The physician and health care provider do not have a duty to investigate whether a declaration is legally sufficient. They may rely on representations of the declarant.

HOUSE VERSION: The declaration must be signed by the declarant or, at the declarant's direction, and witnessed by two persons or a person who can take acknowledgments. Any legally competent person may witness a declaration without regard to relationship to the declarant.

A person may not charge a fee for preparing a declaration.

AS 18.12.010(b)

SENATE VERSION: The declarant is responsible for notifying the physician that a declaration exists.

A physician or health care provider who receives a copy of the declaration must insert it into the declarant's medical record.

HOUSE VERSION: The declarant is responsible for providing a copy of the declaration to the physician.

A physician or health care provider who receives a copy of the declaration must insert it into the declarant's medical record.

AS 18.12.010(c) This subsection contains a suggested form of the declaration.

SENATE VERSION: The form provides that the declarant authorizes the attending physician to withdraw life-sustaining medical procedures, if the declarant is unable to participate in medical treatment decisions and is terminally ill.

The form provides for the signature of the declarant and the witnesses.

HOUSE VERSION: The form provides that the declarant authorizes the attending physician to withdraw life-sustaining medical procedures, if the declarant is unable to participate in medical treatment decisions and is terminally ill.

The form provides language by which the declarant may elect whether to receive nutrition or hydration by gastric tube or intravenously.

The form provides for the signature of the declarant and the witnesses. As an alternative to the witnessing provisions

AS 18.12.040(b)

SENATE VERSION: When life-sustaining procedures have been withdrawn according to the intent of the declaration, certain medical procedures necessary to prevent pain or to provide comfort to the patient may still be administered. Nutrition and hydration may be provided to the patient, even though life-sustaining procedures are withdrawn.

HOUSE VERSION: The House version is similar to the Senate version except that it allows a declarant to specify in the declaration that nutrition and hydration is not to be provided by gastric tube or intravenously.

AS 18.12.040(c)

SENATE VERSION: A qualified patient who is known to the attending physician to be pregnant must receive life-sustaining treatment as long as it is probable that the fetus could develop to the point of live birth. The declaration of a pregnant woman is not effective while it is probable that the fetus will survive.

HOUSE VERSION: The declaration of a woman known to be pregnant is not effective as long as the fetus is alive.

AS 18.12.050(a) House and Senate versions are identical.

A physician who refuses to record a patient's declaration in the medical record or who refuses to comply with the declaration shall withdraw as the patient's attending physician. The physician remains responsible for the patient until another physician is obtained.

AS 18.12.050(b)

SENATE VERSION: A health care facility which refuses to follow a patient's declaration must take all reasonable steps to transfer the patient to a facility that will follow the patient's declaration.

HOUSE VERSION: If a health care facility refuses to comply with a patient's declaration, the facility must inform the patient, or in certain circumstances the patient's guardian, of the facility's policy. The health care facility must also take reasonable steps to transfer the patient to a

facility that will follow the patient's declaration or to the patient's home.

AS 18.12.060(a) House and Senate versions are identical.

Physicians, health care facilities, and persons who assist in withholding of life-sustaining procedures are not liable if they withhold life-sustaining procedures in compliance with a declaration and if they are not aware of any revocation of the declaration. The immunity granted in this section extends to civil, criminal, and professional liability that may otherwise arise when life-sustaining procedures are withdrawn in good faith although by mistake.

AS 18.12.060(b) Under House and Senate versions, certain persons or facilities are not subject to civil or criminal liability if they follow reasonable medical standards. This provision does not prevent a person from suing these persons or facilities for actions under this Act, however the plaintiff must prove that the defendant acted unreasonably.

The Senate version refers to physicians, health care facilities, and health care providers while the House version refers to physicians, health care facilities and health care professionals.

AS 18.12.070

SENATE VERSION: A physician who refuses to comply with a declaration and who refuses to withdraw as attending physician is guilty of a class A misdemeanor.

A physician who refuses to record a determination of terminal condition is guilty of a class A misdemeanor.

A person who conceals or destroys the declaration of another or who falsifies the revocation of a declaration of another is guilty of a class A misdemeanor.

A person who intends to cause the withdrawal of life-sustaining procedures from another person and thus causes the death of that person, by forging a declaration or destroying a revocation of a declaration is guilty of first degree murder.

HOUSE VERSION: A physician who fails to comply with the patient's declaration or to transfer a patient to a facility where the declaration can be effected

(1) has no right to compensation for medical services provided after the withdrawal should have been effective or the transfer should have occurred and

(2) is liable to the patient or the patient's heirs for a civil penalty of \$1,000 and the actual costs arising from the failure to comply with the declaration. This is the exclusive remedy at law for failure to comply with the declaration. This limitation on actions for damages applies only to physicians and not to health care providers or health care facilities.

A person who conceals or destroys a declaration of another or who falsifies a revocation of a declaration may be liable to the declarant or the heirs of the declarant in a civil action.

AS 18.12.080(a)

SENATE VERSION: Except for those actions described in AS 18.12.070(d) of the Senate version, a death resulting from the withholding or withdrawal of life-sustaining procedures under this Act is not murder or suicide.

HOUSE VERSION: A death resulting from the withholding or withdrawal of life-sustaining procedures under this Act is not murder or suicide. The House version does not make specific reference to acts that are punishable under the murder statutes.

AS 18.12.080 (b) - (f) House and Senate versions are identical.

The execution of a declaration does not affect the sale of insurance to the declarant. The withholding or withdrawal of life-sustaining procedures in compliance with this bill does not impair or invalidate a life insurance policy on the declarant.

A person cannot be required to execute a declaration as a condition for receiving health insurance or medical care.

The fact that a person has not executed a declaration does not create any presumption as to the person's intent if the person should ever be in a terminal condition and unable to make treatment decisions.

Nothing in this bill in any way limits the rights of a person to control medical treatment and the use of life-sustaining procedures as long as the person is able to do so.

Nothing in this bill condones, authorizes, or approves euthanasia.

AS 18.12.090 House and Senate versions are essentially the same except that the Senate version recognizes declarations validly executed in other states while the House version recognizes declarations validly executed in other states, territories, or possessions of the United States.

AS 18.12.100 Terms defined for the purposes of the bill are: "attending physician", "declaration", "health care provider", "life-sustaining procedure", "physician", "qualified patient", and "terminal condition".

Except for the definition of "terminal condition", definitions in House and Senate versions are identical.

SENATE VERSION: "Terminal condition" means an incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered. The determination of when a terminal condition exists is made by the attending physician.

HOUSE VERSION: "Terminal condition" means a progressive incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered. The determination of when a terminal condition exists is made by two physicians who have personally examined the patient. One of the two physicians must be the patient's attending physician. The opinion of two physicians is not required if two physicians are not available.

Section 2. The immediate effective date is identical in House and Senate versions.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1986

SUBJECT: Powers of Conference Committees  
(SB 140)

TO: Senator Richard Eliason

FROM: George Utermohle *GU*  
Legislative Counsel

This memorandum supplements a conversation with Sheila Peterson of your staff. The question was whether a conference committee could draft a substitute bill for SB 140 using sentences from the House version and Senate version. As long as the conference committee adopts language adopted by either house, the conference committee could formulate a substitute bill by combining sentences from either version. The paramount consideration is whether the language adopted by the conference committee encompasses a complete unit of subject matter.

For example, in 18.12.010(a) of SB 140 there are at least four different subjects addressed in either or both of the versions of the bill. Those subjects are eligibility for and legal effect of a declaration, the manner for executing a declaration, the presumptions of validity of a declaration, and the fee for preparation of a declaration. On each of these four subjects the committee must adopt either the Senate or House language.

The conference committee must adopt the language on the eligibility for and legal effect of a declaration because the same language is in both versions of the bill.

The conference committee has two versions of language to choose from on the subject of the manner of executing a declaration. The conference committee may adopt either the House or Senate version.

The conference committee has only one version of language to choose from on the subject of the presumptions of validity

Senator Richard Eliason  
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of a declaration. The House and Senate bills contain identical language on this subject. The conference committee must include this language in a conference committee substitute because it is included in both versions. The only issue before the committee is whether to include this language in 18.12.010(a) or 18.12.010(d).

The conference committee has two versions of the language relating to the fee for preparation of a declaration. The House version says no fee may be charged while the Senate version is silent on this subject. The conference committee may then adopt the House language or the Senate language on this subject.

The action which the conference committee takes on each of these subjects is distinct and independent from that taken on the others. The only limit on the power of the committee to mix and match between House and Senate language on each subject is that the committee cannot change the effect of the bill as to that subject to arrive at a result that differs from both the House and Senate versions. Admittedly, it is difficult to determine when this has occurred. However, without this limit on the power of a conference committee to mix and match Senate and House language, form would prevail over substance and a conference committee could conceivably completely rewrite legislation without powers of free conference.

Though I have treated the manner of executing a declaration as a single subject for consideration by the committee, this subject could be further divided into distinct subjects. For example in executing a declaration, the declaration may be witnessed by two persons or in the alternative by two persons or a person who can take acknowledgments. The second distinct subject addressed by the House and Senate versions of the bill is the competence of persons to serve as witnesses. In the Senate version witnesses may not be related by blood or marriage to the declarant and must be at least 18 years old and in the House version witnesses must be generally competent to serve as witnesses. The conference committee could then accept the House language on who can witness (two persons or a person qualified to take acknowledgments) and the Senate's language on the competence of persons to witness a declaration (16 year of age and not related by blood or marriage). The limit on the power of the conference committee to mix and match language from the House and Senate versions of the bill would be exceeded if

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the committee attempted to combine the House provision that any person generally competent to be witness may witness a declaration with the Senate provision that a witness cannot be related by blood or marriage to the declarant. In this case the conference committee would not be adopting the House or Senate amendment on the issue but would be formulating compromise language which is beyond the power of a conference committee.

GU:mkr  
m4/066

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 1, 1986

SUBJECT: Powers of a conference committee  
SB 140

TO: Senator Richard Eliason

FROM: George Utermohle *GU*  
Legislative Counsel

You have asked whether a conference committee that has not been granted limited powers of free conference may delete language from an amendment previously adopted by one house to avoid redundant language when the same language is contained in another portion of the amendments adopted by the other house.

In regard to the specific language in question the Senate amendments to SB 140 include the following sentence in sec. 18.12.010(a): "A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this Act and is valid." The House amendments have moved this language from sec. 18.12.010(a) to sec. 18.12.010(d).

The powers of conference committees is limited by Rule 42 of the Uniform Rules which provides in part

"If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house."

Under the Rules the conference committee must reach agreement on previously adopted amendments. The issue is what is a previously adopted amendment. Section 18.12.010(a) as passed by the Senate addresses three distinct subjects: eligibility for and legal effect of a declaration, execution of declarations, and presumptions of validity of a declaration. Two of the three subjects have been amended in the House. As to the eligibility for and legal effect of declarations House and Senate versions are the same. As to

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the execution of declarations House and Senate versions differ greatly. As to the third subject, presumptions of validity of a declaration, the House and Senate versions are contrary to each other; the Senate version contains this provision and the House does not.

In reaching an agreement on previously adopted amendments, the conference committee may address each subject separately and adopt either the House or Senate amendment on each. As to the subject of "presumptions" the committee may agree to accept the Senate language or the House version that deletes this provision from sec. 18.12.010(a). In regard to sec. 18.12.010(d) that is contained in the House version, and that contains the language on presumptions of validity of declarations, the committee may accept the House version of the language or the Senate version, which has no subsection (d).

As an alternative procedure the conference committee could adopt the Senate version of sec. 18.12.010(a) in its entirety and not adopt sec. 18.12.010(d) from the House version. This procedure would also avoid the duplication of the "presumptions" language.

GU:mkr  
m4:053

SENATE VERSION	HOUSE VERSION
<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u></p> <p>-- The declaration is witnessed by two persons not related to the declarant by blood or marriage.</p> <p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant notifies physician of a declaration.</p> <p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Does not address the nutrition and hydration issue</p> <p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain.</p> <p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- The declaration has no effect as long as it is probable that the fetus could develop to the point of live birth.</p> <p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to another facility must be made.</p>	<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u></p> <p>-- The declaration is witnessed by two persons generally competent OR a judge, justice, magistrate, clerk of a court, notary public, United States postmaster, or a commissioned officer under AS 09.63.050(4). No fee may be charged for preparing a declaration.</p> <p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant provides a copy of the declaration to the physician.</p> <p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Provides the following language:</p> <p>I ( ) do ( ) do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.</p> <p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain. The declaration can state that the patient does not wish nutrition and hydration to be administered by tubes.</p> <p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- Suspends the declaration as long as the fetus is alive.</p> <p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to the patient's home or to another facility must be made.</p>

SENATE VERSION	HOUSE VERSION
<p><u>Penalties - Attending Physician (Sec. 18.12.070(a))</u></p> <ul style="list-style-type: none"> <li>-- A physician who fails to withdraw is guilty of a class A misdemeanor.</li> <li>-- A physician who fails to record a declaration is guilty of a class A misdemeanor. (Sec. 18.12.070(b))</li> </ul>	<p><u>Penalties - Attending Physician (Sec. 18.12.070(a))</u></p> <ul style="list-style-type: none"> <li>-- An attending physician who fails to comply with the declaration or to make a transfer won't receive payment for service after withdrawal should have occurred is liable for \$1000 penalty, and must pay any costs associated with failure to comply.</li> </ul>
<p><u>Penalties (Sec. 18.12.070(c))</u></p> <ul style="list-style-type: none"> <li>-- Any person who alters a declaration is guilty of a class A misdemeanor.</li> <li>-- Any person who hastens an individual's death by withholding knowledge of a declarant's revocation is guilty of first degree murder. (Sec. 18.12.070(d))</li> </ul>	<p><u>Penalties (Sec. 18.12.070(b))</u></p> <ul style="list-style-type: none"> <li>-- Any person who alters a declaration is civilly liable to the patient and his/her heirs.</li> </ul>
<p><u>Recognition of Declaration (Sec. 18.12.090)</u></p> <ul style="list-style-type: none"> <li>-- Another state's declaration is valid.</li> </ul>	<p><u>Recognition of Declaration (Sec. 18.12.090)</u></p> <ul style="list-style-type: none"> <li>-- Another state's, or a territory or possession of the United States, declaration is valid.</li> </ul>
<p><u>Definition (Sec. 18.12.100(7))</u></p> <ul style="list-style-type: none"> <li>-- One physician determines if a patient is terminally ill.</li> <li>-- Terminal condition means an incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.</li> </ul>	<p><u>Definition (Sec. 18.12.100(7))</u></p> <ul style="list-style-type: none"> <li>-- Two physicians, when available, determines if a patient is terminally ill.</li> <li>-- Terminal condition means a progressive incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.</li> </ul>

Utermohle  
4/25/86

Original sponsors: Eliason, Ziegler,  
V.Fischer, et al

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally ill;  
7 and providing for an effective date."

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

9 \* Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11 Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING  
12 PROCEDURES. (a) A competent person who is at least 18 years old may  
13 execute a declaration at any time directing that life-sustaining  
14 procedures be withheld or withdrawn from that person; but the declara-  
15 tion is given operative effect only if the declarant's condition is  
16 determined to be terminal and the declarant is not able to make treat-  
17 ment decisions. The declaration shall be signed by the declarant, or  
18 another at the declarant's direction, and in either case shall be  
19 witnessed by two persons or a person qualified to take acknowledge-  
20 ments under AS 09.63.010. The witnesses must be at least 18 years old  
21 and may not be related to the declarant by blood or marriage. A  
22 person may not charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy  
24 of the declaration to the declarant's physician. A physician or other  
25 health care provider who is provided a copy of the declaration shall  
26 make it a part of the declarant's medical records.

27 (c) A declaration may, but need not, be in the following form:

28 DECLARATION

29 If I should have an incurable or irreversible condition that will

1 cause my death within a relatively short time, it is my desire that my  
2 life not be prolonged by administration of life-sustaining procedures.

3 If my condition is terminal and I am unable to participate in de-  
4 cisions regarding my medical treatment, I direct my attending phy-  
5 sician to withhold or withdraw procedures that merely prolong the  
6 dying process and are not necessary to my comfort or to alleviate  
7 pain.

8 I [ ] do [ ] do not desire that nutrition or hydration (food  
9 and water) be provided by gastric tube or intravenously if  
10 necessary.

11 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

12 Signature \_\_\_\_\_

13 Place \_\_\_\_\_

14 The declarant is known to me and voluntarily signed or  
15 voluntarily directed another to sign this document in my presence.

16 Witness \_\_\_\_\_

17 Address \_\_\_\_\_

18 Witness \_\_\_\_\_

19 Address \_\_\_\_\_

20 State of \_\_\_\_\_

21 \_\_\_\_\_ Judicial District

22 The foregoing instrument was acknowledged before me this (date)  
23 by (name of person who acknowledged).

24 \_\_\_\_\_  
25 Signature of Person Taking  
26 Acknowledgement

27 \_\_\_\_\_  
28 Title or Rank  
29 \_\_\_\_\_

1 Serial Number, if any

2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR  
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER  
4 AS 09.63.010.

5 (d) A physician or health care provider may presume, in the  
6 absence of actual notice to the contrary, that the declaration com-  
7 plies with this chapter and is valid.

8 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration  
9 may be revoked at any time and in any manner by which the declarant is  
10 able to communicate an intent to revoke, without regard to mental or  
11 physical condition. A revocation is only effective as to the attend-  
12 ing physician or any health care provider acting under the guidance of  
13 that physician upon communication to the physician or health care  
14 provider by the declarant or by another to whom the revocation was  
15 communicated.

16 (b) The attending physician or health care provider shall make  
17 the revocation a part of the declarant's medical record.

18 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION  
19 AND CONTENTS OF DECLARATION. When an attending physician who has been  
20 provided a copy of a declaration determines that the declarant is in a  
21 terminal condition, the physician shall record that determination and  
22 the contents of the declaration in the declarant's medical record.

23 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-  
24 ified patient has the right to make decisions regarding use of life-  
25 sustaining procedures as long as the patient is able to do so. If a  
26 qualified patient is not able to make these decisions, the declaration  
27 governs decisions regarding use of life-sustaining procedures.

28 (b) This chapter does not prohibit the application of any med-  
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-  
2 viation of pain. The declaration may provide that the declarant does  
3 not want nutrition or hydration administered intravenously or by  
4 gastric tube.

5 (c) The declaration of a qualified patient known to the  
6 attending physician to be pregnant is given no effect as long as it is  
7 probable that the fetus could develop to the point of live birth with  
8 continued application of life-sustaining procedures.

9 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-  
10 cian who is unwilling to comply with the requirements of AS 18.12.030  
11 or who is unwilling to comply with the declaration of a qualified  
12 patient under AS 18.12.040 shall withdraw as attending physician but  
13 the withdrawal is effective only when the services of another attend-  
14 ing physician have been obtained.

15 (b) If the policies of a health care facility preclude compli-  
16 ance with the declaration of a qualified patient under this chapter,  
17 that facility shall take all reasonable steps to notify the patient  
18 or, if the patient is not able to make treatment decisions, the  
19 patient's guardian, of the facility's policy and shall take all  
20 reasonable steps to effect the transfer of the patient to the  
21 patient's home or to a facility where the provisions of this chapter  
22 can be carried out.

23 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual  
24 notice of the revocation of a declaration, the following, while acting  
25 in accordance with the requirements of this chapter, are not subject  
26 to civil or criminal liability or guilty of unprofessional conduct:

27 (1) a physician who causes the withholding or withdrawal of  
28 life-sustaining procedures from a qualified patient;

29 (2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the  
2 authorization of a physician;

3 (3) the health care facility in which the withholding or  
4 withdrawal occurs.

5 (b) A physician, a health care professional, or a health care  
6 facility is not subject to civil or criminal liability for actions  
7 under this chapter that are in accord with reasonable medical stan-  
8 dards.

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who  
10 fails to comply with the declaration of a qualified patient or to make  
11 the necessary arrangements to effect a transfer under AS 18.12.050 has  
12 no right to compensation for medical services provided to a qualified  
13 patient after withdrawal should have been effective or after transfer  
14 should have occurred and may be liable to the qualified patient and to  
15 the heirs of the qualified patient for a civil penalty not to exceed  
16 \$1000.00 plus the actual costs associated with the failure to comply  
17 with the declaration, and this shall be the exclusive remedy at law  
18 for damages.

19 (b) A person who wilfully conceals, cancels, defaces, obliterated,  
20 or damages the declaration of another without the declarant's  
21 consent or who falsifies or forges a revocation of the declaration of  
22 another may be civilly liable to the qualified patient and to the  
23 heirs of the qualified patient.

24 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from  
25 the withholding or withdrawal of life-sustaining procedures under a  
26 declaration and in accordance with this chapter does not, for any  
27 purpose, constitute a suicide or homicide.

28 (b) The making of a declaration under AS 18.12.010 does not  
29 affect in any manner the sale, procurement, or issuance of a policy of

1 life insurance, nor does it modify the terms of an existing policy of  
2 life insurance. A policy of life insurance is not legally impaired or  
3 invalidated in any manner by the withholding or withdrawal of life-  
4 sustaining procedures from an insured qualified patient, notwithstand-  
5 ing any term of the policy to the contrary.

6 (c) A physician, health care facility, or other health care  
7 provider, and a health care service plan, insurer issuing disability  
8 insurance, self-insured employee welfare benefit plan, or nonprofit  
9 hospital plan, may not require a person to execute a declaration as a  
10 condition for being insured for, or receiving, health care services.

11 (d) This chapter creates no presumption concerning the intention  
12 of an individual who has not executed a declaration with respect to  
13 the use, withholding, or withdrawal of life-sustaining procedures in  
14 the event of a terminal condition.

15 (e) Nothing in this chapter increases or decreases the right of  
16 a patient to make decisions regarding use of life-sustaining proce-  
17 dures as long as the patient is able to do so, or impairs or super-  
18 cedes any right or responsibility that a person has to effect the  
19 withholding or withdrawal of medical care in a lawful manner. In that  
20 respect, the provisions of this chapter are cumulative.

21 (f) This chapter does not condone, authorize, or approve mercy  
22 killing or euthanasia.

23 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER  
24 STATES. A declaration executed in another state or a territory or  
25 possession of the United States in compliance with the law of that  
26 jurisdiction is effective for purposes of this chapter.

27 Sec. 18.12.100. DEFINITIONS. In this chapter

28 (1) "attending physician" means the physician selected by,  
29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

2 (2) "declaration" means a document executed in accordance  
3 with the requirements of AS 18.12.010;

4 (3) "health care provider" means a person who is licensed,  
5 certified, or otherwise authorized by the law of this state to admin-  
6 ister health care in the ordinary course of business or practice of a  
7 profession;

8 (4) "life-sustaining procedure" means a medical procedure  
9 or intervention that, when administered to a qualified patient, will  
10 serve only to prolong the dying process;

11 (5) "physician" means a person licensed to practice medi-  
12 cine in this state or an officer in the regular medical service of the  
13 armed services of the United States or the United States Public Health  
14 Service while in the discharge of their official duties, or while  
15 volunteering services without pay or other remuneration to a hospital,  
16 clinic, medical office, or other medical facility in the state;

17 (6) "qualified patient" means a patient who has executed a  
18 declaration in accordance with this chapter and who has been deter-  
19 mined by the attending physician to be in a terminal condition;

20 (7) "terminal condition" means a progressive incurable or  
21 irreversible condition that, without the administration of life-sus-  
22 taining procedures, will, in the opinion of two physicians, when  
23 available, who have personally examined the patient, one of whom must  
24 be the attending physician, result in death within a relatively short  
25 time.

26 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).  
28  
29

CONFERENCE

COMMITTEE

SB 140

(FILE 2)

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON



LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN  
LEGISLATIVE COUNCIL, VICE-CHAIRMAN  
FINANCE COMMITTEE  
RESOURCES COMMITTEE

PO. BOX 143  
SITKA, ALASKA 99835

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4916

---

March 26, 1986

A N N O U N C E M E N T

The Conference Committee for S.B. 140, an act relating to the rights of the terminally ill, will meet Thursday, April 3, at 3:30 in the Butrovich Room, 205 Capitol Building.

For further information, please contact Senator Eliason's office at 465-4916.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON



LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN  
LEGISLATIVE COUNCIL, VICE-CHAIRMAN  
FINANCE COMMITTEE  
RESOURCES COMMITTEE

PO. BOX 143  
SITKA, ALASKA 99835

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4918

MEMORANDUM

TO: Senator Bill Ray, Conference Committee Member  
Senator Bob Ziegler, Conference Committee Member

FROM: Senator Dick Eliason, Chair *Dick Eliason*  
Conference Committee on S.B. 140 - Rights of the  
Terminally Ill

RE: Propose Changes

DATE: March 20, 1986

After carefully reviewing both the Senate and House versions of S.B. 140 and weighing the merits of both proposals, I am recommending that the House passed version be adopted with the following two changes:

- 1) Adopt the Senate language for Sec. 18.12.010(a).

This change would require that two individuals witness the signing of a declaration. The witnesses must be at least 18 years old and may not be related to the declarant by blood or marriage.

- 2) Adopt the Senate language for Sec. 18.12.040(c).

This change would state "The declaration of a qualified patient known to the attending physician to be pregnant is given no effect as long as it is probable that the fetus could develop to the point of live birth with continued application of life-sustaining procedures".

I would appreciate your careful consideration regarding this recommendation. Thank you very much.

house. When the second house receives the message accompanying the engrossed bill and reporting its passage, the bill shall be read by the clerk or secretary for the first time and then referred by the presiding officer to one or more committees for subsequent action by that house.

#### AMENDMENTS IN OTHER HOUSE

**RULE 41. AMENDMENTS IN OTHER HOUSE.** (a) When a bill, resolution, or citation passed in one house is amended in the other house, the bill, resolution, or citation with certified amendments is returned to the house of origin requesting concurrence. The vote on concurrence in amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership in each house. If concurrence is had the clerk or secretary notes the concurrence in the journal, informs the other house of the concurrence, and proceeds to have the bill or resolution enrolled for certification and transmittal to the governor.

(b) An amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change.

#### CONFERENCE AND FREE CONFERENCE COMMITTEES

##### **RULE 42. CONFERENCE AND FREE CONFERENCE COMMITTEES.**

(a) If one house refuses to concur in the amendments of the other it so notifies the amending house and requests that it recede from its amendments. The vote on receding from amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. A house recedes from its amendments only by a majority vote of the full membership of the house. If the house refuses to recede, the presiding officer of each house appoints three members to sit as a Conference Committee. The committee meets when mutually agreeable to its members. If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house. The report is not subject to amendment in either house. If the report is adopted by each house the bill is enrolled, signed, and transmitted to the governor. If the members of the Conference Committee cannot agree on amendments, or if one or both houses refuses to adopt the committee report, the Conference Committee submits an identical written report to each house listing the specific points of disagreement for which the committee requests powers of free conference. The presiding officer of each house may then give limited powers of free conference only on the specific points listed. If the members of a Conference Committee with limited powers of free conference cannot agree on amendments, or one or both houses refuses to adopt the committee report, it is then in order to appoint a Free Conference Committee. A member who served on a Conference Committee or a Conference Committee with limited powers of free conference may not be appointed to a subsequent Conference Committee or Free Conference Committee concerning the same measure. The vote on adoption of a conference committee report is taken by the calling of the

roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(b) A Free Conference Committee is appointed in the same manner as a Conference Committee and may suggest in its report any new amendments clearly germane to the question. When a majority of the membership of the committee from each house agrees on amendments, the amendments are attached to the bill and reported back to each house in an identical report. The report is not subject to amendment in either house. If the report is adopted in each house the bill is then ordered enrolled by its house of origin. If the members of a Free Conference Committee fail to agree on amendments or one or both houses refuses to adopt the free conference report, a second Free Conference Committee may be appointed, but no member of the first committee may be reappointed. A free conference report may not be voted on by the house until at least 24 hours after the report is duplicated and delivered to the chief clerk or secretary of the house for distribution to each member. The chief clerk or secretary shall certify the time of delivery of the report for recording in the journal. The vote on adoption of a free conference committee report is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(c) A Conference Committee with limited powers of free conference or a Free Conference Committee may not include in its report on an appropriation bill an item which was not included in a version of that appropriation bill adopted in third reading by a house and the amount appropriated by an item may not exceed the higher amount appropriated by that item in a version of the bill adopted in third reading by a house. An item in an appropriation bill includes a line item, an allocation, and an appropriation.

(d) Notwithstanding the provisions of (c) of this rule, a Free Conference Committee may consider and include in its report on an appropriation bill appropriations as requested by attached fiscal notes on new legislation and resolutions that have been passed by both houses.

(e) A Conference Committee, a Conference Committee with limited powers of free conference, or a Free Conference Committee may not adopt a report that requires a change in the title of a bill other than a clerical or technical change.

#### ENROLLMENT

**RULE 43. ENROLLMENT.** (a) When a bill has passed both houses the presiding officer of the house of origin directs that it be enrolled. The clerk or secretary transmits the engrossed bill to the enrolling secretary of the legislature, who, with the revisor of statutes, checks the bill before placement in final form according to the legislative drafting manual. The enrolling secretary is authorized to correct form and manifest errors which are clerical, typographical, or errors in spelling or errors by way of additions or omissions. The enrolling secretary is required to

SJR 39

The Rules Committee considered SENATE JOINT RESOLUTION NO. 39 (Proposing an amendment to the Constitution of the State of Alaska relating to the right of a citizen to keep and bear arms) and a majority of the committee recommended calendar March 25. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Josephson and Coghill.

SENATE JOINT RESOLUTION NO. 39 is on the calendar.

SB 457

The Rules Committee considered SENATE BILL NO. 457 (State Physical Therapy Board; efd) and a majority of the committee recommended calendar March 25. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Josephson and Coghill.

SENATE BILL NO. 457 is on the calendar.

HCR 8

The Rules Committee considered CS FOR HOUSE CONCURRENT RESOLUTION NO. 8 (O&G) (natural gas pipeline) and a majority of the committee recommended calendar March 25. The report was signed by Senator Kelly, Chairman and concurred in by Senators Faiks, Bennett and Coghill.

CS FOR HOUSE CONCURRENT RESOLUTION NO. 8 (O&G) is on the calendar.

## SPECIAL COMMITTEE REPORTS

SB 187

March 25, 1986

Dear Senator Bennett:

The Senate Conference Committee considering SENATE BILL NO. 187 and HOUSE CS FOR SENATE BILL NO. 187 (2d JUD) (adoption; efd) requests to amend the initial request for limited powers of free conference as follows:

1. Access to adoption information

March 25, 1986

2153

HB 31

The Resources Committee considered HOUSE BILL NO. 31 (obstruction or hindrance of lawful hunting, fishing, or trapping) and a majority of the committee recommended it be replaced with

SENATE CS FOR HOUSE BILL NO. 31 (RES)

and do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Halford, Fahrenkamp and Eliason.

HOUSE BILL NO. 31 was referred to the Judiciary Committee.

HB 208

The Finance Committee considered HOUSE BILL NO. 208 (authorizing salmon classics) and recommended it be replaced with

SENATE CS FOR HOUSE BILL NO. 208 (FIN)

Senator Faiks, Co-Chairman and Senators Halford and Paul Fischer signed "no recommendation". Senators Kerttula, Eliason and Sackett signed "do pass".

Fiscal note is zero.

HOUSE BILL NO. 208 was referred to the Rules Committee.

HB 281

The Resources Committee considered CS FOR HOUSE BILL NO. 281 (RES) am (trapping cabin permits) and recommended it be replaced with

SENATE CS FOR CS FOR HOUSE BILL NO. 281 (RES)

Senator Sturgulewski, Chairman and Senator Fahrenkamp signed "do pass". Senators Halford and Eliason signed "no recommendation".

Fiscal note is zero.

CS FOR HOUSE BILL NO. 281 (RES) am was referred to the Rules Committee.

SB 187 cont'd

The report was signed by Senator Rodey, Chairman and Senator Kelly, Senate conferees and Representative Gruenberg, Chairman and Representatives Szymanski and Pettyjohn, House conferees.

President Bennett granted the Senate conferees limited powers of free conference on the amended initial request.

The Secretary was requested to notify the House.

## INTRODUCTION AND REFERENCE OF SENATE RESOLUTIONS

SCR 35

SPONSOR SUBSTITUTE FOR SENATE CONCURRENT RESOLUTION NO. 35  
by Senator Vic Fischer,

Relating to general liability and property  
insurance,  
(New title)

was read the first time and referred to the Labor and  
Commerce Committee.

SJR 48

SENATE JOINT RESOLUTION NO. 48 by the Resources Committee,

Relating to the continued operation of the  
Institute of Northern Forestry at Fairbanks  
and the Forestry Survey Group in Anchorage,

was read the first time and referred to the Resources  
Committee.

## INTRODUCTION AND REFERENCE OF SENATE BILLS

SB 414

2d SPONSOR SUBSTITUTE FOR SENATE BILL NO. 414 by Senator  
Ferguson, entitled:

"An Act relating to general grant land  
entitlements; and providing for an  
effective date."  
(New title)

was read the first time and referred to the Community and  
Regional Affairs Committee, the Resources Committee and the  
Finance Committee.

## CONSIDERATION OF THE CALENDAR

## SECOND READING OF SENATE BILLS

SB 457

SENATE BILL NO. 457 (State Physical Therapy Board; efd) was read the second time.

Senator Fahrenkamp moved and asked unanimous consent for the adoption of the Health, Education and Social Services Committee Substitute offered on page 2109. Without objection. CS FOR SENATE BILL NO. 457 (HESS) was adopted.

Senator Fahrenkamp moved and asked unanimous consent that the Health, Education and Social Services Committee Letter of Intent be adopted as a Senate Letter of Intent. Without objection, the Senate Letter of Intent was adopted.

CS FOR SENATE BILL NO. 457 (HESS) was read the second time.

Senator Halford moved and asked unanimous consent that CS FOR SENATE BILL NO. 457 (HESS) be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 457 (HESS) was read the third time.

The question being: "Shall CS FOR SENATE BILL NO. 457 (HESS) (State Physical Therapy Board; efd) pass the Senate?" The roll was taken with the following result:

CS SB 457 HESS 3RD

Yeas: 18 Abord, Bennett, Coghill, DeVries,  
Eliason, Fahrenkamp, Faiks,  
Fischer Paul, Fischer Vic,  
Halford, Josephson, Kelly,  
Kerttula, Ray, Rodey, Sackett,  
Sturgulewski, Ziegler

Nays: 1 Ferguson

Excused: 1 Zharoff

and so, CS FOR SENATE BILL NO. 457 (HESS) passed the Senate with a Senate Letter of Intent.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 18, 1986

The Honorable Richard Eliason  
Alaska State Senate  
P. O. Box V  
Juneau, AK 99811

Re: CSSB 140 (HESS) (am)

Dear Senator Eliason:

Your office has requested comments on the criminal penalties which were formerly a part of CSSB 140, "An Act relating to the rights of the terminally ill..."

The criminal penalties were found in proposed AS 18.12.070. 1/

---

1/ In AS 18.12.070 the penalties advanced were:

(a) A physician who wilfully fails to withdraw in accordance with AS 18.12.050 is guilty of a class A misdemeanor.

(b) A physician who wilfully fails to record the determination of terminal condition in accordance with AS 18.12.030 is guilty of a class A misdemeanor.

(c) A person who wilfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a class A misdemeanor.

(d) A person who falsifies or forges the declaration of another person or wilfully conceals or withholds personal knowledge of a revocation under AS 18.12.020, with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the other person or declarant, and thereby directly causes life-sustaining procedures to be withheld or withdrawn and death to be hastened violates AS 11.41.100.

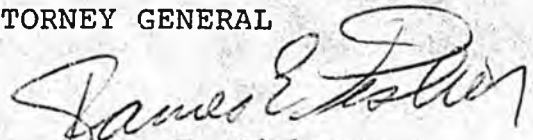
The Honorable Richard Eliason  
Alaska State Senate

February 18, 1986  
Page 2

The Department of Law has concerns about these proposed new crimes because such cases will inevitably be complicated by questions involving medical ethics or a physician's personal religious beliefs. It will be very difficult, in our view, to secure convictions "beyond a reasonable doubt" under such circumstances. As for the murder section, it seems to us that the common law of homicide is sufficiently well developed to take care of appropriate cases without specifically setting out those provisions in the statute.

Sincerely yours,

HAROLD M. BROWN  
ATTORNEY GENERAL



By: James E. Fisher  
Assistant Attorney General

JEF:ejf:22

Offered: 3/15/85  
Referred: Judiciary

as passed by  
the Senate

Original sponsors: Eliason, Ziegler  
and V. Fischer

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 140 (HESS) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the rights of the terminally ill;

7

and providing for an effective date."

8

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

9

\* Section 1. AS 18 is amended by adding a new chapter to read:

10

CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11

Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING

12

PROCEDURES. (a) Any competent person who is at least 18 years old

13

may execute a declaration at any time directing that life-sustaining

14

procedures be withheld or withdrawn from ~~that person~~; but the declara-

HIM OR ITSELF

15

tion is given operative effect only if the declarant's condition is

16

determined to be terminal and the declarant is ~~not~~ able to make treat-

NO LONGER

17

~~ment decisions.~~ OR IS WILLING TO ACCEPT FURTHER TREATMENT. The declaration must be signed by the declarant, or

18

another at the declarant's direction, and in either case must be

19

witnessed by two persons. The witnesses must be at least 18 years old

20

and may not be related to the declarant by blood or marriage. A

21

physician or health care provider may presume, in the absence of

22

actual notice to the contrary, that the declaration complies with this

23

Act and is valid.

24

(b) It is the responsibility of the declarant to notify the

25

declarant's physician of the declaration. A physician or other health

26

care provider who is provided a copy of the declaration shall make it

27

a part of the declarant's medical records.

28

(c) A declaration may, but need not, be in the following form:

29

DECLARATION

1 If I should have an incurable or irreversible condition that will  
2 cause my death within a relatively short time, it is my desire that my  
3 life not be prolonged by administration of life-sustaining procedures.  
4 If my condition is terminal and I am unable to participate in de-  
5 cisions regarding my medical treatment, I direct my attending phy-  
6 sician to withhold or withdraw procedures that merely prolong the  
7 dying process and are not necessary to my comfort or to alleviate  
8 pain.

9 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

10 Signature \_\_\_\_\_

11 City, County and State of Residence \_\_\_\_\_

12 The Declarant is known to me and voluntarily signed this document  
13 in my presence.

14 Witness \_\_\_\_\_

15 Address \_\_\_\_\_

16 Witness \_\_\_\_\_

17 Address \_\_\_\_\_

18 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration  
19 may be revoked at any time and in any manner by which the declarant is  
20 able to communicate an intent to revoke, without regard to mental or  
21 physical condition. A revocation is ~~only~~ effective <sup>WHEN TRANSMITTED</sup> as to the attend-  
22 ing physician or any health care provider acting under the guidance of  
23 that physician ~~upon communication to the physician or health care~~  
24 ~~provider~~ by the declarant or by another to whom the revocation was  
25 communicated.

26 (b) The attending physician or health care provider shall make  
27 the revocation a part of the declarant's medical record.

28 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION  
29 AND CONTENTS OF DECLARATION. When an attending physician who has been

1 notified of the existence and contents of a declaration determines  
2 that the declarant is in a terminal condition, the physician must  
3 <sup>AND NOTIFY THE DECLARANT</sup> record that determination and the contents of the declaration in the  
4 declarant's medical record.

5 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-  
6 ified patient has the right to make decisions regarding use of life-  
7 sustaining procedures as long as the patient is able to do so. If a  
8 qualified patient is not able to make these decisions, the declaration  
9 governs decisions regarding use of life-sustaining procedures.

10 (b) This chapter does not prohibit the application of any med-  
11 ical procedure or intervention, including the provision of nutrition  
12 and hydration, considered necessary to provide comfort, care, or  
13 alleviation of pain.

14 (c) The declaration of a qualified patient known to the attend-  
15 ing physician to be pregnant is given no effect as long as it is  
16 probable that the fetus could develop to the point of live birth with  
17 continued application of life-sustaining procedures.

18 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-  
19 cian who is unwilling to comply with the requirements of AS 18.12.030  
20 or who is unwilling to comply with the declaration of a qualified  
21 patient under AS 18.12.040 shall withdraw as attending physician but  
22 the withdrawal is effective only when the services of another attend-  
23 ing physician have been obtained.

24 (b) If the policies of a health care facility preclude compli-  
25 ance with the declaration of a qualified patient under this chapter,  
26 that facility shall take all reasonable steps to effect the transfer  
27 of the patient to a facility in which the provisions of this chapter  
28 can be carried out.

29 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual

1 notice of the revocation of a declaration, the following, while acting  
2 in accordance with the requirements of this chapter, are not subject  
3 to civil or criminal liability or guilty of unprofessional conduct:

4 (1) a physician who causes the withholding or withdrawal of  
5 life-sustaining procedures from a qualified patient;

6 (2) a person who participates in the withholding or with-  
7 drawal of life-sustaining procedures under the direction or with the  
8 authorization of a physician;

9 (3) the health care facility in which the withholding or  
10 withdrawal occurs.

11 (b) A physician, health care provider, or health care facility  
12 is not subject to civil or criminal liability for actions under this  
13 chapter that are in accord with reasonable medical standards.

14 Sec. 18.12.070. PENALTIES. (a) A physician who wilfully fails  
15 to withdraw in accordance with AS 18.12.050 is guilty of a class A  
16 misdemeanor.

17 (b) A physician who wilfully fails to record the determination  
18 of terminal condition in accordance with AS 18.12.030 is guilty of a  
19 class A misdemeanor.

20 (c) A person who wilfully conceals, cancels, defaces, or oblit-  
21 erates the declaration of another without the declarant's consent or  
22 who falsifies or forges a revocation of the declaration of another is  
23 guilty of a class A misdemeanor.

24 (d) A person who falsifies or forges the declaration of another  
25 person or wilfully conceals or withholds personal knowledge of a  
26 revocation under AS 18.12.020, with the intent to cause a withholding  
27 or withdrawal of life-sustaining procedures contrary to the wishes of  
28 the other person or declarant, and thereby directly causes  
29 life-sustaining procedures to be withheld or withdrawn and death to be

1 hastened violates AS 11.41.100.

2 Sec. 18.12.080. GENERAL PROVISIONS. (a) Except as provided in  
3 AS 18.12.070 (d) death resulting from the withholding or withdrawal of  
4 life-sustaining procedures under a declaration and in accordance with  
5 this chapter does not, for any purpose, constitute a suicide or homi-  
6 cide.

7 2 (b) The making of a declaration under AS 18.12.010 does not  
8 affect in any manner the sale, procurement, or issuance of a policy of  
9 life insurance, nor does it modify the terms of an existing policy of  
10 life insurance. A policy of life insurance is not legally impaired or  
11 invalidated in any manner by the withholding or withdrawal of life-  
12 sustaining procedures from an insured qualified patient, notwithstand-  
13 ing any term of the policy to the contrary.

14 (c) A physician, health care facility, or other health care  
15 provider, and a health care service plan, insurer issuing disability  
16 insurance, self-insured employee welfare benefit plan, or nonprofit  
17 hospital plan, may not require a person to execute a declaration as a  
18 condition for being insured for, or receiving, health care services.

19 (d) This chapter creates no presumption concerning the intention  
20 of an individual who has not executed a declaration with respect to  
21 the use, withholding, or withdrawal of life-sustaining procedures in  
22 the event of a terminal condition.

23 (e) Nothing in this chapter increases or decreases the right of  
24 a patient to make decisions regarding use of life-sustaining proce-  
25 dures as long as the patient is able to do so, [nor impairs or super- 2  
26 cedes any right or responsibility that a person has to effect the 1  
27 withholding or withdrawal of medical care in a lawful manner.] In that  
28 respect, the provisions of this chapter are cumulative.

29 (f) This chapter does not condone, authorize, or approve mercy

1 killing or euthanasia.

2 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER  
3 STATES. A declaration executed in another state in compliance with  
4 the law of that state is effective for purposes of this chapter.

5 Sec. 18.12.100. DEFINITIONS. In this chapter

6 (1) "attending physician" means the physician selected by,  
7 or assigned to, the patient who has primary responsibility for the  
8 treatment and care of the patient;

9 (2) "declaration" means a document executed in accordance  
10 with the requirements of AS 18.12.010;

11 (3) "health care provider" means a person who is licensed,  
12 certified, or otherwise authorized by the law of this state to admin-  
13 ister health care in the ordinary course of business or practice of a  
14 profession;

15 (4) "life-sustaining procedure" means a medical procedure  
16 or intervention that, when administered to a qualified patient, will  
17 serve only to prolong the dying process;

18 (5) "physician" means a person licensed to practice medi-  
19 cine in this state or an officer in the regular medical service of the  
20 armed services of the United States or the United States Public Health  
21 Service while in the discharge of their official duties, or while  
22 volunteering services without pay or other remuneration to a hospital,  
23 clinic, medical office, or other medical facility in the state;

24 (6) "qualified patient" means a patient who has executed a  
25 declaration in accordance with this chapter and who has been deter-  
26 mined by the attending physician to be in a terminal condition;

27 (7) "terminal condition" means an incurable or irreversible  
28 condition that, without the administration of life-sustaining proce-  
29 dures, will, in the opinion of the attending physician, result in

1 death within a relatively short time.

2 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).

Received 9:00 am  
MAY 7, 1986

CONFERENCE COMMITTEE REPORT

May 6, 1986 Date

Mr. President:  
Mr. Speaker:

The CONFERENCE COMMITTEE considered CS FOR SENATE BILL NO. 140 (HESS) amended (relating to the rights of the terminally ill; efd) and HOUSE CS FOR CS FOR SENATE BILL NO. 140 (JUD) amended House and recommends

Conference CS for Senate Bill No. 140

21

be adopted.

*Eliason*  
Senator Eliason, Chairman

*R. Clocksin*  
Rep. Clocksin, Chairman

*Ray* Do NOT PASS  
Senator Ray

*Koponen*  
Rep. Koponen

*Ziegler*  
Senator Ziegler

*Pignalberi* DO NOT PASS  
Rep. Pignalberi

\*\*PLEASE RETURN COMPLETED FORM TO SENATE SECRETARY'S OFFICE\*\*

Original sponsors: Eliason, Ziegler,  
V.Fischer, et al

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally ill;  
7 and providing for an effective date."

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

9 \* Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11 Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING  
12 PROCEDURES. (a) A competent person who is at least 18 years old may  
13 execute a declaration at any time directing that life-sustaining  
14 procedures be withheld or withdrawn from that person; but the declara-  
15 tion is given operative effect only if the declarant's condition is  
16 determined to be terminal and the declarant is not able to make treat-  
17 ment decisions. The declaration shall be signed by the declarant, or  
18 another at the declarant's direction, and in either case shall be  
19 witnessed by two persons or a person qualified to take acknowledge-  
20 ments under AS 09.63.010. The witnesses must be at least 18 years old  
21 and may not be related to the declarant by blood or marriage. A  
22 person may not charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy  
24 of the declaration to the declarant's physician. A physician or other  
25 health care provider who is provided a copy of the declaration shall  
26 make it a part of the declarant's medical records.

27 (c) A declaration may, but need not, be in the following form:

28 DECLARATION

29 If I should have an incurable or irreversible condition that will

1 cause my death within a relatively short time, it is my desire that my  
2 life not be prolonged by administration of life-sustaining procedures.

3 If my condition is terminal and I am unable to participate in de-  
4 cisions regarding my medical treatment, I direct my attending phy-  
5 sician to withhold or withdraw procedures that merely prolong the  
6 dying process and are not necessary to my comfort or to alleviate  
7 pain.

8 I [ ] do [ ] do not desire that nutrition or hydration (food  
9 and water) be provided by gastric tube or intravenously if  
10 necessary.

11 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

12 Signature \_\_\_\_\_

13 Place \_\_\_\_\_

14 The declarant is known to me and voluntarily signed or  
15 voluntarily directed another to sign this document in my presence.

16 Witness \_\_\_\_\_

17 Address \_\_\_\_\_

18 Witness \_\_\_\_\_

19 Address \_\_\_\_\_

20 State of \_\_\_\_\_

21 \_\_\_\_\_ Judicial District

22 The foregoing instrument was acknowledged before me this (date)  
23 by (name of person who acknowledged).

24 \_\_\_\_\_  
25 Signature of Person Taking  
26 Acknowledgement

27 \_\_\_\_\_  
28 Title or Rank  
29 \_\_\_\_\_

1 Serial Number, if any

2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR  
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER  
4 AS 09.63.010.

5 (d) A physician or health care provider may presume, in the  
6 absence of actual notice to the contrary, that the declaration com-  
7 plies with this chapter and is valid.

8 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration  
9 may be revoked at any time and in any manner by which the declarant is  
10 able to communicate an intent to revoke, without regard to mental or  
11 physical condition. A revocation is only effective as to the attend-  
12 ing physician or any health care provider acting under the guidance of  
13 that physician upon communication to the physician or health care  
14 provider by the declarant or by another to whom the revocation was  
15 communicated.

16 (b) The attending physician or health care provider shall make  
17 the revocation a part of the declarant's medical record.

18 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION  
19 AND CONTENTS OF DECLARATION. When an attending physician who has been  
20 provided a copy of a declaration determines that the declarant is in a  
21 terminal condition, the physician shall record that determination and  
22 the contents of the declaration in the declarant's medical record.

23 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-  
24 ified patient has the right to make decisions regarding use of life-  
25 sustaining procedures as long as the patient is able to do so. If a  
26 qualified patient is not able to make these decisions, the declaration  
27 governs decisions regarding use of life-sustaining procedures.

28 (b) This chapter does not prohibit the application of any med-  
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-  
2 viation of pain. The declaration may provide that the declarant does  
3 not want nutrition or hydration administered intravenously or by  
4 gastric tube.

5 (c) The declaration of a qualified patient known to the  
6 attending physician to be pregnant is given no effect as long as it is  
7 probable that the fetus could develop to the point of live birth with  
8 continued application of life-sustaining procedures.

9 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-  
10 cian who is unwilling to comply with the requirements of AS 18.12.030  
11 or who is unwilling to comply with the declaration of a qualified  
12 patient under AS 18.12.040 shall withdraw as attending physician but  
13 the withdrawal is effective only when the services of another attend-  
14 ing physician have been obtained.

15 (b) If the policies of a health care facility preclude compli-  
16 ance with the declaration of a qualified patient under this chapter,  
17 that facility shall take all reasonable steps to notify the patient  
18 or, if the patient is not able to make treatment decisions, the  
19 patient's guardian, of the facility's policy and shall take all  
20 reasonable steps to effect the transfer of the patient to the  
21 patient's home or to a facility where the provisions of this chapter  
22 can be carried out.

23 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual  
24 notice of the revocation of a declaration, the following, while acting  
25 in accordance with the requirements of this chapter, are not subject  
26 to civil or criminal liability or guilty of unprofessional conduct:

27 (1) a physician who causes the withholding or withdrawal of  
28 life-sustaining procedures from a qualified patient;

29 (2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the  
2 authorization of a physician;

3 (3) the health care facility in which the withholding or  
4 withdrawal occurs.

5 (b) A physician, a health care professional, or a health care  
6 facility is not subject to civil or criminal liability for actions  
7 under this chapter that are in accord with reasonable medical stan-  
8 dards.

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who  
10 fails to comply with the declaration of a qualified patient or to make  
11 the necessary arrangements to effect a transfer under AS 18.12.050 has  
12 no right to compensation for medical services provided to a qualified  
13 patient after withdrawal should have been effective or after transfer  
14 should have occurred and may be liable to the qualified patient and to  
15 the heirs of the qualified patient for a civil penalty not to exceed  
16 \$1000.00 plus the actual costs associated with the failure to comply  
17 with the declaration, and this shall be the exclusive remedy at law  
18 for damages.

19 (b) A person who wilfully conceals, cancels, defaces, obliterated,  
20 or damages the declaration of another without the declarant's  
21 consent or who falsifies or forges a revocation of the declaration of  
22 another may be civilly liable to the qualified patient and to the  
23 heirs of the qualified patient.

24 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from  
25 the withholding or withdrawal of life-sustaining procedures under a  
26 declaration and in accordance with this chapter does not, for any  
27 purpose, constitute a suicide or homicide.

28 (b) The making of a declaration under AS 18.12.010 does not  
29 affect in any manner the sale, procurement, or issuance of a policy of

1 life insurance, nor does it modify the terms of an existing policy of  
2 life insurance. A policy of life insurance is not legally impaired or  
3 invalidated in any manner by the withholding or withdrawal of life-  
4 sustaining procedures from an insured qualified patient, notwithstand-  
5 ing any term of the policy to the contrary.

6 (c) A physician, health care facility, or other health care  
7 provider, and a health care service plan, insurer issuing disability  
8 insurance, self-insured employee welfare benefit plan, or nonprofit  
9 hospital plan, may not require a person to execute a declaration as a  
10 condition for being insured for, or receiving, health care services.

11 (d) This chapter creates no presumption concerning the intention  
12 of an individual who has not executed a declaration with respect to  
13 the use, withholding, or withdrawal of life-sustaining procedures in  
14 the event of a terminal condition.

15 (e) Nothing in this chapter increases or decreases the right of  
16 a patient to make decisions regarding use of life-sustaining proce-  
17 dures as long as the patient is able to do so, or impairs or super-  
18 cedes any right or responsibility that a person has to effect the  
19 withholding or withdrawal of medical care in a lawful manner. In that  
20 respect, the provisions of this chapter are cumulative.

21 (f) This chapter does not condone, authorize, or approve mercy  
22 killing or euthanasia.

23 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER  
24 STATES. A declaration executed in another state or a territory or  
25 possession of the United States in compliance with the law of that  
26 jurisdiction is effective for purposes of this chapter.

27 Sec. 18.12.100. DEFINITIONS. In this chapter

28 (1) "attending physician" means the physician selected by,  
29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

2 (2) "declaration" means a document executed in accordance  
3 with the requirements of AS 18.12.010;

4 (3) "health care provider" means a person who is licensed,  
5 certified, or otherwise authorized by the law of this state to admin-  
6 ister health care in the ordinary course of business or practice of a  
7 profession;

8 (4) "life-sustaining procedure" means a medical procedure  
9 or intervention that, when administered to a qualified patient, will  
10 serve only to prolong the dying process;

11 (5) "physician" means a person licensed to practice medi-  
12 cine in this state or an officer in the regular medical service of the  
13 armed services of the United States or the United States Public Health  
14 Service while in the discharge of their official duties, or while  
15 volunteering services without pay or other remuneration to a hospital,  
16 clinic, medical office, or other medical facility in the state;

17 (6) "qualified patient" means a patient who has executed a  
18 declaration in accordance with this chapter and who has been deter-  
19 mined by the attending physician to be in a terminal condition;

20 (7) "terminal condition" means a progressive incurable or  
21 irreversible condition that, without the administration of life-sus-  
22 taining procedures, will, in the opinion of two physicians, when  
23 available, who have personally examined the patient, one of whom must  
24 be the attending physician, result in death within a relatively short  
25 time.

26 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).

House Adopted Version  
with 2 changes as

Uteimohle  
4/25/86

Original sponsors: Eliason, Ziegler,  
V.Fischer, et al

high lighted

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally ill;  
7 and providing for an effective date."

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

9 \* Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11 Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING  
12 PROCEDURES. (a) A competent person who is at least 18 years old may  
13 execute a declaration at any time directing that life-sustaining  
14 procedures be withheld or withdrawn from that person; but the declara-  
15 tion is given operative effect only if the declarant's condition is  
16 determined to be terminal and the declarant is not able to make treat-  
17 ment decisions. The declaration shall be signed by the declarant, or  
18 another at the declarant's direction, and in either case shall be  
19 witnessed by two persons or a person qualified to take acknowledge-  
20 ments under AS 09.63.010. The witnesses must be at least 18 years old  
21 and may not be related to the declarant by blood or marriage. A  
22 person may not charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy  
24 of the declaration to the declarant's physician. A physician or other  
25 health care provider who is provided a copy of the declaration shall  
26 make it a part of the declarant's medical records.

27 (c) A declaration may, but need not, be in the following form:

28 DECLARATION

29 If I should have an incurable or irreversible condition that will

1 cause my death within a relatively short time, it is my desire that my  
 2 life not be prolonged by administration of life-sustaining procedures.

3 If my condition is terminal and I am unable to participate in de-  
 4 cisions regarding my medical treatment, I direct my attending phy-  
 5 sician to withhold or withdraw procedures that merely prolong the  
 6 dying process and are not necessary to my comfort or to alleviate  
 7 pain.

8 I [ ] do [ ] do not desire that nutrition or hydration (food  
 9 and water) be provided by gastric tube or intravenously if  
 10 necessary.

11 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
 12 Signature \_\_\_\_\_  
 13 Place \_\_\_\_\_

14 The declarant is known to me and voluntarily signed or  
 15 voluntarily directed another to sign this document in my presence.

16 Witness \_\_\_\_\_  
 17 Address \_\_\_\_\_  
 18 Witness \_\_\_\_\_  
 19 Address \_\_\_\_\_  
 20 State of \_\_\_\_\_  
 21 \_\_\_\_\_ Judicial District

22 The foregoing instrument was acknowledged before me this (date)  
 23 by (name of person who acknowledged).

24 \_\_\_\_\_  
 25 Signature of Person Taking  
 26 Acknowledgement  
 27 \_\_\_\_\_  
 28 Title or Rank  
 29 \_\_\_\_\_

1 Serial Number, if any

2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR  
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER  
4 AS 09.63.010.

5 (d) A physician or health care provider may presume, in the  
6 absence of actual notice to the contrary, that the declaration com-  
7 plies with this chapter and is valid.

8 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration  
9 may be revoked at any time and in any manner by which the declarant is  
10 able to communicate an intent to revoke, without regard to mental or  
11 physical condition. A revocation is only effective as to the attend-  
12 ing physician or any health care provider acting under the guidance of  
13 that physician upon communication to the physician or health care  
14 provider by the declarant or by another to whom the revocation was  
15 communicated.

16 (b) The attending physician or health care provider shall make  
17 the revocation a part of the declarant's medical record.

18 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION  
19 AND CONTENTS OF DECLARATION. When an attending physician who has been  
20 provided a copy of a declaration determines that the declarant is in a  
21 terminal condition, the physician shall record that determination and  
22 the contents of the declaration in the declarant's medical record.

23 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-  
24 ified patient has the right to make decisions regarding use of life-  
25 sustaining procedures as long as the patient is able to do so. If a  
26 qualified patient is not able to make these decisions, the declaration  
27 governs decisions regarding use of life-sustaining procedures.

28 (b) This chapter does not prohibit the application of any med-  
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-  
2 viation of pain. The declaration may provide that the declarant does  
3 not want nutrition or hydration administered intravenously or by  
4 gastric tube.

5 *Senate language*  
6 (c) The declaration of a qualified patient known to the  
7 attending physician to be pregnant is given no effect as long as it is  
8 probable that the fetus could develop to the point of live birth with  
9 continued application of life-sustaining procedures.

10 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-  
11 cian who is unwilling to comply with the requirements of AS 18.12.030  
12 or who is unwilling to comply with the declaration of a qualified  
13 patient under AS 18.12.040 shall withdraw as attending physician but  
14 the withdrawal is effective only when the services of another attend-  
15 ing physician have been obtained.

16 (b) If the policies of a health care facility preclude compli-  
17 ance with the declaration of a qualified patient under this chapter,  
18 that facility shall take all reasonable steps to notify the patient  
19 or, if the patient is not able to make treatment decisions, the  
20 patient's guardian, of the facility's policy and shall take all  
21 reasonable steps to effect the transfer of the patient to the  
22 patient's home or to a facility where the provisions of this chapter  
23 can be carried out.

24 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual  
25 notice of the revocation of a declaration, the following, while acting  
26 in accordance with the requirements of this chapter, are not subject  
27 to civil or criminal liability or guilty of unprofessional conduct:

28 (1) a physician who causes the withholding or withdrawal of  
29 life-sustaining procedures from a qualified patient;

(2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the  
2 authorization of a physician;

3 (3) the health care facility in which the withholding or  
4 withdrawal occurs.

5 (b) A physician, a health care professional, or a health care  
6 facility is not subject to civil or criminal liability for actions  
7 under this chapter that are in accord with reasonable medical stan-  
8 dards.

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who  
10 fails to comply with the declaration of a qualified patient or to make  
11 the necessary arrangements to effect a transfer under AS 18.12.050 has  
12 no right to compensation for medical services provided to a qualified  
13 patient after withdrawal should have been effective or after transfer  
14 should have occurred and may be liable to the qualified patient and to  
15 the heirs of the qualified patient for a civil penalty not to exceed  
16 \$1000.00 plus the actual costs associated with the failure to comply  
17 with the declaration, and this shall be the exclusive remedy at law  
18 for damages.

19 (b) A person who wilfully conceals, cancels, defaces, obliterated,  
20 or damages the declaration of another without the declarant's  
21 consent or who falsifies or forges a revocation of the declaration of  
22 another may be civilly liable to the qualified patient and to the  
23 heirs of the qualified patient.

24 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from  
25 the withholding or withdrawal of life-sustaining procedures under a  
26 declaration and in accordance with this chapter does not, for any  
27 purpose, constitute a suicide or homicide.

28 (b) The making of a declaration under AS 18.12.010 does not  
29 affect in any manner the sale, procurement, or issuance of a policy of

1 life insurance, nor does it modify the terms of an existing policy of  
2 life insurance. A policy of life insurance is not legally impaired or  
3 invalidated in any manner by the withholding or withdrawal of life-  
4 sustaining procedures from an insured qualified patient, notwithstand-  
5 ing any term of the policy to the contrary.

6 (c) A physician, health care facility, or other health care  
7 provider, and a health care service plan, insurer issuing disability  
8 insurance, self-insured employee welfare benefit plan, or nonprofit  
9 hospital plan, may not require a person to execute a declaration as a  
10 condition for being insured for, or receiving, health care services.

11 (d) This chapter creates no presumption concerning the intention  
12 of an individual who has not executed a declaration with respect to  
13 the use, withholding, or withdrawal of life-sustaining procedures in  
14 the event of a terminal condition.

15 (e) Nothing in this chapter increases or decreases the right of  
16 a patient to make decisions regarding use of life-sustaining proce-  
17 dures as long as the patient is able to do so, or impairs or super-  
18 cedes any right or responsibility that a person has to effect the  
19 withholding or withdrawal of medical care in a lawful manner. In that  
20 respect, the provisions of this chapter are cumulative.

21 (f) This chapter does not condone, authorize, or approve mercy  
22 killing or euthanasia.

23 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER  
24 STATES. A declaration executed in another state or a territory or  
25 possession of the United States in compliance with the law of that  
26 jurisdiction is effective for purposes of this chapter.

27 Sec. 18.12.100. DEFINITIONS. In this chapter

28 (1) "attending physician" means the physician selected by,  
29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

2 (2) "declaration" means a document executed in accordance  
3 with the requirements of AS 18.12.010;

4 (3) "health care provider" means a person who is licensed,  
5 certified, or otherwise authorized by the law of this state to admin-  
6 ister health care in the ordinary course of business or practice of a  
7 profession;

8 (4) "life-sustaining procedure" means a medical procedure  
9 or intervention that, when administered to a qualified patient, will  
10 serve only to prolong the dying process;

11 (5) "physician" means a person licensed to practice medi-  
12 cine in this state or an officer in the regular medical service of the  
13 armed services of the United States or the United States Public Health  
14 Service while in the discharge of their official duties, or while  
15 volunteering services without pay or other remuneration to a hospital,  
16 clinic, medical office, or other medical facility in the state;

17 (6) "qualified patient" means a patient who has executed a  
18 declaration in accordance with this chapter and who has been deter-  
19 mined by the attending physician to be in a terminal condition;

20 (7) "terminal condition" means a progressive incurable or  
21 irreversible condition that, without the administration of life-sus-  
22 taining procedures, will, in the opinion of two physicians, when  
23 available, who have personally examined the patient, one of whom must  
24 be the attending physician, result in death within a relatively short  
25 time.

26 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).  
28  
29

SENATE VERSION	HOUSE VERSION <i>Conference Cmte Adopted House Version</i>
<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u></p> <p>-- The declaration is witnessed by two persons not related to the declarant by blood or marriage.</p>	<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u> <i>with 2 changes</i></p> <p>-- The declaration is witnessed by two persons generally competent OR a judge, justice, magistrate, clerk of a court, notary public, United States postmaster, or a commissioned officer under AS 09.63.050(4). No fee may be charged for preparing a declaration.</p>
<p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant notifies physician of a declaration.</p>	<p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant provides a copy of the declaration to the physician.</p>
<p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Does not address the nutrition and hydration issue</p>	<p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Provides the following language:</p> <p>I ( ) do ( ) do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.</p>
<p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain.</p>	<p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain. The declaration can state that the patient does not wish nutrition and hydration to be administered by tubes.</p>
<p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- The declaration has no effect as long as it is probable that the fetus could develop to the point of live birth.</p>	<p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- Suspends the declaration as long as the fetus is alive.</p>
<p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to another facility must be made.</p>	<p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to the patient's home or to another facility must be made.</p>

*combined House language*

*deleted House language*

## SENATE VERSION

Penalties - Attending Physician (Sec. 18.12.070(a))

- A physician who fails to withdraw is guilty of a class A misdemeanor.
- A physician who fails to record a declaration is guilty of a class A misdemeanor. (Sec. 18.12.070(b))

Penalties (Sec. 18.12.070(c))

- Any person who alters a declaration is guilty of a class A misdemeanor.
- Any person who hastens an individual's death by withholding knowledge of a declarant's revocation is guilty of first degree murder. (Sec. 18.12.070(d))

Recognition of Declaration (Sec. 18.12.090)

- Another state's declaration is valid.

Definition (Sec. 18.12.100(7))

- One physician determines if a patient is terminally ill.
- Terminal condition means an incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.

## HOUSE VERSION

Penalties - Attending Physician (Sec. 18.12.070(a))

- An attending physician who fails to comply with the declaration or to make a transfer won't receive payment for service after withdrawal should have occurred is liable for \$1000 penalty, and must pay any costs associated with failure to comply.

Penalties (Sec. 18.12.070(b))

- Any person who alters a declaration is civilly liable to the patient and his/her heirs.

Recognition of Declaration (Sec. 18.12.090)

- Another state's, or a territory or possession of the United States, declaration is valid.

Definition (Sec. 18.12.100(7))

- Two physicians, when available, determines if a patient is terminally ill.
- Terminal condition means a progressive incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.

See page 2

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1986

SUBJECT: Powers of Conference Committees  
(SB 140)

TO: Senator Richard Eliason

FROM: George Utermohle *GU*  
Legislative Counsel

This memorandum supplements a conversation with Sheila Peterson of your staff. The question was whether a conference committee could draft a substitute bill for SB 140 using sentences from the House version and Senate version. As long as the conference committee adopts language adopted by either house, the conference committee could formulate a substitute bill by combining sentences from either version. The paramount consideration is whether the language adopted by the conference committee encompasses a complete unit of subject matter.

For example, in 18.12.010(a) of SB 140 there are at least four different subjects addressed in either or both of the versions of the bill. Those subjects are eligibility for and legal effect of a declaration, the manner for executing a declaration, the presumptions of validity of a declaration, and the fee for preparation of a declaration. On each of these four subjects the committee must adopt either the Senate or House language.

The conference committee must adopt the language on the eligibility for and legal effect of a declaration because the same language is in both versions of the bill.

The conference committee has two versions of language to choose from on the subject of the manner of executing a declaration. The conference committee may adopt either the House or Senate version.


The conference committee has only one version of language to choose from on the subject of the presumptions of validity


I've extra copies, but cmte members  
don't have memo -

Senator Richard Eliason


Page 2

April 3, 1986

of a declaration. The House and Senate bills contain identical language on this subject. The conference committee must include this language in a conference committee substitute because it is included in both versions. The only issue before the committee is whether to include this language in 18.12.010(a) or 18.12.010(d). 

The conference committee has two versions of the language relating to the fee for preparation of a declaration. The House version says no fee may be charged while the Senate version is silent on this subject. The conference committee may then adopt the House language or the Senate language on this subject.   
(which is no reference)

The action which the conference committee takes on each of these subjects is distinct and independent from that taken on the others. The only limit on the power of the committee to mix and match between House and Senate language on each subject is that the committee cannot change the effect of the bill as to that subject to arrive at a result that differs from both the House and Senate versions. Admittedly, it is difficult to determine when this has occurred. However, without this limit on the power of a conference committee to mix and match Senate and House language, form would prevail over substance and a conference committee could conceivably completely rewrite legislation without powers of free conference.

Though I have treated the manner of executing a declaration as a single subject for consideration by the committee, this subject could be further divided into distinct subjects. For example in executing a declaration, the declaration may be witnessed by two persons or in the alternative by two persons or a person who can take acknowledgments. The second distinct subject addressed by the House and Senate versions of the bill is the competence of persons to serve as witnesses. In the Senate version witnesses may not be related by blood or marriage to the declarant and must be at least 18 years old and in the House version witnesses must be generally competent to serve as witnesses. The conference committee could then accept the House language on who can witness (two persons or a person qualified to take acknowledgments) and the Senate's language on the competence of persons to witness a declaration (18 year of age and not related by blood or marriage). The limit on the power of the conference committee to mix and match language from the House and Senate versions of the bill would be exceeded if 

Says  
it is  
OK to  
join witness  
requirements

Senator Richard Eliason

Page 3

April 3, 1986

the committee attempted to combine the House provision that any person generally competent to be witness may witness a declaration with the Senate provision that a witness cannot be related by blood or marriage to the declarant. In this case the conference committee would not be adopting the House or Senate amendment on the issue but would be formulating compromise language which is beyond the power of a conference committee.

GU:mkr  
m4/066

STA

This letter is in response to the concern brought DEPA up in conf smte re: \$1,000 cap OFFICE for a doctor who fails to comply with a declaration.

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600  
P.O. Box K  
465-3603

Honorable Richard I. Eliason  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Re: HCSCSSB 140(Jud) am H

Dear Senator Eliason:

At the request of Sheila Peterson I have reviewed the above identified bill, specifically, that portion of the bill providing for a civil penalty and actual costs against a physician who fails to comply with the declaration of a qualified patient. The penalty provisions are not unconstitutional.

Discussion: Equal Protection - There is a constitutional equal protection issue involved in "caps" on damages; Assume a law providing damages of not more than \$100,000 for pain and suffering and two injured plaintiffs, one who suffered a minor degree of discomfort attendant to a sprained ankle and the other who is a paraplegic suffering continual life long pain. The plaintiff with the minor injury can obtain full compensation but the paraplegic is limited in his pain and suffering claim by the \$100,000 cap. This can be considered discrimination against the seriously ill and therefore could result in a ruling that the statute denies equal protection of the law. The courts are divided but the trend nationwide appears to be to not find laws setting caps on damages to be unconstitutional.

Due Process - It is arguable that a personal injury claim is a "property right" recognized at the common law which cannot be diminished by the legislature. Consequently, there is a possibility that a "cap" on damages in personal injury cases would be found to deny substantive due process rights. A due process ruling of unconstitutionality is not likely in Alaska.

HCSCSSB 140 (JUD) am H - The penalty provision of HCSCSSB 140(JUD) am H provides for a penalty for a "wrong" not previously recognized by the law. Courts have traditionally

Honorable Richard I. Eliason  
Alaska State Senate

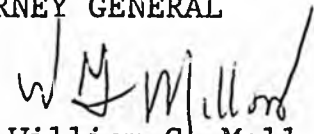
April 10, 1986  
Page 2

stated that where the legislature creates a new cause of action, it is free to limit the recovery available for violations of the law. Thus, even conceding where "caps" on damages may be a constitutional issue, it is not probable that the penalty provision of HCSCSSB 140(JUD) am H would be struck as unconstitutional.

Sincerely,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:

  
William G. Mellow  
Assistant Attorney General

WGM:jal

cc: Arthur H. Peterson

#12  
Failed

BSN:1337

ALASKA HOUSE OF REPRESENTATIVES  
HCSC99B377(JUL)AM12

2ND SESSION 14TH LEG

5/ 8/86 7: 0 PM

		15 YEARS	25 DAYS	0 EXC	0 ABS		
N	ADAMS	N	FULLER	N	LARSON	N	FOURCROT
Y	BINKLEY	Y	FURNACE	Y	HARROU	N	RIEGER
Y	BOUCHER	N	GOLL	N	MARTIN	Y	KINGSTAD
N	CATO	N	GRUENBERG	N	MILLER, M.M.	Y	SHULTZ
N	CLOCK SIN	N	GRUSSENDORF	Y	MILLER, M.W.	N	SUND
Y	COLLINS	Y	HANLEY	N	NAVARRE	N	SZYMANSKI
Y	COTTER	N	HERRMANN	Y	PEARCE	N	TAYLOR
N	DAVIS	N	HURLEY	N	PETTY, JOHN	Y	THOMPSON
N	DUNCAN	Y	JENKINS	N	PHILLIPS	N	UEHLING
Y	FRANK	N	KOPONEN	Y	PIGNALBERTI	N	WALLIS

+ VOTED FOR  
- CHANGED VOTE

AMENDMENT # 15

NOV 2004

OFFERED IN THE HOUSE:

To: HCS CSSB JWA

By: COLLIAS  
PIERCE

HOUSE BILL No. \_\_\_\_\_

SENATE BILL No. \_\_\_\_\_

LINE: 11-16

PAGE: 1

11 \* Section 1. AS 09 is amended by adding a new chapter to read:

12 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

13 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
14 recover damages for personal injury based on negligence, damages for  
15 noneconomic losses shall be limited to \$500,000 for each person  
16 injured.

# 13  
 failed

BSN:1338

ALASKA HOUSE OF REPRESENTATIVES  
 HCSCSSB377 (JUD) AMH AM13

2ND SESSION 14TH LEG

5/ 8/86 7: 9 PM

	20 YEARS	20 DAYS	0 EXC	0 ABS		
N ADAMS	N	FULLER	Y	LARSON	N	FOURCHOT
Y BINKLEY	Y	FURNACE	Y	MARROU	Y	RIEGER
Y BOUCHER	N	GOLL	Y	MARTIN	Y	RINGSTAD
N CATO	N	GRUENBERG	N	MILLER, M.M.	Y	SHULTZ
N CLOCKSIN	N	GRUSSENDORF	Y	MILLER, M.W.	N	SUND
Y COLLINS	Y	HANLEY	N	NAVARRE	N	SZYNANSKI
Y COTTEN	N	HERRMANN	Y *	PEARCE	N	TAYLOR
N DAVIS	N	HURLEY	Y	PETTYJOHN	Y	THOMPSON
N DUNCAN	Y	JENKINS	N	PHILLIPS	Y	UEHLING
Y FRANK	N	KOPONEN	Y	PIGNALBERT	N	WALLIS

\* VOTED FOR  
 \* CHANGED VOTE

By: Gruenberg & Phillips

line 11

At page 9, insert a new section 8 as follows and renumber the following sections accordingly.

\* Sec. 8. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases and proceedings as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$35,000 [\$25,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$35,000 [\$25,000];

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

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value **[OF THE PROPERTY OR]** of the arrears and damage to the property does not exceed \$35,000 [\$25,000];

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$25,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.-030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020.

#14  
PASS

NAME		ADDRESS		CITY		STATE	
Y	ALBANE	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	BURTON	Y	1000 E	Y	ALBANY	N	ALBANY
Y	COOPER	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	DAVE	Y	1000 E	Y	ALBANY	N	ALBANY
Y	FRANK	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	GEORGE	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	HENRY	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	JAMES	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	JOHN	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	LEWIS	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	MARY	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	ROBERT	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	THOMAS	Y	1000 E	Y	ALBANY	Y	ALBANY
Y	WILLIAM	Y	1000 E	Y	ALBANY	Y	ALBANY

Y VOTED FOR  
N CHARGED WITH

W/D

Ford ✓

# 15

A M E N D M E N T

Offered in the HOUSE

By Taylor

TO: HCS CSSB 377(Judiciary)

Page 7, before line 1, insert a new bill section to read:

"\* Sec. 2. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on injury to person or property when the amount in controversy is less than \$75,000, exclusive of costs, interest, and attorney fees, unless the controversy is first arbitrated under AS 09.43."

Renumber following bill sections accordingly.

Page 8, after line 15, insert new bill sections to read:

"\* Sec. 6. AS 09.43.110 is amended to read:

Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a party, the court shall confirm an award unless

(1) within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130; or

(2) an appeal is taken under AS 09.43.160(c).

\* Sec. 7. AS 09.43.160 is amended by adding a new subsection to read:

(c) An award made as a result of arbitration required by

AS 09.10.075 may be appealed to the proper court. The appeal shall be filed within 60 days after notice of an award is made under AS 09.43.-080. The court shall grant a trial de novo if an appeal is filed under this subsection.

\* Sec. 8. AS 09.60 is amended by adding a new section to read:

Sec. 09.60.035. COSTS AND ATTORNEY FEES ALLOWED FOR ARBITRATION APPEAL. If a party appeals an award made as a result of arbitration required by AS 09.10.075, and the appellate court increases or decreases the award by more than 10 percent, the prevailing party on appeal shall also be awarded actual costs and attorney fees incurred as a result of the appeal."

Renumber following bill sections accordingly.

Page 9, after line 10, insert new bill sections to read:

"\* Sec. 12. AS 22.10.020(d) is amended to read:

(d) The superior court has jurisdiction in all matters appealed to it (1) from a subordinate court; (2) by a party to an arbitration award under AS 09.43.160(c); [,] or (3) an administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

\* Sec. 13. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases and proceedings as follows:

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

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$25,000;

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$25,000;

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

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the property or of the arrears and damage to the property does not exceed \$25,000;

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$25,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$25,000;

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.-030;

(10) over cases involving injunctive relief for domestic

violence under AS 25.35.010 and 25.35.020;

(11) over an appeal by a party to an arbitration award under AS 09.43.160(c) when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$25,000."

Renumber following bill sections accordingly.

Page 9, line 26, delete "sec. 7" and insert "sec. 11"

Page 9, line 29, delete "sec. 4" and insert "sec. 5"

Page 10, line 3, delete "sec. 6" and insert "sec. 10"

Page 10, line 6, delete "Sections 1 - 8" and insert "Sections 1 - 14"

final

GSN:1340

ALASKA HOUSE OF REPRESENTATIVES  
REGULAR SESSION

2ND SESSION 1971-72

5/ 6/78c

		55	56	57	58	59	60
		Y	Y	Y	Y	Y	Y
Y	ADAMS	Y	FULLER	Y	SAKSON	Y	FOURQUREN
Y	BIRRELL	Y	FURBER	Y	SKROU	Y	RIEGER
N	BURCHER	Y	GILL	Y	WARTER	Y	RINGSBY
Y	CAHO	Y	GRUBBS	Y	HILLER, JR.	Y	SHULTZ
N	CLINE	Y	SHUBERT	Y	HILLER, JR.	Y	SORD
N	CULLINS	Y	HARLEY	Y	BUCKLE	Y	SZTARNAK
Y	COTTELL	Y	HEIKKILA	Y	PEARCE	Y	TAYLOR
Y	DAVIS	Y	HURLEY	Y	PETTYJOHN	Y	THOMPSON
Y	DURCAN	Y	JEDYNSKI	Y	PHILLIPS	Y	VEHLING
Y	FREDE	Y	KOPPEL	N	RICHALBERT	Y	WALLIS

\* VOTED FOR  
\* CHANGED VOTE



Honoring - Robert R. Newell  
by Senators Ray and DeVries

Honoring - Tom and Terry Kennedy  
by Representative Shultz  
Senator Coghill

Honoring - Martha Shields  
by Representatives Sund, Taylor and Goll  
Senators Ziegler and Eliason

In Memoriam - John J. Longacre  
by Representative Uehling  
Senators Zharoff, Bennett, Rodey, Sturgulewski,  
Halford, DeVries and Vic Fischer

In Memoriam - Marvin C. Kinberg  
by Representative Grussendorf  
Senators Eliason and DeVries

Senator Halford moved and asked unanimous consent that the citation calendar be adopted. Without objection, the citations were adopted and referred to the Secretary for transmittal.

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SENATE BILLS IN SECOND READING

SB 377

SENATE BILL NO. 377 (civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; efd) which was held from May 2 was before the Senate in second reading.

Senator Faiks moved and asked unanimous consent for the adoption of the Finance Committee Substitute offered on page 2534 and new title offered on page 2557. Senator Rodey objected and called the Senate.

The call of the Senate was satisfied.

Senator Sturgulewski moved and asked unanimous consent that she be allowed to abstain from voting. Senators Ray and Abood objected.

Senator Josephson moved and asked unanimous consent that he be allowed to abstain from voting. Senator Fahrenkamp objected.

SB 377 cont'd

Senator Rodey withdrew his objection. There being no further objection, CS FOR SENATE BILL NO. 377 (FIN) (civil actions; directing the Department of Law to conduct a study; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68 and 82; efd) was adopted.

CS FOR SENATE BILL NO. 377 (FIN) was read the second time.

Senator Fahrenkamp offered Amendment No. 1:

Page 10: Delete line 24 through page 11, line 2  
and renumber remaining sections accordingly.

Page 11: Delete line 29 through page 12, line 3  
and renumber remaining sections accordingly.

Senator Fahrenkamp moved Amendment No. 1. Senator Kelly objected.

The question being: "Shall Amendment No. 1 be adopted?"  
The roll was taken with the following result:

CSSB 377 FIN AM 1

Yeas: 6 Fahrenkamp, Fischer Vic,  
Josephson, Kerttula, Rodey,  
Ziegler

Nays: 14 Abood, Bennett, Coghill, DeVries,  
Eliason, Faiks, Ferguson,  
Fischer Paul, Halford, Kelly, Ray,  
Sackett, Sturgulewski, Zharoff

and so, Amendment No. 1 failed.

Senator Ray offered Amendment No. 2:

Page 4, line 3: After "of" delete "a" and insert  
"an injured"

Senator Ray moved for the adoption of Amendment No. 2 and asked unanimous consent. Senators Kelly and Halford objected.

The question being: "Shall Amendment No. 2 be adopted?"  
The roll was taken with the following result:

SB 377 Joint'd

CSSB 377 FIN AM 2

Yeas: 13 Abood, Bennett, Coghill,  
Fahrenkamp, Ferguson, Fischer Vic,  
Josephson, Ray, Rodey, Sackett,  
Sturgulewski, Zharoff, Ziegler

Nays: 7 DeVries, Eliason, Faiks,  
Fischer Paul, Halford, Kelly,  
Kerttula

Senator Kerttula changed from nay to yea.

and so, Amendment No. 2 was adopted.

Senator Rodey offered Amendment No. 3:

Page 2: Delete line 23 through page 3, line 2 and insert

Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence. Fifty percent of any punitive or exemplary damages that may be adjudged against the party defending the claim shall be awarded to the benefit of the state and when paid deposited in the general fund.

(b) The amount of punitive damages awarded to the state shall be considered a part of the amount recovered by the claiming party for purposes of calculating an award of attorney fees.

(c) Except for purposes of seeking execution on a judgment, the state may not bring or be joined in an action based on punitive damages that may be awarded under this section.

Senator Rodey moved Amendment No. 3. Senator Kelly objected.

Senator Rodey offered an amendment to Amendment No. 3:

Delete all wording after "evidence"

Senator Rodey moved and asked unanimous consent for the adoption of the amendment to Amendment No. 3. Senators Eliason and Sackett objected. Senator Sackett withdrew his objection.

SB 377 cont'd

The question being: "Shall the amendment to Amendment No. 3 be adopted?" The roll was taken with the following result:

## CSSB 377 FIN AM AM TO AM3

Yeas: 13 Abood, Bennett, Coghill, DeVries,  
Fahrenkamp, Fischer Vic,  
Josephson, Ray, Rodey, Sackett,  
Sturgulewski, Zharoff, Ziegler

Nays: 7 Eliason, Faiks, Ferguson,  
Fischer Paul, Halford, Kelly,  
Kerttula

and so, the amendment to Amendment No. 3 was adopted.

The question now being: "Shall Amendment No. 3 as amended be adopted?" The roll was taken with the following result:

## CSSB 377 FIN AM AM 3

Yeas: 12 Abood, Bennett, DeVries,  
Fahrenkamp, Fischer Vic,  
Josephson, Ray, Rodey, Sackett,  
Sturgulewski, Zharoff, Ziegler

Nays: 8 Coghill, Eliason, Faiks, Ferguson,  
Fischer Paul, Halford, Kelly,  
Kerttula

and so, Amendment No. 3 as amended was adopted.

Senator Rodey offered Amendment No. 4:

Page 7, line 28: Delete "several liability" insert  
"joint and several liability, except that a  
party who is allocated less than 50 percent  
of the total fault of all the parties may not  
be jointly liable for more than twice the  
percentage of fault allocated to that party."

Senator Rodey moved Amendment No. 4. Senator Kelly objected.

Senator Ray called the Senate on the entire bill.

The President stated the call was satisfied.

The question being: "Shall Amendment No. 4 be adopted?"  
The roll was taken with the following result:

SB 377 cont'd

CSSB 377 FIN AM AM 4

Yeas: 5 Fahrenkamp, Fischer Vic,  
Josephson, Rodey, Zharoff,  
Ziegler

Nays: 14 Abood, Bennett, Coghill, DeVries,  
Eliason, Faiks, Ferguson,  
Fischer Paul, Halford, Kelly,  
Kerttula, Ray, Sackett,  
Sturgulewski

and so, Amendment No. 4 failed.

Senator Rodey withdrew Amendments No. 5 and 6.

Senator Josephson offered Amendment No. 7:

Page 13, line 2: Delete lines 2-3 and insert

"Sec. 19. This Act takes effect on the  
sixtieth legislative day following the submittal  
by the Department of Law to the Legislature of  
the studies required to be made under Sec. 18 of  
this Act."

Senator Josephson moved Amendment No. 7.

The question being: "Shall Amendment No. 7 be adopted?"  
The roll was taken with the following result:

CSSB 377 FIN AM AM 7

Yeas: 9 Abood, Fahrenkamp, Fischer Vic,  
Halford, Josephson, Kerttula,  
Rodey, Sackett, Ziegler

Nays: 11 Bennett, Coghill, DeVries,  
Eliason, Faiks, Ferguson,  
Fischer Paul, Kelly, Ray,  
Sturgulewski, Zharoff

and so, Amendment No. 7 failed.

Senator Kerttula offered Amendment No. 8:

Page 2, line 21: After "exceed" delete "\$500,000"  
insert "\$750,000"

SB 377 cont'd

Senator Kerttula moved Amendment No. 8. Senator Kelly objected.

The question being: "Shall Amendment No. 8 be adopted?"  
The roll was taken with the following result:

CSSB 377 FIN AM AM 8

Yeas: 8 Fahrenkamp, Fischer Vic, Halford,  
Josephson, Kerttula, Rodey,  
Sackett, Ziegler

Nays: 12 Abood, Bennett, Coghill, DeVries,  
Eliason, Faiks, Ferguson,  
Fischer Paul, Kelly, Ray,  
Sturgulewski, Zharoff

and so, Amendment No. 8 failed.

Senator Josephson offered Amendment No. 9:

Page 5, line 19: Delete "an" insert "a negligent"

Senator Josephson moved for the adoption of Amendment No. 9 and asked unanimous consent. Without objection, Amendment No. 9 was adopted.

Senator Ray removed the call of the Senate.

Senator Kelly requested that the Senate advance to Announcements.

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ANNOUNCEMENTS

SR 10

Senator Kelly, Chairman, moved and asked unanimous consent that the five-day notice and publication requirements be waived for the Rules Committee meeting on May 5 to consider SENATE RESOLUTION NO. 10 (Establishing a Select Committee on State Licensing Procedures). Without objection, it was so ordered.

Senator Kelly announced a Rules Committee meeting upon recess to consider SENATE RESOLUTION NO. 10 and for calendaring bills for May 6.

## CONSIDERATION OF THE CALENDAR

SB 377 cont'd

Senator Kerttula offered Amendment No. 10:

Page 10, line 20: Delete lines 20 - 23.

Senator Kerttula moved Amendment No. 10. Senator Kelly objected.

Senator Kerttula withdrew Amendment No. 10.

Senator Josephson offered Amendment No. 11:

Page 7, line 28: Delete "several liability"  
Insert in lieu thereof: "joint and several liability, except that a party allocated less than 50 percent of the total fault allocated to all parties shall be jointly liable only for 50 percent of the damages awarded."

Senator Josephson moved Amendment No. 11. Senator Kelly objected.

The question being: "Shall Amendment No. 11 be adopted?"  
The roll was called with the following result:

Yeas:	7	Fahrenkamp, Fischer Vic, Halford, Josephson, Rodey, Zharoff, Ziegler
Nays:	13	Eliason, Faiks, Ferguson, Fischer Paul, Kelly, Kerttula, Ray, Sackett, Sturgulewski, Abood, Coghill, DeVries, Bennett

and so, Amendment No. 11 failed.

Senator Halford moved and asked unanimous consent that CS FOR SENATE BILL NO. 377 (FIN) am be considered engrossed, advanced to third reading and placed on final passage. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 377 (FIN) am was read the third time.

Senator Kerttula moved and asked unanimous consent that CS FOR SENATE BILL NO. 377 (FIN) am be returned to second reading for a specific amendment. Without objection, it was so ordered.

SB 377 cont'd

Amendment No. 10 by Senator Kerttula was again before the Senate.

Senator Kerttula moved and asked unanimous consent that Amendment No. 10 be adopted. Without objection, Amendment No. 10 was adopted.

Senator Ray called the Senate on the entire bill.

The President stated the call was satisfied.

The question now being: "Shall CS FOR SENATE BILL NO. 377 (FIN) am (civil actions; directing the Department of Law to conduct a study; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 60 and 82; efd) pass the Senate?" The roll was taken with the following result:

## CSSB 377 FIN AM 3RD

Yeas:	15	Abood, Bennett, Coghill, DeVries, Eliason, Fahrenkamp, Faiks, Ferguson, Fischer Paul, Halford, Kelly, Kerttula, Ray, Sturgulewski, Zharoff
Nays:	5	Fischer Vic, Josephson, Rodey, Sackett, Ziegler

and so, CS FOR SENATE BILL NO. 377 (FIN) am passed the Senate.

Senator Halford moved and asked unanimous consent that the vote on the passage of the bill be considered the vote on the effective date clauses. Without objection, it was so ordered.

CS FOR SENATE BILL NO. 377 (FIN) am was referred to the Secretary for engrossment.

## UNFINISHED BUSINESS

HB 338

Senator Zharoff, Chairman, moved and asked unanimous consent that CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 338 (JUD) am (establishing a state lottery; authorizing an advisory vote on the lottery; efd) have an additional referral to the Labor and Commerce Committee. Without objection, it was so ordered.

HB 338 cont'd

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 338 (JUD) am was referred to the State Affairs Committee, the Labor and Commerce Committee and the Finance Committee.

SB 488

Senator Zharoff, Chairman, moved and asked unanimous consent that SENATE BILL NO. 488 (location of the Fifteenth Legislature in Anchorage) have an additional referral to the Labor and Commerce Committee. Without objection, it was so ordered.

SENATE BILL NO. 488 was referred to the State Affairs Committee, the Judiciary Committee, the Labor and Commerce Committee and the Finance Committee.

## ANNOUNCEMENTS

SB 297

Senator Zharoff, Chairman, moved and asked unanimous consent that the five-day notice and publication requirements be waived for the Labor and Commerce Committee meeting on May 6 to consider SPONSOR SUBSTITUTE FOR SENATE BILL NO. 297 (practice of naturopathy and exempting the practice of naturopathy from the practice of medicine). Without objection, it was so ordered.

SB 489

Senator Zharoff, Chairman, moved and asked unanimous consent that the five-day notice and publication requirements be waived for the Labor and Commerce Committee meeting on May 7 to consider SENATE BILL NO. 489 (extending the termination date of the Alaska Public Utilities Commission; efd). Without objection, it was so ordered.

Announcements appear at the end of the journal.

Senator Halford moved and asked unanimous consent that the Senate revert to Messages from the House. Without objection, the Senate revert to

## MESSAGES FROM THE HOUSE

Message of May 5 was read, stating the House passed and transmitted for consideration:

## FIRST READING AND REFERENCE OF HOUSE BILLS

HB 402

CS FOR HOUSE BILL NO. 402 (JUD) by the Judiciary Committee, entitled:

"An Act relating to absentee voting."

was read the first time and referred to the State Affairs Committee.

## ENGROSSMENT

SB 209

CS FOR SENATE BILL NO. 209 (RULES) was engrossed, signed by the President and Secretary and transmitted to the House for consideration with a Senate Letter of Intent.

SB 356

CS FOR SENATE BILL NO. 356 (FIN) am was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

SB 377

CS FOR SENATE BILL NO. 377 (FIN) am was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

SB 418

CS FOR SENATE BILL NO. 418 (RES) was engrossed, signed by the President and Secretary and transmitted to the House for consideration.

Ford  
5/7/86

Original sponsors: Kelly, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 377 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil actions; directing the  
7 Department of Law to conduct a study; amending Alaska  
8 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;  
9 and providing for an effective date."

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

11 \* Section 1. AS 09 is amended by adding a new chapter to read:

12 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

13 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
14 recover damages for personal injury based on negligence, damages for  
15 noneconomic losses shall be limited to \$1,000,000 for each person  
16 injured.

17 (b) The limit under (a) of this section does not apply to dam-  
18 ages for physical impairment or disfigurement.

19 Sec. 09.17.020. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A  
20 person who suffers personal injury or death may not recover damages  
21 for the personal injury or death if the injuries or death occurred  
22 while the person was engaged in the commission of a felony, the person  
23 has been convicted of the felony, including conviction based on a  
24 guilty plea or plea of nolo contendere, and the felony substantially  
25 contributed to the injury or death. This section does not affect a  
26 right of action under 42 U.S.C. 1983.

27 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
28 for personal injury are awarded by the court or jury, the verdict  
29 shall be itemized between economic loss and noneconomic loss, if any,

1 as follows:

- 2 (1) past economic loss;  
3 (2) past noneconomic loss;  
4 (3) future economic loss;  
5 (4) future noneconomic loss; and  
6 (5) punitive damages.

7 Sec. 09.17.040. PERIODIC PAYMENTS. (a) In an action to recover  
8 damages, the court shall, at the request of an injured party, enter  
9 judgment ordering that amounts awarded a judgment creditor for future  
10 damages be paid to the maximum extent feasible by periodic payments  
11 rather than by a lump-sum payment if the award equals or exceeds  
12 \$100,000 in future damages.

13 (b) The court may require security be posted, in order to ensure  
14 that funds are available as periodic payments become due. The court  
15 may not require security to be posted if an authorized insurer, as  
16 defined in AS 21.90.900, acknowledges to the court its obligation to  
17 discharge the judgment.

18 (c) A judgment ordering payment of future damages by periodic  
19 payment shall specify the recipient, the dollar amount of the pay-  
20 ments, the interval between payments, and the number of payments or  
21 the period of time over which payments shall be made. Periodic pay-  
22 ments shall be cumulatively adjusted annually by applying each year  
23 the annual rate of change in the consumer price index for all urban  
24 consumers for the Anchorage Metropolitan Area as published by the  
25 Bureau of Labor Statistics of the United States Department of Labor  
26 for the immediately preceding year. Payments may be modified only in  
27 the event of the death of the judgment creditor, in which case pay-  
28 ments may not be reduced or terminated, but shall be paid to persons  
29 to whom the judgment creditor owed a duty of support, as provided by

1 law, immediately before death. If the judgment creditor owed no duty  
2 of support to dependents at the time of the judgment creditor's death,  
3 the money remaining shall be distributed in accordance with a will of  
4 the deceased judgment creditor accepted into probate or under the  
5 intestate laws of the state if the deceased had no will.

6 (d) If the court finds that the judgment debtor has exhibited a  
7 continuing pattern of failing to make payments required under (c) of  
8 this section, the court shall, in addition to the required periodic  
9 payments, order the judgment debtor to pay the judgment creditor any  
10 damages caused by the failure to make periodic payments, including  
11 costs and attorney fees.

12 Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND  
13 OFFICERS. (a) Unless the act or omission constituted gross negli-  
14 gence, a person may not recover tort damages for personal injury,  
15 death, or damage to property for an act or omission to act in the  
16 course and scope of official duties, as a member or officer of the  
17 following:

18 (1) a member of the board of directors or an officer of a  
19 nonprofit corporation;

20 (2) a member of the board of directors of a public or  
21 nonprofit hospital, or a member of a citizen's advisory board of any  
22 hospital;

23 (3) a member of a school board of a school district;

24 (4) a member of the governing body, a commission, or a  
25 citizen's advisory committee of a municipality of the state.

26 (b) Notwithstanding (a) of this section, the duties and liabil-  
27 ities of a director or officer of a nonprofit corporation to the  
28 corporation or the corporation's shareholders may not be limited or  
29 modified.

1 (c) In this section "nonprofit corporation" means a corporation  
2 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)  
3 or (4) (Internal Revenue Code).

4 Sec. 09.17.060. EFFECT OF CONTRIBUTORY FAULT. In an action  
5 based on fault seeking to recover damages for injury or death to a  
6 person or harm to property, contributory fault chargeable to the  
7 claimant diminishes proportionately the amount awarded as compensatory  
8 damages for the injury attributable to the claimant's contributory  
9 fault, but does not bar recovery.

10 Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder  
11 has rendered an award to a claimant, and after the court has awarded  
12 costs and attorney fees, a defendant may introduce evidence of amounts  
13 received or to be received by the claimant as compensation for the  
14 same injury from collateral sources that do not have a right of subro-  
15 gation by law or contract.

16 (b) If the defendant elects to introduce evidence under (a) of  
17 this section, the claimant may introduce evidence of

18 (1) the amount that the actual attorney fees incurred by  
19 the claimant in obtaining the award exceed the amount of attorney fees  
20 awarded to the claimant by the court; and

21 (2) the amount that the claimant has paid or contributed to  
22 secure the right to an insurance benefit introduced by the defendant  
23 as evidence.

24 (c) If the total amount of collateral benefits introduced as  
25 evidence under (a) of this section exceeds the total amount that the  
26 claimant introduced as evidence under (b) of this section, the court  
27 shall deduct from the total award the amount by which the value of the  
28 nonsubrogated sum awarded under (a) of this section exceeds the amount  
29 of payments under (b) of this section.

1 (d) Notwithstanding (a) of this section, the defendant may not  
2 introduce evidence of

3 (1) benefits that under federal law cannot be reduced or  
4 offset;

5 (2) a deceased's life insurance policy; or

6 (3) gratuitous benefits provided to the claimant.

7 (e) This section does not apply to a medical malpractice action  
8 filed under AS 09.55.

9 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions  
10 involving fault of more than one party to the action, including third-  
11 party defendants and persons who have been released under AS 09.17.-  
12 090, the court, unless otherwise agreed by all parties, shall instruct  
13 the jury to answer special interrogatories or, if there is no jury,  
14 shall make findings, indicating

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

17 (2) the percentage of the total fault of all of the parties  
18 to each claim that is allocated to each claimant, defendant, third-  
19 party defendant, and person who has been released from liability under  
20 AS 09.17.090.

21 (b) In determining the percentages of fault, the trier of fact  
22 shall consider both the nature of the conduct of each party at fault,  
23 and the extent of the causal relation between the conduct and the  
24 damages claimed. The trier of fact may determine that two or more  
25 persons are to be treated as a single party if their conduct was a  
26 cause of the damages claimed and the separate act or omission of each  
27 person cannot be distinguished.

28 (c) The court shall determine the award of damages to each  
29 claimant in accordance with the findings, subject to a reduction under

1 AS 09.17.090, and enter judgment against each party liable. The court  
2 also shall determine and state in the judgment each party's equitable  
3 share of the obligation to each claimant in accordance with the re-  
4 spective percentages of fault.

5 (d) The court shall enter judgment against each party liable on  
6 the basis of joint and several liability, except that a party who is  
7 allocated less than 50 percent of the total fault allocated to all the  
8 parties may not be jointly liable for more than twice the percentage  
9 of fault allocated to that party.

10 Sec. 09.17.090. EFFECT OF RELEASE. When a release or covenant  
11 not to sue or not to enforce judgment is given in good faith to one of  
12 two or more persons liable in tort for the same injury or the same  
13 wrongful death

14 (1) it does not discharge any of the other tortfeasors from  
15 liability for the injury or wrongful death unless its terms so pro-  
16 vide; but it reduces the claim against the others to the extent of any  
17 amount stipulated by the release or the covenant, or in the amount of  
18 the consideration paid for it, whichever is the greater; and

19 (2) it discharges the tortfeasor to whom it is given from  
20 all liability for contribution to any other tortfeasor.

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

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

2       Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
3 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
4 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
5 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
6 making a claim or the party defending against a claim may serve upon  
7 the adverse party an offer to allow judgment to be entered [IN COM-  
8 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the  
9 effect specified in the offer, with costs [COST] then accrued. If  
10 within 10 days after the service of the offer the adverse party serves  
11 written notice that the offer is accepted, either party may then file  
12 the offer and notice of acceptance together with proof of service, and  
13 the clerk shall enter judgment. An offer not accepted within 10 days  
14 is considered withdrawn and evidence of that offer is not admissible  
15 except in a proceeding to determine costs and attorney fees [THE FORM  
16 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the  
17 claim as to which an offer has been made under this section is not  
18 more favorable to the offeree than the offer, the offeree shall pay  
19 costs incurred after service of the offer, and the court may also  
20 require payment of reasonable actual attorney fees incurred after  
21 service of the offer, and the interest awarded under AS 45.45.010(a)  
22 and accrued up to the date judgment is entered shall be adjusted as  
23 follows:

24       (1) if the offeree is the party making the claim, the  
25 interest rate shall be reduced by five [TWO] percent a year;

26       (2) if the offeree is the party defending against the  
27 claim, the interest rate shall be increased by five [TWO] percent a  
28 year.

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

1 (b) The fact that an offer is made but not accepted does not  
2 preclude a subsequent offer. When the liability of one party to  
3 another has been determined by verdict, order, or judgment, but the  
4 amount or extent of the liability remains to be determined by further  
5 proceedings, the party adjudged liable may make an offer of judgment,  
6 which shall have the same effect as an offer made before trial if it  
7 is served within a reasonable time not less than 10 days before the  
8 commencement of hearings to determine the amount or extent of liability.  
9

10 (c) Except for civil commitment and child custody actions, this  
11 section applies to all civil actions.

12 \* Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:

13 (b) Except when the court finds that the parties have agreed  
14 otherwise, prejudgment interest accrues from the day the cause of  
15 action accrues.

16 \* Sec. 5. AS 09.55.548(a) is repealed and reenacted to read:

17 (a) Except as provided in AS 09.17, damages in a malpractice  
18 action shall be awarded in accordance with principles of the common  
19 law.

20 \* Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

21 (b) In making an award of attorney fees to a prevailing party,  
22 the court shall consider the actual attorney fees incurred by each  
23 party in the civil action. Actual attorney fees shall be supported by  
24 affidavit from the attorney representing each party.

25 \* Sec. 7. AS 09.63 is amended by adding a new section to read:

26 Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as  
27 provided in (b) of this section, every complaint, answer, cross-claim,  
28 and counterclaim shall be signed and verified by the party or the  
29 attorney of the party filing the pleading and shall bear a statement

1 that the person signing the pleading believes the statements made in  
2 the pleading are true. If the court finds that a statement made in  
3 the complaint, answer, cross-claim, or counterclaim was knowingly  
4 untrue, upon motion of a party, the person signing the pleading may be  
5 compelled to show cause why the person signing the pleading should not  
6 be held in contempt of court.

7 (b) For good cause, a complaint, answer, cross-claim or coun-  
8 ter-claim may be filed without verification; provided, however, that  
9 verification of the pleading by the party or attorney of the party  
10 shall be made within 15 days of the filing of the pleading.

11 \* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and  
12 09.16.060 are repealed.

13 \* Sec. 9. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act have  
14 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the  
15 jury to answer the special interrogatories listed in AS 09.17.080 regarding  
16 the amount of damages and the percentages of fault to be allocated among  
17 the parties and to itemize the verdict regarding economic, noneconomic, and  
18 punitive damages as specified in AS 09.17.030.

19 \* Sec. 10. AS 09.17.080 enacted in sec. 1 of this Act has the effect of  
20 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
21 specific findings regarding the amount of damages and the percentages of  
22 fault to be allocated among the parties.

23 \* Sec. 11. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act  
24 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring  
25 the court to include a specific item in its judgment.

26 \* Sec. 12. AS 09.63.045 enacted in sec. 7 of this Act has the effect of  
27 amending Alaska Rule of Civil Procedure 11 by requiring verification of  
28 claims, answers, counterclaims, and cross-claims.

29 \* Sec. 13. AS 09.30.070(b) as added by sec. 4 of this Act has the

effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest accrues from the day the cause of action accrues.

\* Sec. 14. AS 09.60.010 as amended by sec. 6 of this Act has the effect of amending Alaska Rule of Civil Procedure 82 by requiring the court to consider the actual attorney fees incurred in the civil action.

\* Sec. 15. APPLICABILITY. Sections 1 - 8 of this Act apply to all causes of action accruing after the effective date of this Act.

\* Sec. 16. (a) The Department of Law shall collect and analyze information pertaining to the insurance crisis and its relation to the civil justice system in Alaska. The study may include an analysis of closed insurance claim files and insurance company finances.

(b) All state agencies shall cooperate fully with the Department of Law in the collection and analysis of information necessary to conduct the study under (a) of this section.

(c) The Department of Law shall report its findings under this section to the legislature no later than the 30th day of the First Session of the Fifteenth Alaska Legislature.

\* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

AMENDMENT

# 9/10/04

Pettyjohn

IN THE HOUSE

OFFERED IN THE HOUSE

TO: HCS CSSB 377 (JUDICIARY) ( CS SB 377 (FINANCE) am ~~4~~)

Page ~~2~~<sup>H 2</sup>, line ~~33~~<sup>71</sup>, through page ~~35~~<sup>3</sup>, line ~~45~~<sup>11</sup>, delete

all material and insert the following:

Sec. 09.17.030 FUTURE DAMAGES. (a) The court shall reduce a lump-sum award of future damages to its present value. In reducing the award to present value, the court shall consider inflation and the estimated future earning capacity of the injured person.

(b) The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.900 or from the Medical Indemnity Corporation of Alaska is sufficient assurance that funds will be available.

(c) A judgment ordering payment of future damages by periodic payment shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only as provided in (d) of this section or in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor or under the intestate laws of the state if the deceased had no will.

John

(d) The court that rendered the original judgment may, upon petition of the judgment creditor, modify the judgment to award additional damages if the judgment creditor incurs medical expenses that were not included in the original judgment and could not have been reasonably anticipated at the time of trial.

(e) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments required under this section, the court shall, in addition to the required periodic payments, order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

(f) If at any time following entry of judgment, a judgment debtor fails to make a payment in a timely fashion according to the terms of the part of the judgment related to periodic payments, the judgment creditor may petition the court that rendered the original judgment for an order requiring payment by the judgment debtor of the outstanding payments in a lump sum. In calculating the amount of the lump-sum judgment under this section, the court shall total the remaining periodic payments due and owing to the judgment creditor. This amount may not be converted to its present value. The court may also require the payment of interest on the outstanding judgment.

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The effect of this amendment is to strike the language relating to periodic payments and substitute instead the original proposed Judiciary Committee language which contains alternative means to achieve the same end. Both means proposed here were

prompted by the state supreme court decision in Beaulieu v. Elliot in which, unlike any other state, our supreme court prohibits the discounting of future damages to present value. (i.e., if a claimant receives \$20,000.00 for lost wages in 1995 as part of the award, he receives those damages in \$20,000.00 present day dollars.)

Under this amendment, if the plaintiff chooses to take future damages in a lump sum, it will be reduced to present value. Also, the court, in its discretion may enter a judgment for periodic payment of future damages.

This decision in Beaulieu v. Elliot has been criticized by legal scholars for being economically unsound.

The court said inflation will offset the interest rate therefore no discounting is appropriate. This however does not recognize that in an economic world dominated by rational decision making, real interest rates are positive, consequently, the rationale for the Beaulieu decision is based on a view of the economic system that does not conform to accepted economic theory and does not have empirical validity.

COMPARISON BETWEEN CS FOR CS SB 377 (Judiciary) <sup>am H</sup> ~~5-27-86~~ and CS SB 377 (Finance) am

Prepared by Rep. John Sund's office; May 10, 1986

1. Findings

Senate version (only)

11 \* Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has  
12 generally been developed by the courts on a case-by-case basis. While this  
13 process has resulted in some significant changes in the law, including  
14 amelioration of the harshness of many common law doctrines, the legislature  
15 has periodically intervened in order to bring about needed reforms. The  
16 purpose of this Act is to enact further reforms in order to create a more  
17 equitable distribution of the cost and risk of injury and increase the  
18 availability and affordability of insurance.

19 (b) The legislature finds that boroughs, cities, and other govern-  
20 mental entities are faced with increased exposure to lawsuits and awards  
21 and dramatic increases in the cost of insurance coverage. These escalating  
22 costs ultimately affect the public through higher taxes, loss of essential  
23 services, and loss of the protection provided by adequate insurance. In  
24 order to improve the availability and affordability of quality governmental  
25 services, comprehensive reform is necessary.

26 (c) The legislature also finds comparable cost increases in profes-  
27 sional liability insurance. Escalating malpractice insurance premiums  
28 discourage physicians and other health care providers from initiating or  
29 continuing their practice or offering needed services to the public and

## Findings (cont).

1 contribute to the rising costs of consumer health care. Other profession-  
2 als, such as architects and engineers, face similar difficult choices,  
3 financial instability, and unlimited risk in providing services to the  
4 public.

5 (d) The legislature also finds that general liability insurance is  
6 becoming unavailable or unaffordable to many businesses, individuals, and  
7 nonprofit organizations in amounts sufficient to cover potential losses.  
8 High premiums have discouraged socially and economically desirable activ-  
9 ities and encourage many to go without adequate insurance coverage.

10 (e) It is the intent of the legislature to reduce costs associated  
11 with the tort system, while ensuring that adequate and appropriate compen-  
12 sation for persons injured through the fault of others is available.

## 2. Noneconomic Damages

*House version*

13           Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
14 recover damages for personal injury based on negligence, damages for  
15 noneconomic losses shall be limited to \$1,000,000 for each person  
16 injured.

17           (b) The limit under (a) of this section does not apply to dam-  
18 ages for physical impairment or disfigurement.

*Senate version*

15           Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
16 recover damages for personal injury based on negligence, damages for  
17 noneconomic losses shall be limited to compensation for pain, suffer-  
18 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-  
19 ment of life and other nonpecuniary damage.

20           (b) The amount of damages awarded by a court or jury under (a)  
21 of this section may not exceed \$500,000 for each claim based on a  
22 separate incident or injury.

## 3. Punitive Damages

*Senate version (only)*

23           Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be  
24 awarded in an action, whether in tort, contract, or otherwise, unless  
25 supported by clear and convincing evidence.

4. Damages from Intoxication or Crime

House version

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Sec. 09.17.010. DAMAGES RESULTING FROM COMMISSION OF A CRIME.  
person who suffers personal injury or death may not recover damage  
for the personal injury or death if the injuries or death occurred  
while the person was engaged in the commission of a felony, the person  
has been convicted of the felony, including conviction based on a  
guilty plea or plea of nolo contendere, and the felony substantially  
contributed to the injury or death. This section does not affect a  
right of action under 42 U.S.C. 1983.

Senate version

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Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISS-  
SION OF A CRIME. (a) A person who suffers personal injury or death  
may not bring an action to recover damages for the personal injury or  
death if the injuries or death occurred while the person was

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(1) voluntarily under the influence of intoxicating liquor  
or under the influence of a controlled substance listed in AS 11.71.-  
140 - 11.71.190 and the condition of being under the influence of the  
intoxicating liquor or controlled substance contributed more than 50  
percent to the person's injuries or death; if there was 0.10 percent  
or more by weight of alcohol in the person's blood or 0.10 grams or  
more of alcohol per 210 liters of the person's breath, it is presumed  
that the person was under the influence of intoxicating liquor; or

(2) engaged in the commission of a felony, if the felony  
was causally related to the injury or death in time, place, or activi-  
ty; however, nothing in this paragraph shall affect a right of action  
under 42 U.S.C. 1983.

(b) The provisions of (a)(1) of this section do not apply to a  
person who suffers personal injury or death caused by the intentional  
act of another person or persons.

# 5. Itemized Verdicts

House version and Senate version

16                   Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
17 for personal injury are awarded by the court or jury, the verdict  
18 shall be itemized between economic loss and noneconomic loss, if any,  
19 as follows:

- 20                   (1) past economic loss;  
21                   (2) past noneconomic loss;  
22                   (3) future economic loss;  
23                   (4) future noneconomic loss; and  
24                   (5) punitive damages.

6. Future Damages / Periodic Payments  
House version

7           Sec. 09.17.040. FUTURE DAMAGES. (a) The court shall reduce a  
8 lump-sum award of future damages to its present value. In reducing  
9 the award to present value, the court shall consider inflation and the  
10 estimated future earning capacity of the injured person.

11           (b) The court may enter a judgment that future damages be paid  
12 in whole or in part by periodic payments rather than by a lump-sum  
13 payment; the judgment shall include, if necessary, other provisions to  
14 assure that funds are available as periodic payments become due.  
15 Insurance from an authorized insurer as defined in AS 21.90.900 or  
16 from the Medical Indemnity Corporation of Alaska is sufficient  
17 assurance that funds will be available.

18           (c) A judgment ordering payment of future damages by periodic  
19 payment shall specify the recipient, the dollar amount of the pay-  
20 ments, the interval between payments, and the number of payments or  
21 the period of time over which payments shall be made. Payments may be  
22 modified only as provided in (d) of this section or in the event of  
23 the death of the judgment creditor, in which case payments may not be  
24 reduced or terminated, but shall be paid to persons to whom the judg-  
25 ment creditor owed a duty of support, as provided by law, immediately  
26 before death. In the event the judgment creditor owed no duty of  
27 support to dependents at the time of the judgment creditor's death,  
28 the money remaining shall be distributed in accordance with a will of  
29 the deceased judgment creditor or under the intestate laws of the

b. Future Damages (cont).  
House version (cont).

1 state if the deceased had no will.

2 (d) The court that rendered the original judgment may, upon  
3 petition of the judgment creditor, modify the judgment to award  
4 additional damages if the judgment creditor incurs medical expenses  
5 that were not included in the original judgment and could not have  
6 been reasonably anticipated at the time of trial.

7 (e) If the court finds that the judgment debtor has exhibited a  
8 continuing pattern of failing to make payments required under this  
9 section, the court shall, in addition to the required periodic pay-  
10 ments, order the judgment debtor to pay the judgment creditor any  
11 damages caused by the failure to make periodic payments, including  
12 costs and attorney fees.

13 (f) If at any time following entry of judgment, a judgment  
14 debtor fails to make a payment in a timely fashion according to the  
15 terms of the part of the judgment related to periodic payments, the  
16 judgment creditor may petition the court that rendered the original  
17 judgment for an order requiring payment by the judgment debtor of the  
18 outstanding payments in a lump sum. In calculating the amount of the  
19 lump-sum judgment under this section, the court shall total the  
20 remaining periodic payments due and owing to the judgment creditor.  
21 This amount may not be converted to its present value. The court may  
22 also require the payment of interest on the outstanding judgment.

# 6. Periodic Payments

Senate version

25           Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover  
26 damages, the court shall, at the request of an injured party, enter  
27 judgment ordering that amounts awarded a judgment creditor for future  
28 damages be paid to the maximum extent feasible by periodic payments  
29 rather than by a lump-sum payment if the award equals or exceeds  
1     \$100,000 in future damages.

2           (b) The court may require security be posted, in order to ensure  
3 that funds are available as periodic payments become due. The court  
4 may not require security to be posted if an authorized insurer, as  
5 defined in AS 21.90.900, acknowledges to the court its obligation to  
6 discharge the judgment.

7           (c) A judgment ordering payment of future damages by periodic  
8 payment shall specify the recipient, the dollar amount of the pay-  
9 ments, the interval between payments, and the number of payments or  
10 the period of time over which payments shall be made. Periodic pay-  
11 ments shall be cumulatively adjusted annually by applying each year  
12 the annual rate of change in the consumer price index for all urban  
13 consumers for the Anchorage Metropolitan Area as published by the  
14 Bureau of Labor Statistics of the United States Department of Labor  
15 for the immediately preceding year. Payments may be modified only in  
16 the event of the death of the judgment creditor, in which case pay-  
17 ments may not be reduced or terminated, but shall be paid to persons  
18 to whom the judgment creditor owed a duty of support, as provided by  
19 law, immediately before death. In the event the judgment creditor  
20 owed no duty of support to dependents at the time of the judgment  
21 creditor's death, the money remaining shall be distributed in accor-  
22 dance with a will of the deceased judgment creditor accepted into  
23 probate or under the intestate laws of the state if the deceased had  
24 no will.

25           (d) If the court finds that the judgment debtor has exhibited a  
26 continuing pattern of failing to make payments required under (c) of  
27 this section, the court shall, in addition to the required periodic  
28 payments, order the judgment debtor to pay the judgment creditor any  
29 damages caused by the failure to make periodic payments, including

1           costs and attorney fees.

## 7. Limited Liability

House version

12           Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND  
13 OFFICERS. (a) Unless the act or omission constituted gross negli-  
14 gence, a person may not recover tort damages for personal injury,  
15 death, or damage to property for an act or omission to act in the  
16 course and scope of official duties, as a member or officer of the  
17 following:

18           (1) a member of the board of directors or an officer of a  
19 nonprofit corporation;

20           (2) a member of the board of directors of a public or  
21 nonprofit hospital, or a member of a citizen's advisory board of any  
22 hospital;

23           (3) a member of a school board of a school district;

24           (4) a member of the governing body, a commission, or a  
25 citizen's advisory committee of a municipality of the state.

26           (b) Notwithstanding (a) of this section, the duties and liabil-  
27 ities of a director or officer of a nonprofit corporation to the  
28 corporation or the corporation's shareholders may not be limited or  
29 modified.

1           (c) In this section, "nonprofit corporation" means a corporation  
2 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)  
3 or (4) (Internal Revenue Code).

# Limited Liability (cont)

Senate version

11           Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND  
12 OFFICERS. (a) Unless the act or omission constituted gross negli-  
13 gence, a person may not recover damages for a negligent act or omis-  
14 sion to act, in the course and scope of official duties, from the  
15 following:

16           (1) a member of the board of directors or an officer of a  
17 nonprofit corporation;

18           (2) a member of the board of directors of a public or  
19 nonprofit hospital or a community-based advisory board of a hospital;

20           (3) a member of a school board of a school district;

21           (4) a member of a governing board, commission, or citizen  
22 advisory committee of a municipality in the state.

23           (b) Notwithstanding (a) of this section, the duties and liabil-  
24 ities of a director or officer of a nonprofit corporation to the  
25 corporation or the corporation's shareholders may not be limited or  
26 modified.

## 8. Contributory Fault

State version and House version

27           Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT.    In an action  
28           based on fault seeking to recover damages for injury or death to a  
29           person or harm to property, contributory fault chargeable to the  
1           claimant diminishes proportionately the amount awarded as compensatory  
2           damages for the injury attributable to the claimant's contributory  
3           fault, but does not bar recovery.

## 9. Collateral Benefits

House version

10           Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder  
11 has rendered an award to a claimant, and after the court has awarded  
12 costs and attorney fees, a defendant may introduce evidence of amounts  
13 received or to be received by the claimant as compensation for the  
14 same injury from collateral sources that do not have a right of subro-  
15 gation by law or contract.

16           (b) If the defendant elects to introduce evidence under (a) of  
17 this section, the claimant may introduce evidence of

18                 (1) the amount that the actual attorney fees incurred by  
19 the claimant in obtaining the award exceed the amount of attorney fees  
20 awarded to the claimant by the court; and

21                 (2) the amount that the claimant has paid or contributed to  
22 secure the right to an insurance benefit introduced by the defendant  
23 as evidence.

24           (c) If the total amount of collateral benefits introduced as  
25 evidence under (a) of this section exceeds the total amount that the  
26 claimant introduced as evidence under (b) of this section, the court  
27 shall deduct from the total award the amount by which the value of the  
28 nonsubrogated sum awarded under (a) of this section exceeds the amount  
29 of payments under (b) of this section.

1           (d) Notwithstanding (a) of this section, the defendant may not  
2 introduce evidence of

3                 (1) benefits that under federal law cannot be reduced or  
4 offset;

5                 (2) a deceased's life insurance policy; or

6                 (3) gratuitous benefits provided to the claimant.

7           (e) This section does not apply to a medical malpractice action  
8 filed under AS 09.55.

# Collateral Benefits (cont)

## Senate version

4           Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder  
5           has rendered an award to a claimant, and after the court has awarded  
6           costs and attorney fees, a defendant may introduce evidence of amounts  
7           received or to be received by the claimant as compensation for the  
8           same injury from collateral sources that do not have a right of subro-  
9           gation against the claimant by law or contract.

10           (b) If the defendant elects to introduce evidence under (a) of  
11           this section, the claimant may introduce evidence of

12           .           (1) the amount that the actual attorney fees incurred by  
13           the claimant exceed the amount of the attorney fees awarded to the  
14           claimant; and

15                       (2) the amount that the claimant has paid or contributed to  
16           secure the right to an insurance benefit introduced by the defendant  
17           as evidence.

18           (c) If the total amount of collateral benefits introduced as  
19           evidence under (a) of this section exceeds the total amount that the  
20           claimant introduced as evidence under (b) of this section, the court  
21           shall deduct from the amount awarded the claimant, the amount by which  
22           the value of the benefits under (a) of this section exceeds the amount  
23           of payments under (b) of this section.

24           (d) Notwithstanding (a) of this section, the defendant may not  
25           introduce evidence of

26                       (1) benefits that cannot be reduced or offset by federal  
27           law;

28                       (2) a deceased's life insurance policy; or

29                       (3) gratuitous benefits provided to the claimant.

1           (e) This section does not apply to a medical malpractice action  
2           filed under AS 09.55.

# 10. Apportionment of Damages

House version

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Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all action involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.070, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.070.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.070, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) The court shall enter judgment against each party liable on the basis of joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party.

Apportionment of Damages (cont).

Senate version

3           Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions  
4 involving fault of more than one party to the action, including third-  
5 party defendants and persons who have been released under AS 09.17.-  
6 070, the court, unless otherwise agreed by all parties, shall instruct  
7 the jury to answer special interrogatories or, if there is no jury,  
8 shall make findings, indicating

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

11           (2) the percentage of the total fault of all of the parties  
12 to each claim that is allocated to each claimant, defendant, third-  
13 party defendant, and person who has been released from liability under  
14 AS 09.17.070; for this purpose the court may determine that two or  
15 more persons are to be treated as a single party.

16           (b) In determining the percentages of fault, the trier of fact  
17 shall consider both the nature of the conduct of each party at fault  
18 and the extent of the causal relation between the conduct and the  
19 damages claimed.

20           (c) The court shall determine the award of damages to each  
21 claimant in accordance with the findings, subject to a reduction under  
22 AS 09.17.070, and enter judgment against each party liable on the  
23 basis of rules of several liability. The court shall also determine  
24 and state in the judgment each party's equitable share of the obliga-  
25 tion to each claimant in accordance with the respective percentages of  
26 fault.

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# Effect of Release

## House version

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Sec. 09.17.070. EFFECT OF RELEASE. When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

## Senate version

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Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.060.

12. Contingency Fees  
Senate version (only)

7           Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may  
8 not contract for or collect a contingency fee for representing a  
9 person seeking damages in connection with an action for personal  
10 injury based on negligence in excess of 25 percent of the amount  
11 recovered.

12           (b) If periodic payments for future damages are awarded, the  
13 present value of the periodic payments must be included in computing  
14 the total award from which attorney fees are calculated under this  
15 section.

16           (c) An attorney may not contract for or receive a fee for de-  
17 fending a person against a claim for damages in connection with an  
18 action for personal injury based on negligence, in excess of 25 per-  
19 cent of the amount recovered or if no amount is recovered by the  
20 plaintiff, 25 percent of the amount in controversy.

21           (d) The limitations in (a) - (c) of this section apply whether  
22 the recovery is by settlement, arbitration, or judgment.

This section takes effect only if section regarding Rule 82 (As 09.60.010) does not pass each house by at least 2/3 majority.

# 13. Definitions

## House version and Senate version

23           Sec. 09.17.900. DEFINITION. In this chapter "fault" includes  
24           acts or omissions that are in any measure negligent or reckless toward  
25           the person or property of the actor or others, or that subject a  
26           person to strict tort liability; the term also includes breach of  
27           warranty, unreasonable assumption of risk not constituting an enforce-  
28           able express consent, misuse of a product for which the defendant  
29           otherwise would be liable, and unreasonable failure to avoid an injury

1           or to mitigate damages; legal requirements of causal relation apply  
2           both to fault as the basis for liability and to contributory fault.

3           \* Sec. 3. AS 09.30.065 is amended to read:

14. Offers of Judgment

House version

2           Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
3 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
4 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
5 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
6 making a claim or the party defending against a claim may serve upon  
7 the adverse party an offer to allow judgment to be entered [IN COM-  
8 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the  
9 effect specified in the offer, with costs [COST] then accrued. If  
10 within 10 days after the service of the offer the adverse party serves  
11 written notice that the offer is accepted, either party may then file  
12 the offer and notice of acceptance together with proof of service, and  
13 the clerk shall enter judgment. An offer not accepted within 10 days  
14 is considered withdrawn and evidence of that offer is not admissible  
15 except in a proceeding to determine costs and attorney fees [THE FORM  
16 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the  
17 claim as to which an offer has been made under this section is not  
18 more favorable to the offeree than the offer, the offeree shall pay  
19 costs incurred after service of the offer, and the court may also  
20 require payment of reasonable actual attorney fees incurred after  
21 service of the offer, and the interest awarded under AS 45.45.010(a)  
22 and accrued up to the date judgment is entered shall be adjusted as  
23 follows:

24           (1) if the offeree is the party making the claim, the  
25 interest rate shall be reduced by five [TWO] percent a year;

26           (2) if the offeree is the party defending against the  
27 claim, the interest rate shall be increased by five [TWO] percent a  
28 year.

Offer of Judgment (cont).

House version (cont).

1 (b) The fact that an offer is made but not accepted does not  
2 preclude a subsequent offer. When the liability of one party to  
3 another has been determined by verdict, order, or judgment, but the  
4 amount or extent of the liability remains to be determined by further  
5 proceedings, the party adjudged liable may make an offer of judgment,  
6 which shall have the same effect as an offer made before trial if it  
7 is served within a reasonable time not less than 10 days before the  
8 commencement of hearings to determine the amount or extent of liabili-  
9 ty.

10 (c) Except for civil commitment and child custody actions, this  
11 section applies to all civil actions.

# 14. Offers of Judgment (cont).

Senate version

4           Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
5           days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
6           FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
7           THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
8           making a claim or the party defending against a claim may serve upon  
9           the adverse party an offer to allow judgment to be entered in complete  
10          satisfaction of the claim for the money or property or to the effect  
11          specified in the offer, with cost then accrued. If within 10 days  
12          after the service of the offer the adverse party serves written notice  
13          that the offer is accepted, either party may then file the offer and  
14          notice of acceptance together with proof of service, and the clerk  
15          shall enter judgment. An offer not accepted within 10 days is con-  
16          sidered withdrawn and evidence of that offer is not admissible except  
17          in a proceeding to determine the form of judgment after verdict. If  
18          the judgment finally entered on the claim as to which an offer has  
19          been made under this section is not more favorable to the offeree than  
20          the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]  
21          and accrued up to the date judgment is entered shall be adjusted as  
22          follows:

23                   (1) if the offeree is the party making the claim, the  
24                   interest rate shall be reduced by five [TWO] percent a year;

25                   (2) if the offeree is the party defending against the  
26                   claim, the interest rate shall be increased by five [TWO] percent a  
27                   year.

# 15. Interest on Judgments

## House version

12 | \* Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:

13 |       (b) Except when the court finds that the parties have agreed  
14 | otherwise, prejudgment interest accrues from the day the cause of  
15 | action accrues.

## Senate version

29       Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on  
1       judgments and decrees for the payment of money is equal to the 12th  
2       Federal Reserve district discount rate as determined under AS 45.45.-  
3       010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded  
4       on a contract in writing, providing for the payment of interest until  
5       paid at a specified rate not exceeding the legal rate of interest for  
6       that type of contract, bears interest at the rate specified in the  
7       contract if the interest rate is set out in the judgment or decree.

8       \* Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

9       (b) Except when the court finds that the parties have agreed  
10       otherwise, prejudgment interest accrues from the day process is served  
11       on the defendant or the day the defendant received written notifica-  
12       tion of the claim, whichever is earlier. Evidence to be considered by  
13       the finder of fact may include the amount of the prejudgment interest  
14       that may be added to the award.

16. Awards

Have version (only)

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Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages in a malpractice action shall be awarded in accordance with principles of the common law.

17. Prevailing Party Attorney Fees

House version

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(b) In making an award of attorney fees to a prevailing party, the court shall consider actual attorney fees incurred by each party in the civil action. Actual attorney fees shall be supported by affidavit from the attorney representing each party.

Senate version

15 \* Sec. 6. AS 09.60.010 is repealed and reenacted to read:  
16 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING  
17 PARTY. The supreme court shall determine by rule or order the costs,  
18 if any, that may be allowed a prevailing party in a civil action.  
19 Unless specifically authorized by statute or by agreement between the  
20 parties, attorney fees may not be awarded to a party in a civil action  
21 for personal injury, death or property damage related to or arising  
22 out of fault, as defined in AS 09.17.900.

# 18 Verification of Claims

## House version

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Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as provided in (b) of this section, every complaint, answer, cross-claim, and counterclaim shall be signed and verified by the party or the attorney of the party filing the pleading and shall bear a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counterclaim was knowingly untrue, upon motion of a party, the person signing the pleading may be compelled to show cause why the person signing the pleading should not be held in contempt of court.

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(b) For good cause, a complaint, answer, cross-claim or counter-claim may be filed without verification; provided, however, that verification of the pleading by the party or attorney of the party shall be made within 15 days of the filing of the pleading.

## Senate version

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Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the attorney of the party shall sign and verify each complaint, answer, cross-claim, and counterclaim that the party files. The verification must include a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counter-claim was knowingly untrue, and upon motion of a party the person signing the pleading shall be compelled to show cause why the person signing the pleading should not be held in contempt of court.

18 a. Jurisdiction

House version only

22 \* Sec. 8. AS 22.15.030(a) is amended to read:

23 (a) The district court has jurisdiction of civil cases and  
24 proceedings as follows:

25 (1) for the recovery of money or damages when the amount  
26 claimed exclusive of costs, interest and attorney fees does not exceed  
27 \$35,000 [\$25,000];

28 (2) for the recovery of specific personal property, when  
29 the value of the property claimed and the damages for the detention

1 do not exceed \$35,000 [\$25,000];

2 (3) for the recovery of a penalty or forfeiture, whether  
3 given by statute or arising out of contract, not exceeding \$35,000  
4 [\$25,000];

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

8 (5) for establishing the fact of death of any person in the  
9 manner prescribed in AS 09.55.020 - 09.55.060;

10 (6) for the recovery of the possession of premises in the  
11 manner provided under AS 09,45.070 - 09.45.160 when the value [OF THE  
12 PROPERTY OR] of the arrears and damage to the property does not exceed  
13 \$35,000 [\$25,000];

14 (7) for the foreclosure of a lien when the amount in con-  
15 troversy does not exceed \$25,000;

16 (8) for the recovery of money or damages in motor vehicle  
17 tort cases when the amount claimed exclusive of costs, interest and  
18 attorney fees does not exceed \$35,000 [\$25,000];

19 (9) over civil actions for taking utility service and for  
20 damages to or interference with a utility line filed under AS 42.20.-  
21 030;

22 (10) over cases involving injunctive relief for domestic  
23 violence under AS 25.35.010 and 25.35.020.

19. Repeals

House version and Senate version

23 \* Sec. 7. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and  
24 09.16.060 are repealed.

## 20. Applicability

### House version

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\* Sec. 15. APPLICABILITY. Sections 1 - 8 of this Act apply to all causes of action accruing on or after the effective date of this Act.

### Senate version

24 \* Sec. 15. APPLICABILITY. Sections 1 - 7 of this Act apply to all  
25 causes of action accruing after the effective date of this Act, except that  
26 AS 09.17.055(a) enacted in sec. 2 of this Act applies to all contracts for  
27 the provision of collateral benefits that are formed or renewed after the  
28 effective date of this Act.

21. Severability  
Senate version (only)

29 \* Sec. 16. SEVERABILITY. If any provision of this Act, or the  
1 application thereof to any person or circumstance is held invalid, the  
2 remainder of this Act and the application to other persons or circumstances  
3 shall not be affected thereby.

22. Study

House version

\* Sec. 16. (a) The Department of Law shall collect and analyze information pertaining to the insurance crisis and its relation to the civil justice system in Alaska. The study may include an analysis of closed insurance claim files and insurance company finances.

(b) All state agencies shall cooperate fully with the Department of Law in the collection and analysis of information necessary to conduct the study under (a) of this section.

(c) The Department of Law shall report its findings under this section to the legislature no later than the 30th day of the First Session of the Fifteenth Alaska Legislature.

\* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

22. Study

State version

4 \* Sec. 17. The Department of Law, with the assistance of the Department  
5 of Commerce and Economic Development, shall contract for

6 (1) a study of closed insurance claims to identify

7 (A) the extent to which the legal system has or has not  
8 been the cause of dramatic liability insurance increases and coverage  
9 reduction in crisis lines in Alaska;

10 (B) how victims are faring under the present system; and

11 (C) what the various specific tort reform proposals will  
12 actually accomplish;

13 (2) a study of insurance company finances to determine

14 (A) the extent to which dramatic liability insurance rate  
15 increases and coverage limitations in Alaska are, or are not, cost-  
16 justified in relation to awards, settlements, and relevant court  
17 decisions in Alaska involving personal injury, death, or property  
18 damage based on fault; and

19 (B) the extent to which legislative or regulatory actions  
20 affecting the tort system in Alaska are necessary to resolve the  
21 state's liability insurance crisis.

## 23. Effective Dates

House version

9 || \* Sec. 16. This Act takes effect immediately in accordance with AS 01  
10 || 10.070(c).

Senate version

22 \* Sec. 18. Except for AS 09.17.080, added by sec. 2 of this Act, this  
23 Act takes effect immediately in accordance with AS 01.10.070(c).

24 \* Sec. 19. AS 09.17.080, added by sec. 2 of this Act, only takes effect  
25 if sec. 14 of this Act does not pass each house of the legislature by at  
26 least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes  
27 effect immediately under AS 01.10.070(c).

COMPARISON BETWEEN CS FOR CS SB 377 (Judiciary-5/7/86) and CS SB 377 (Finance) am

Prepared by Rep. John Sund's office; May 7, 1986

1. Findings

Senate version (only)

11 \* Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has  
12 generally been developed by the courts on a case-by-case basis. While this  
13 process has resulted in some significant changes in the law, including  
14 amelioration of the harshness of many common law doctrines, the legislature  
15 has periodically intervened in order to bring about needed reforms. The  
16 purpose of this Act is to enact further reforms in order to create a more  
17 equitable distribution of the cost and risk of injury and increase the  
18 availability and affordability of insurance.

19 (b) The legislature finds that boroughs, cities, and other govern-  
20 mental entities are faced with increased exposure to lawsuits and awards  
21 and dramatic increases in the cost of insurance coverage. These escalating  
22 costs ultimately affect the public through higher taxes, loss of essential  
23 services, and loss of the protection provided by adequate insurance. In  
24 order to improve the availability and affordability of quality governmental  
25 services, comprehensive reform is necessary.

26 (c) The legislature also finds comparable cost increases in profes-  
27 sional liability insurance. Escalating malpractice insurance premiums  
28 discourage physicians and other health care providers from initiating or  
29 continuing their practice or offering needed services to the public and

## Findings (cont).

1 contribute to the rising costs of consumer health care. Other profession-  
2 als, such as architects and engineers, face similar difficult choices,  
3 financial instability, and unlimited risk in providing services to the  
4 public.

5 (d) The legislature also finds that general liability insurance is  
6 becoming unavailable or unaffordable to many businesses, individuals, and  
7 nonprofit organizations in amounts sufficient to cover potential losses.  
8 High premiums have discouraged socially and economically desirable activ-  
9 ities and encourage many to go without adequate insurance coverage.

10 (e) It is the intent of the legislature to reduce costs associated  
11 with the tort system, while ensuring that adequate and appropriate compen-  
12 sation for persons injured through the fault of others is available.

## 2. Noneconomic Damages

House version

13           Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
14 recover damages for personal injury based on negligence, damages for  
15 noneconomic losses shall be limited to \$1,000,000 for each person  
16 injured.

17           (b) The limit under (a) of this section does not apply to dam-  
18 ages for physical impairment or disfigurement.

Senate version

15           Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
16 recover damages for personal injury based on negligence, damages for  
17 noneconomic losses shall be limited to compensation for pain, suffer-  
18 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-  
19 ment of life and other nonpecuniary damage.

20           (b) The amount of damages awarded by a court or jury under (a)  
21 of this section may not exceed \$500,000 for each claim based on a  
22 separate incident or injury.

## 3. Punitive Damages

Senate version (only)

23           Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be  
24 awarded in an action, whether in tort, contract, or otherwise, unless  
25 supported by clear and convincing evidence.

4. Damages from Intoxication or Crime

House version

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Sec. 09.17.010. DAMAGES RESULTING FROM COMMISSION OF A CRIME.  
person who suffers personal injury or death may not recover damages  
for the personal injury or death if the injuries or death occurred  
while the person was engaged in the commission of a felony, the person  
has been convicted of the felony, including conviction based on a  
guilty plea or plea of nolo contendere, and the felony substantially  
contributed to the injury or death. This section does not affect a  
right of action under 42 U.S.C. 1983.

Senate version

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Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISS-  
SION OF A CRIME. (a) A person who suffers personal injury or death  
may not bring an action to recover damages for the personal injury or  
death if the injuries or death occurred while the person was

(1) voluntarily under the influence of intoxicating liquor  
or under the influence of a controlled substance listed in AS 11.71.-.  
140 - 11.71.190 and the condition of being under the influence of the  
intoxicating liquor or controlled substance contributed more than 50  
percent to the person's injuries or death; if there was 0.10 percent  
or more by weight of alcohol in the person's blood or 0.10 grams or  
more of alcohol per 210 liters of the person's breath, it is presumed  
that the person was under the influence of intoxicating liquor; or

(2) engaged in the commission of a felony, if the felony  
was causally related to the injury or death in time, place, or activi-  
ty; however, nothing in this paragraph shall affect a right of action  
under 42 U.S.C. 1983.

(b) The provisions of (a)(1) of this section do not apply to a  
person who suffers personal injury or death caused by the intentional  
act of another person or persons.

# 5. Itemized Verdicts

House version and Senate version

16                   Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
17 for personal injury are awarded by the court or jury, the verdict  
18 shall be itemized between economic loss and noneconomic loss, if any,  
19 as follows:

- 20                   (1) past economic loss;  
21                   (2) past noneconomic loss;  
22                   (3) future economic loss;  
23                   (4) future noneconomic loss; and  
24                   (5) punitive damages.

## 6. Periodic Payments

House version and Senate version

25           Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover  
26 damages, the court shall, at the request of an injured party, enter  
27 judgment ordering that amounts awarded a judgment creditor for future  
28 damages be paid to the maximum extent feasible by periodic payments  
29 rather than by a lump-sum payment if the award equals or exceeds  
1 \$100,000 in future damages.

2           (b) The court may require security be posted, in order to ensure  
3 that funds are available as periodic payments become due. The court  
4 may not require security to be posted if an authorized insurer, as  
5 defined in AS 21.90.900, acknowledges to the court its obligation to  
6 discharge the judgment.

7           (c) A judgment ordering payment of future damages by periodic  
8 payment shall specify the recipient, the dollar amount of the pay-  
9 ments, the interval between payments, and the number of payments or  
10 the period of time over which payments shall be made. Periodic pay-  
11 ments shall be cumulatively adjusted annually by applying each year  
12 the annual rate of change in the consumer price index for all urban  
13 consumers for the Anchorage Metropolitan Area as published by the  
14 Bureau of Labor Statistics of the United States Department of Labor  
15 for the immediately preceding year. Payments may be modified only in  
16 the event of the death of the judgment creditor, in which case pay-  
17 ments may not be reduced or terminated, but shall be paid to persons  
18 to whom the judgment creditor owed a duty of support, as provided by  
19 law, immediately before death. In the event the judgment creditor  
20 owed no duty of support to dependents at the time of the judgment  
21 creditor's death, the money remaining shall be distributed in accor-  
22 dance with a will of the deceased judgment creditor accepted into  
23 probate or under the intestate laws of the state if the deceased had  
24 no will.

25           (d) If the court finds that the judgment debtor has exhibited a  
26 continuing pattern of failing to make payments required under (c) of  
27 this section, the court shall, in addition to the required periodic  
28 payments, order the judgment debtor to pay the judgment creditor any  
29 damages caused by the failure to make periodic payments, including  
1 costs and attorney fees.

## 7. Limited Liability

House version

12           Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND  
13 OFFICERS. (a) Unless the act or omission constituted gross negli-  
14 gence, a person may not recover tort damages for personal injury,  
15 death, or damage to property for an act or omission to act in the  
16 course and scope of official duties, as a member or officer of the  
17 following:

18                   (1) a member of the board of directors or an officer of a  
19 nonprofit corporation;

20                   (2) a member of the board of directors of a public or  
21 nonprofit hospital, or a member of a citizen's advisory board of any  
22 hospital;

23                   (3) a member of a school board of a school district;

24                   (4) a member of the governing body, a commission, or a  
25 citizen's advisory committee of a municipality of the state.

26           (b) Notwithstanding (a) of this section, the duties and liabil-  
27 ities of a director or officer of a nonprofit corporation to the  
28 corporation or the corporation's shareholders may not be limited or  
29 modified.

1           (c) In this section "nonprofit corporation" means a corporation  
2 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)  
3 or (4) (Internal Revenue Code).

# Limited Liability (cont)

Senate version

11           Sec. 09.17.045.   LIMITED LIABILITY OF CERTAIN DIRECTORS AND  
12 OFFICERS. (a) Unless the act or omission constituted gross negli-  
13 gence, a person may not recover damages for a negligent act or omis-  
14 sion to act, in the course and scope of official duties, from the  
15 following:

16                   (1) a member of the board of directors or an officer of a  
17 nonprofit corporation;

18                   (2) a member of the board of directors of a public or  
19 nonprofit hospital or a community-based advisory board of a hospital;

20                   (3) a member of a school board of a school district;

21                   (4) a member of a governing board, commission, or citizen  
22 advisory committee of a municipality in the state.

23           (b) Notwithstanding (a) of this section, the duties and liabil-  
24 ities of a director or officer of a nonprofit corporation to the  
25 corporation or the corporation's shareholders may not be limited or  
26 modified.

## 8. Contributory Fault

State version and House version

27           Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT.    In an action  
28           based on fault seeking to recover damages for injury or death to a  
29           person or harm to property, contributory fault chargeable to the  
1           claimant diminishes proportionately the amount awarded as compensatory  
2           damages for the injury attributable to the claimant's contributory  
3           fault, but does not bar recovery.

# 9. Collateral Benefits

House version

10       Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder  
11 has rendered an award to a claimant, and after the court has awarded  
12 costs and attorney fees, a defendant may introduce evidence of amounts  
13 received or to be received by the claimant as compensation for the  
14 same injury from collateral sources that do not have a right of subro-  
15 gation by law or contract.

16       (b) If the defendant elects to introduce evidence under (a) of  
17 this section, the claimant may introduce evidence of

18           (1) the amount that the actual attorney fees incurred by  
19 the claimant in obtaining the award exceed the amount of attorney fees  
20 awarded to the claimant by the court; and

21           (2) the amount that the claimant has paid or contributed to  
22 secure the right to an insurance benefit introduced by the defendant  
23 as evidence.

24       (c) If the total amount of collateral benefits introduced as  
25 evidence under (a) of this section exceeds the total amount that the  
26 claimant introduced as evidence under (b) of this section, the court  
27 shall deduct from the total award the amount by which the value of the  
28 nonsubrogated sum awarded under (a) of this section exceeds the amount  
29 of payments under (b) of this section.

1       (d) Notwithstanding (a) of this section, the defendant may not  
2 introduce evidence of

3           (1) benefits that under federal law cannot be reduced or  
4 offset;

5           (2) a deceased's life insurance policy; or

6           (3) gratuitous benefits provided to the claimant.

7       (e) This section does not apply to a medical malpractice action  
8 filed under AS 09.55.

# Collateral Benefits (cont)

## Senate version

4           Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder  
5 has rendered an award to a claimant, and after the court has awarded  
6 costs and attorney fees, a defendant may introduce evidence of amounts  
7 received or to be received by the claimant as compensation for the  
8 same injury from collateral sources that do not have a right of subro-  
9 gation against the claimant by law or contract.

10           (b) If the defendant elects to introduce evidence under (a) of  
11 this section, the claimant may introduce evidence of

12                 (1) the amount that the actual attorney fees incurred by  
13 the claimant exceed the amount of the attorney fees awarded to the  
14 claimant; and

15                 (2) the amount that the claimant has paid or contributed to  
16 secure the right to an insurance benefit introduced by the defendant  
17 as evidence.

18           (c) If the total amount of collateral benefits introduced as  
19 evidence under (a) of this section exceeds the total amount that the  
20 claimant introduced as evidence under (b) of this section, the court  
21 shall deduct from the amount awarded the claimant, the amount by which  
22 the value of the benefits under (a) of this section exceeds the amount  
23 of payments under (b) of this section.

24           (d) Notwithstanding (a) of this section, the defendant may not  
25 introduce evidence of

26                 (1) benefits that cannot be reduced or offset by federal  
27 law;

28                 (2) a deceased's life insurance policy; or

29                 (3) gratuitous benefits provided to the claimant.

1           (e) This section does not apply to a medical malpractice action  
2 filed under AS 09.55.

# 10. Apportionment of Damages

House version

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Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.070, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.17.070.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.070, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) The court shall enter judgment against each party liable on the basis of joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party.

Apportionment of Damages (cont).

Senate Version

3           Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions  
4 involving fault of more than one party to the action, including third-  
5 party defendants and persons who have been released under AS 09.17.-  
6 070, the court, unless otherwise agreed by all parties, shall instruct  
7 the jury to answer special interrogatories or, if there is no jury,  
8 shall make findings, indicating

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

11           (2) the percentage of the total fault of all of the parties  
12 to each claim that is allocated to each claimant, defendant, third-  
13 party defendant, and person who has been released from liability under  
14 AS 09.17.070; for this purpose the court may determine that two or  
15 more persons are to be treated as a single party.

16           (b) In determining the percentages of fault, the trier of fact  
17 shall consider both the nature of the conduct of each party at fault  
18 and the extent of the causal relation between the conduct and the  
19 damages claimed.

20           (c) The court shall determine the award of damages to each  
21 claimant in accordance with the findings, subject to a reduction under  
22 AS 09.17.070, and enter judgment against each party liable on the  
23 basis of rules of several liability. The court shall also determine  
24 and state in the judgment each party's equitable share of the obliga-  
25 tion to each claimant in accordance with the respective percentages of  
26 fault.

11 Effect of Release

House version

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Sec. 09.17.070. EFFECT OF RELEASE. When a release or covenant not to sue or not to enforce judgment is given in good faith to one or two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

Senate version

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Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.060.

12. Contingency Fees  
Senate version (only)

7           Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may  
8 not contract for or collect a contingency fee for representing a  
9 person seeking damages in connection with an action for personal  
10 injury based on negligence in excess of 25 percent of the amount  
11 recovered.

12           (b) If periodic payments for future damages are awarded, the  
13 present value of the periodic payments must be included in computing  
14 the total award from which attorney fees are calculated under this  
15 section.

16           (c) An attorney may not contract for or receive a fee for de-  
17 fending a person against a claim for damages in connection with an  
18 action for personal injury based on negligence, in excess of 25 per-  
19 cent of the amount recovered or if no amount is recovered by the  
20 plaintiff, 25 percent of the amount in controversy.

21           (d) The limitations in (a) - (c) of this section apply whether  
22 the recovery is by settlement, arbitration, or judgment.

This section takes effect only if section  
regarding Rule 82 (As 09.60.010) does not pass  
each house by at least 2/3 majority.

### 13. Definitions

#### House version and Senate version

23           Sec. 09.17.900. DEFINITION. In this chapter "fault" includes  
24           acts or omissions that are in any measure negligent or reckless toward  
25           the person or property of the actor or others, or that subject a  
26           person to strict tort liability; the term also includes breach of  
27           warranty, unreasonable assumption of risk not constituting an enforce-  
28           able express consent, misuse of a product for which the defendant  
29           otherwise would be liable, and unreasonable failure to avoid an injury

1           or to mitigate damages; legal requirements of causal relation apply  
2           both to fault as the basis for liability and to contributory fault.

3           \* Sec. 3. AS 09.30.065 is amended to read:

# 14. Offers of Judgment

House version

2           Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
3 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
4 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
5 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
6 making a claim or the party defending against a claim may serve upon  
7 the adverse party an offer to allow judgment to be entered [IN COM-  
8 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the  
9 effect specified in the offer, with costs [COST] then accrued. If  
10 within 10 days after the service of the offer the adverse party serves  
11 written notice that the offer is accepted, either party may then file  
12 the offer and notice of acceptance together with proof of service, and  
13 the clerk shall enter judgment. An offer not accepted within 10 days  
14 is considered withdrawn and evidence of that offer is not admissible  
15 except in a proceeding to determine costs and attorney fees [THE FORM  
16 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the  
17 claim as to which an offer has been made under this section is not  
18 more favorable to the offeree than the offer, the offeree shall pay  
19 costs incurred after service of the offer, and the court may also  
20 require payment of reasonable actual attorney fees incurred after  
21 service of the offer, and the interest awarded under AS 45.45.010(a)  
22 and accrued up to the date judgment is entered shall be adjusted as  
23 follows:

24           (1) if the offeree is the party making the claim, the  
25 interest rate shall be reduced by five [TWO] percent a year;

26           (2) if the offeree is the party defending against the  
27 claim, the interest rate shall be increased by five [TWO] percent a  
28 year.

Offer of Judgment (cont).

House version (cont).

1 (b) The fact that an offer is made but not accepted does not  
2 preclude a subsequent offer. When the liability of one party to  
3 another has been determined by verdict, order, or judgment, but the  
4 amount or extent of the liability remains to be determined by further  
5 proceedings, the party adjudged liable may make an offer of judgment,  
6 which shall have the same effect as an offer made before trial if it  
7 is served within a reasonable time not less than 10 days before the  
8 commencement of hearings to determine the amount or extent of liability.  
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10 (c) Except for civil commitment and child custody actions, this  
11 section applies to all civil actions.

# 14. Offers of Judgment (cont).

Senate version

4           Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
5           days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
6           FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
7           THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
8           making a claim or the party defending against a claim may serve upon  
9           the adverse party an offer to allow judgment to be entered in complete  
10          satisfaction of the claim for the money or property or to the effect  
11          specified in the offer, with cost then accrued. If within 10 days  
12          after the service of the offer the adverse party serves written notice  
13          that the offer is accepted, either party may then file the offer and  
14          notice of acceptance together with proof of service, and the clerk  
15          shall enter judgment. An offer not accepted within 10 days is con-  
16          sidered withdrawn and evidence of that offer is not admissible except  
17          in a proceeding to determine the form of judgment after verdict. If  
18          the judgment finally entered on the claim as to which an offer has  
19          been made under this section is not more favorable to the offeree than  
20          the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]  
21          and accrued up to the date judgment is entered shall be adjusted as  
22          follows:

- 23                   (1) if the offeree is the party making the claim, the  
24                   interest rate shall be reduced by five [TWO] percent a year;
- 25                   (2) if the offeree is the party defending against the  
26                   claim, the interest rate shall be increased by five [TWO] percent a  
27                   year.

# 15. Interest on Judgments

House version

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\* Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:  
(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day the cause of action accrues.

Senate version

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Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is equal to the 12th Federal Reserve district discount rate as determined under AS 45.45.010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

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\* Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:  
(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day process is served on the defendant or the day the defendant received written notification of the claim, whichever is earlier. Evidence to be considered by the finder of fact may include the amount of the prejudgment interest that may be added to the award.

16. Awards

Have version (only)

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Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages in a malpractice action shall be awarded in accordance with principles of the common law.

# 17. Prevailing Party Attorney Fees

House version

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(b) In making an award of attorney fees to a prevailing party, the court shall consider actual attorney fees incurred by each party in the civil action. Actual attorney fees shall be supported by affidavit from the attorney representing each party.

Senate version

15 \* Sec. 6. AS 09.60.010 is repealed and reenacted to read:  
16 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING  
17 PART. The supreme court shall determine by rule or order the costs,  
18 if any, that may be allowed a prevailing party in a civil action.  
19 Unless specifically authorized by statute or by agreement between the  
20 parties, attorney fees may not be awarded to a party in a civil action  
21 for personal injury, death or property damage related to or arising  
22 out of fault, as defined in AS 09.17.900.

# 18 Verification of Claims

## House version

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Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as provided in (b) of this section, every complaint, answer, cross-claim, and counterclaim shall be signed and verified by the party or the attorney of the party filing the pleading and shall bear a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counterclaim was knowingly untrue, upon motion of a party, the person signing the pleading may be compelled to show cause why the person signing the pleading should not be held in contempt of court.

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(b) For good cause, a complaint, answer, cross-claim or counter-claim may be filed without verification; provided, however, that verification of the pleading by the party or attorney of the party shall be made within 15 days of the filing of the pleading.

## Senate version

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Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the attorney of the party shall sign and verify each complaint, answer, cross-claim, and counterclaim that the party files. The verification must include a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counter-claim was knowingly untrue, and upon motion of a party the person signing the pleading shall be compelled to show cause why the person signing the pleading should not be held in contempt of court.

## 19. Repeals

### House version and Senate version

- 23 \* Sec. 7. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and  
24 09.16.060 are repealed.

## 20. Applicability

### House version

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\* Sec. 15. APPLICABILITY. Sections 1 - 8 of this Act apply to a causes of action accruing on or after the effective date of this Act.

### Senate version

24 \* Sec. 15. APPLICABILITY. Sections 1 - 7 of this Act apply to all  
25 causes of action accruing after the effective date of this Act, except that  
26 AS 09.17.055(a) enacted in sec. 2 of this Act applies to all contracts for  
27 the provision of collateral benefits that are formed or renewed after the  
28 effective date of this Act.

21. Severability  
Senate version (only)

29 \* Sec. 16. SEVERABILITY. If any provision of this Act, or the  
1 application thereof to any person or circumstance is held invalid, the  
2 remainder of this Act and the application to other persons or circumstances  
3 shall not be affected thereby.

## 22. Study

House version

\* Sec. 16. (a) The Department of Law shall collect and analyze information pertaining to the insurance crisis and its relation to the civil justice system in Alaska. The study may include an analysis of closed insurance claim files and insurance company finances.

(b) All state agencies shall cooperate fully with the Department of Law in the collection and analysis of information necessary to conduct the study under (a) of this section.

(c) The Department of Law shall report its findings under this section to the legislature no later than the 30th day of the First Session of the Fifteenth Alaska Legislature.

\* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

22.

Study

State version

4 \* Sec. 17. The Department of Law, with the assistance of the Department  
5 of Commerce and Economic Development, shall contract for  
6 (1) a study of closed insurance claims to identify  
7 (A) the extent to which the legal system has or has not  
8 been the cause of dramatic liability insurance increases and coverage  
9 reduction in crisis lines in Alaska;  
10 (B) how victims are faring under the present system; and  
11 (C) what the various specific tort reform proposals will  
12 actually accomplish;  
13 (2) a study of insurance company finances to determine  
14 (A) the extent to which dramatic liability insurance rate  
15 increases and coverage limitations in Alaska are, or are not, cost-  
16 justified in relation to awards, settlements, and relevant court  
17 decisions in Alaska involving personal injury, death, or property  
18 damage based on fault; and  
19 (B) the extent to which legislative or regulatory actions  
20 affecting the tort system in Alaska are necessary to resolve the  
21 state's liability insurance crisis.

## 23. Effective Dates

House version

9 ||  
10 || \* Sec. 15. This Act takes effect immediately in accordance with AS 01.10.070(c).

Senate version

22 \* Sec. 18. Except for AS 09.17.080, added by sec. 2 of this Act, this  
23 Act takes effect immediately in accordance with AS 01.10.070(c).

24 \* Sec. 19. AS 09.17.080, added by sec. 2 of this Act, only takes effect  
25 if sec. 14 of this Act does not pass each house of the legislature by at  
26 least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes  
27 effect immediately under AS 01.10.070(c).

house. When the second house receives the message accompanying the engrossed bill and reporting its passage, the bill shall be read by the clerk or secretary for the first time and then referred by the presiding officer to one or more committees for subsequent action by that house.

#### AMENDMENTS IN OTHER HOUSE

**RULE 41. AMENDMENTS IN OTHER HOUSE.** (a) When a bill, resolution, or citation passed in one house is amended in the other house, the bill, resolution, or citation with certified amendments is returned to the house of origin requesting concurrence. The vote on concurrence in amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership in each house. If concurrence is had the clerk or secretary notes the concurrence in the journal, informs the other house of the concurrence, and proceeds to have the bill or resolution enrolled for certification and transmittal to the governor.

(b) An amendment to a bill introduced in the other house is not in order if the amendment requires a change of the bill title other than a clerical or technical change.

#### CONFERENCE AND FREE CONFERENCE COMMITTEES

##### **RULE 42. CONFERENCE AND FREE CONFERENCE COMMITTEES.**

(a) If one house refuses to concur in the amendments of the other it so notifies the amending house and requests that it recede from its amendments. The vote on receding from amendments is taken by the calling of the roll and the recording of the yeas and nays in the journal. A house recedes from its amendments only by a majority vote of the full membership of the house. If the house refuses to recede, the presiding officer of each house appoints three members to sit as a Conference Committee. The committee meets when mutually agreeable to its members. If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house. The report is not subject to amendment in either house. If the report is adopted by each house the bill is enrolled, signed, and transmitted to the governor. If the members of the Conference Committee cannot agree on amendments, or if one or both houses refuses to adopt the committee report, the Conference Committee submits, an identical written report to each house listing the specific points of disagreement for which the committee requests powers of free conference. The presiding officer of each house may then give limited powers of free conference only on the specific points listed. If the members of a Conference Committee with limited powers of free conference cannot agree on amendments, or one or both houses refuses to adopt the committee report, it is then in order to appoint a Free Conference Committee. A member who served on a Conference Committee or a Conference Committee with limited powers of free conference may not be appointed to a subsequent Conference Committee or Free Conference Committee concerning the same measure. The vote on adoption of a conference committee report is taken by the calling of the

roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(b) A Free Conference Committee is appointed in the same manner as a Conference Committee and may suggest in its report any new amendments clearly germane to the question. When a majority of the membership of the committee from each house agrees on amendments, the amendments are attached to the bill and reported back to each house in an identical report. The report is not subject to amendment in either house. If the report is adopted in each house the bill is then ordered enrolled by its house of origin. If the members of a Free Conference Committee fail to agree on amendments or one or both houses refuses to adopt the free conference report, a second Free Conference Committee may be appointed, but no member of the first committee may be reappointed. A free conference report may not be voted on by the house until at least 24 hours after the report is duplicated and delivered to the chief clerk or secretary of the house for distribution to each member. The chief clerk or secretary shall certify the time of delivery of the report for recording in the journal. The vote on adoption of a free conference committee report is taken by the calling of the roll and the recording of the yeas and nays in the journal. Adoption requires a majority vote of the full membership of each house.

(c) A Conference Committee with limited powers of free conference or a Free Conference Committee may not include in its report on an appropriation bill an item which was not included in a version of that appropriation bill adopted in third reading by a house and the amount appropriated by an item may not exceed the higher amount appropriated by that item in a version of the bill adopted in third reading by a house. An item in an appropriation bill includes a line item, an allocation, and an appropriation.

(d) Notwithstanding the provisions of (c) of this rule, a Free Conference Committee may consider and include in its report on an appropriation bill appropriations as requested by attached fiscal notes on new legislation and resolutions that have been passed by both houses.

(e) A Conference Committee, a Conference Committee with limited powers of free conference, or a Free Conference Committee may not adopt a report that requires a change in the title of a bill other than a clerical or technical change.

#### ENROLLMENT

**RULE 43. ENROLLMENT.** (a) When a bill has passed both houses the presiding officer of the house of origin directs that it be enrolled. The clerk or secretary transmits the engrossed bill to the enrolling secretary of the legislature, who, with the revisor of statutes, checks the bill before placement in final form according to the legislative drafting manual. The enrolling secretary is authorized to correct form and manifest errors which are clerical, typographical, or errors in spelling or errors by way of additions or omissions. The enrolling secretary is required to

BSN:1328

ALASKA HOUSE OF REPRESENTATIVES

HCS-CSSB-377(JUD) NOTIO

2ND SESSION 14TH LEG

5/ 8/86 3: 3 PM

	21	YEAS	19	NAYS	0	EXC	0	ABS		
Y	ADAMS	Y	FULLER	N	LARSON	Y	FOURCHOT			
N	BINKLEY	Y	FURNACE	N	MARROU	N	RIEGER			
N	BOUCHER	Y	GOLL	N	MARTIN	N	RINGSTAD			
N	CATO	Y	GRUENBERG	Y	MILLER, M.M.	N	SHULTZ			
Y	CLOCKSIN	Y	GRUSSENDORF	N	MILLER, M.W.	Y	SUND			
N	COLLINS	N	HANLEY	Y	NAVARRE	Y	SZYMANSKI			
N	COTTEN	Y	HERRMANN	N	PEARCE	Y	TAYLOR			
Y	DAVIS	Y	HURLEY	N	PETTYJOHN	N	THOMPSON			
Y	DUNCAN	N	JENKINS	Y	PHILLIPS	Y	UEHLING			
N	FRANK	Y	KOPONEN	N	PIGNALBERTI	Y	WALLIS			

VOTED FOR

\* CHANGED VOTE

#1 Aylt Jlic CS  
(y) 21-19

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Pignol #1 Amendment - non-economic loss to \$300,000  
(n) 17-23

Pignol #2 Amendment - adding intoxication to exclusions  
(n) 17-23

Pignol #3 Amendment - Limited liability  
(n) 19-21

Pettigrew #4 Amendment - future damages to present value  
(n) 21-19 (Binkly-no)

Collins #5 Amendment - non-economic loss to \$500,000 ~~with impact on bifurcation~~  
6  
7 withdrawn  
8  
10

Collins #9 Amendment - Contingency fees  
Pignol (n) 17-23

Thompson Amendment to  
(n) 17-23

Chackin #11 Amendment - rescind action on #4  
(u) 20-20 (Binkly-yes)

Utter # 11 Arbit - joint & seal  
(w)  
19-21

Pearce # 12 Arbit - check rule 82  
15-25

# 13 Arbit - \$500,000 cap  
20-20

Phillips # 14 Arbit Jurisdiction back in  
Greedy 32-8

Taylor # 15 Arbit Arbitration

Bill

36-4

Chaplin  
Boucher  
Collins  
Pigot

From Sund's office

COMPARISON BETWEEN HOUSE BILL 532 and SENATE BILL 377

(Versions as of 5/6/86)

1. Noneconomic Damages  
SB 377 (only)

15           Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
16 recover damages for personal injury based on negligence, damages for  
17 noneconomic losses shall be limited to compensation for pain, suffer-  
18 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-  
19 ment of life and other nonpecuniary damage.

20           (b) The amount of damages awarded by a court or jury under (a)  
21 of this section may not exceed \$500,000 for each claim based on a  
22 separate incident or injury.

MA

2. Punitive Damages

SB 377 (only)

23

Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be

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awarded in an action, whether in tort, contract, or otherwise, unless

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supported by clear and convincing evidence.

3. Damages from Intoxication or Crime

HB 532

12 Sec. 09.17.010. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A  
13 person who suffers personal injury or death may not recover damages  
14 for the personal injury or death if the injuries or death occurred  
15 while the person was engaged in the commission of a felony, the person  
16 has been convicted of the felony, including conviction based on a  
17 guilty plea or plea of nolo contendere, and the felony substantially  
18 contributed to the injury or death. This section does not affect a  
19 right of action under 42 U.S.C. 1983. *Handwritten signature*  
20

SB 377

26 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-  
27 SION OF A CRIME. (a) A person who suffers personal injury or death  
28 may not bring an action to recover damages for the personal injury or  
29 death if the injuries or death occurred while the person was

1 (1) voluntarily under the influence of intoxicating liquor  
2 or under the influence of a controlled substance listed in AS 11.71.-  
3 140 - 11.71.190 and the condition of being under the influence of he  
4 intoxicating liquor or controlled substance contributed more than 50  
5 percent to the person's injuries or death; if there was 0.10 percent  
6 or more by weight of alcohol in the person's blood or 0.10 grams or  
7 more of alcohol per 210 liters of the person's breath, it is presumed  
8 that the person was under the influence of intoxicating liquor; or

9 (2) engaged in the commission of a felony, if the felony  
10 was causally related to the injury or death in time, place, or activi-  
11 ty; however, nothing in this paragraph shall affect a right of action  
12 under 42 U.S.C. 1983.

13 (b) The provisions of (a)(1) of this section do not apply to a  
14 person who suffers personal injury or death caused by the intentional  
15 act of another person or persons.

4. Itemized Verdicts

HB 532

add punitive damages

21 Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages  
22 for personal injury are awarded by the court or jury, the verdict  
23 shall be itemized between economic loss and noneconomic loss, if any,  
24 and economic loss shall be further itemized by category. Itemization  
25 of economic loss by category includes: (1) amounts intended to com-  
26 pensate for reasonable expenses that have been incurred, or which will  
27 be incurred, for necessary medical, surgical, x-ray, dental, or other  
28 health or rehabilitative services, drugs, and therapy; (2) amounts  
29 intended to compensate for lost wages or loss of earning capacity; and  
1 shall further determine the amounts intended to compensate for injury  
2 or losses incurred before the verdict and amounts intended to compen-  
3 sate for losses that will be incurred in the future.

SB 377

16 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
17 for personal injury are awarded by the court or jury, the verdict  
18 shall be itemized between economic loss and noneconomic loss, if any,  
19 as follows:  
20 (1) past economic loss;  
21 (2) past noneconomic loss;  
22 (3) future economic loss;  
23 (4) future noneconomic loss; and  
24 (5) punitive damages.

5. Periodic Payments / Future Damages

HB 532

4           Sec. 09.17.030. FUTURE DAMAGES. (a) The court shall reduce a  
5 lump-sum award of future damages to its present value. In reducing  
6 the award to present value, the court shall consider inflation and the  
7 estimated future earning capacity of the injured person.

8           (b) The court may enter a judgment that future damages be paid  
9 in whole or in part by periodic payments rather than by a lump-sum  
10 payment; the judgment shall include, if necessary, other provisions to  
11 assure that funds are available as periodic payments become due.  
12 Insurance from an authorized insurer as defined in AS 21.90.900 or  
13 from the Medical Indemnity Corporation of Alaska is sufficient assur-  
14 ance that funds will be available. Any part of the award that is paid  
15 on a periodic basis shall be adjusted annually according to changes in  
16 the consumer price index in the community where the claimant resides.  
17 The court shall include as a part of the costs awarded to the claimant  
18 the costs of providing periodic payment of future damages.

19           (c) A judgment ordering payment of future damages by periodic  
20 payment shall specify the recipient, the dollar amount of the pay-  
21 ments, the interval between payments, and the number of payments or  
22 the period of time over which payments shall be made. Payments may be  
23 modified only as provided in (d) of this section or in the event of  
24 the death of the judgment creditor, in which case payments may not be  
25 reduced or terminated, but shall be paid to persons to whom the judg-  
26 ment creditor owed a duty of support, as provided by law, immediately  
27 before death. In the event the judgment creditor owed no duty of  
28 support to dependents at the time of the judgment creditor's death,  
29 the money remaining shall be distributed in accordance with a will of

Periodic Payments / Future Damages (cont).

HB 532

1 the deceased judgment creditor or under the intestate laws of the  
2 state if the deceased had no will.

3 (d) The court that rendered the original judgment may, upon  
4 petition of the judgment creditor, modify the judgment to award addi-  
5 tional damages if the judgment creditor incurs medical expenses that  
6 were not included in the original judgment and could not have been  
7 reasonably anticipated at the time of trial.

8 (e) If the court finds that the judgment debtor has exhibited a  
9 continuing pattern of failing to make payments required under this  
10 section, the court shall, in addition to the required periodic  
11 payments, order the judgment debtor to pay the judgment creditor any  
12 damages caused by the failure to make periodic payments, including  
13 costs and attorney fees.

14 (f) If at any time following entry of judgment, a judgment  
15 debtor fails to make a payment in a timely fashion according to the  
16 terms of the part of the judgment related to periodic payments, the  
17 judgment creditor may petition the court that rendered the original  
18 judgment for an order requiring payment by the judgment debtor of the  
19 outstanding payments in a lump sum. In calculating the amount of the  
20 lump-sum judgment under this section, the court shall total the re-  
21 maining periodic payments due and owing to the judgment creditor.  
22 This amount may not be converted to its present value. The court may  
23 also require the payment of interest on the outstanding judgment.

Periodic Payments / Future Damages (cont)

SB 377

25 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover  
26 damages, the court shall, at the request of an injured party, enter  
27 judgment ordering that amounts awarded a judgment creditor for future  
28 damages be paid to the maximum extent feasible by periodic payments  
29 rather than by a lump-sum payment if the award equals or exceeds

1 \$100,000 in future damages.

2 (b) The court may require security be posted, in order to ensure  
3 that funds are available as periodic payments become due. The court  
4 may not require security to be posted if an authorized insurer, as  
5 defined in AS 21.90.900, acknowledges to the court its obligation to  
6 discharge the judgment.

7 (c) A judgment ordering payment of future damages by periodic  
8 payment shall specify the recipient, the dollar amount of the pay-  
9 ments, the interval between payments, and the number of payments or  
10 the period of time over which payments shall be made. Periodic pay-  
11 ments shall be cumulatively adjusted annually by applying each year  
12 the annual rate of change in the consumer price index for all urban  
13 consumers for the Anchorage Metropolitan Area as published by the  
14 Bureau of Labor Statistics of the United States Department of Labor  
15 for the immediately preceding year. Payments may be modified only in  
16 the event of the death of the judgment creditor, in which case pay-  
17 ments may not be reduced or terminated, but shall be paid to persons  
18 to whom the judgment creditor owed a duty of support, as provided by  
19 law, immediately before death. In the event the judgment creditor  
20 owed no duty of support to dependents at the time of the judgment  
21 creditor's death, the money remaining shall be distributed in accor-  
22 dance with a will of the deceased judgment creditor accepted into  
23 probate or under the intestate laws of the state if the deceased had  
24 no will.

25 (d) If the court finds that the judgment debtor has exhibited a  
26 continuing pattern of failing to make payments required under (c) of  
27 this section, the court shall, in addition to the required periodic  
28 payments, order the judgment debtor to pay the judgment creditor any  
29 damages caused by the failure to make periodic payments, including  
1 costs and attorney fees.

6. Verification of Civil Claims

SB 377

~~SB 377~~

2           Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the  
3 attorney of the party shall sign and verify each complaint, answer,  
4 cross-claim, and counterclaim that the party files. The verification  
5 must include a statement that the person signing the pleading believes  
6 the statements made in the pleading are true. If the court finds that  
7 a statement made in the complaint, answer, cross-claim, or counter-  
8 claim was knowingly untrue, and upon motion of a party the person  
9 signing the pleading shall be compelled to show cause why the person  
10 signing the pleading should not be held in contempt of court.

HB 532

24 \* Sec. 6. AS 09.63 is amended by adding a new section to read:

25           Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as  
26 provided in (b) of this section, every complaint, answer, cross-claim,  
27 and counterclaim shall be signed and verified by the party or the  
28 attorney of the party filing the pleading and shall bear a statement  
29 that the person signing the pleading believes the statements made in  
1 the pleading are true. If the court finds that a statement made in  
2 the complaint, answer, cross-claim, or counterclaim was knowingly  
3 untrue, upon motion of a party, the person signing the pleading may be  
4 compelled to show cause why the person signing the pleading should not  
5 be held in contempt of court.

6           (b) For good cause, a complaint, answer, cross-claim or  
7 counter-claim may be filed without verification; provided, however,  
8 that verification of the pleading by the party or attorney of the  
9 party shall be made within 15 days of the filing of the pleading.  
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7. Limited Liability

HR 532

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Sec. 09.17.040. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. (a) Unless the act or omission constituted gross negligence, a person may not recover tort damages for personal injury, death, or damage to property for an act or omission to act in the course and scope of official duties, as a member or officer of the following:

1 (1) a member of the board of directors or an officer of a  
2 nonprofit corporation;

3 (2) a member of the board of directors of a public or  
4 nonprofit hospital, or a member of a citizen's advisory board of any  
5 hospital;

6 (3) a member of a school board of a school district;

7 (4) a member of the governing body, a commission, or a  
8 citizen's advisory committee of a municipality of the state.

9 (b) Notwithstanding (a) of this section, the duties and liabilities  
10 of a director or officer of a nonprofit corporation to the  
11 corporation or the corporation's shareholders may not be limited or  
12 modified.

13 (c) In this section "nonprofit corporation" means a corporation  
14 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3),  
15 (Internal Revenue Code). (4)

Limited Liability (cont)

SB 377

11           Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND  
12 OFFICERS. (a) Unless the act or omission constituted gross negli-  
13 gence, a person may not recover damages for a negligent act or omis-  
14 sion to act, in the course and scope of official duties, from the  
15 following:

16           (1) a member of the board of directors or an officer of a  
17 nonprofit corporation;

18           (2) a member of the board of directors of a public or  
19 nonprofit hospital or a community-based advisory board of a hospital;

20           (3) a member of a school board of a school district;

21           (4) a member of a governing board, commission, or citizen  
22 advisory committee of a municipality in the state.

23           (b) Notwithstanding (a) of this section, the duties and liabil-  
24 ities of a director or officer of a nonprofit corporation to the  
25 corporation or the corporation's shareholders may not be limited or  
26 modified.

8. Contributory Fault

HB 532

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Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for an injury attributable to the claimant's contributory fault, but does not bar recovery.

SB 377

27 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action  
28 based on fault seeking to recover damages for injury or death to a  
29 person or harm to property, contributory fault chargeable to the  
1 claimant diminishes proportionately the amount awarded as compensatory  
2 damages for the injury attributable to the claimant's contributory  
3 fault, but does not bar recovery.

## 9. Collateral Benefits

HB 532

22 Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder  
23 has rendered an award to a claimant, and after the court has awarded  
24 costs and attorney fees, a defendant may introduce evidence of amounts  
25 received or to be received by the claimant as compensation for the  
26 same injury from collateral sources that do not have a right of subro-  
27 gation by law or contract.

28 (b) If the defendant elects to introduce evidence under (a) of  
29 this section, the claimant may introduce evidence of

1 (1) the amount that the actual attorney fees incurred by  
2 the claimant in obtaining the award exceed the amount of attorney fees  
3 awarded to the claimant by the court; and

4 (2) the amount that the claimant has paid or contributed to  
5 secure the right to an insurance benefit introduced by the defendant  
6 as evidence.

7 (c) If the total amount of collateral benefits introduced as  
8 evidence under (a) of this section exceeds the total amount that the  
9 claimant introduced as evidence under (b) of this section, the court  
10 shall deduct from the total award the amount by which the value of the  
11 nonsubrogated sum awarded under (a) of this section exceeds the amount  
12 of payments under (b) of this section.

13 (d) Notwithstanding (a) of this section, the defendant may not  
14 introduce evidence of

15 (1) benefits that under federal law cannot be reduced or  
16 offset;

17 (2) a deceased's life insurance policy; or

18 (3) gratuitous benefits provided to the claimant.

(e) This section does not apply to a medical malpractice action  
filed under AS 09.55

# Collateral Benefits

SB 377

4           Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder  
5 has rendered an award to a claimant, and after the court has awarded  
6 costs and attorney fees, a defendant may introduce evidence of amounts  
7 received or to be received by the claimant as compensation for the  
8 same injury from collateral sources that do not have a right of subro-  
9 gation against the claimant by law or contract.

10           (b) If the defendant elects to introduce evidence under (a) of  
11 this section, the claimant may introduce evidence of

12           (1) the amount that the actual attorney fees incurred by  
13 the claimant exceed the amount of the attorney fees awarded to the  
14 claimant; and

15           (2) the amount that the claimant has paid or contributed to  
16 secure the right to an insurance benefit introduced by the defendant  
17 as evidence.

18           (c) If the total amount of collateral benefits introduced as  
19 evidence under (a) of this section exceeds the total amount that the  
20 claimant introduced as evidence under (b) of this section, the court  
21 shall deduct from the amount awarded the claimant, the amount by which  
22 the value of the benefits under (a) of this section exceeds the amount  
23 of payments under (b) of this section.

24           (d) Notwithstanding (a) of this section, the defendant may not  
25 introduce evidence of

26           (1) benefits that cannot be reduced or offset by federal  
27 law;

28           (2) a deceased's life insurance policy; or

29           (3) gratuitous benefits provided to the claimant.

1           (e) This section does not apply to a medical malpractice action  
2 filed under AS 09.55.

10. Apportionment of Damages

HB 532

19 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions  
20 involving fault of more than one party to the action, including third-  
21 party defendants and persons who have been released under AS 09.17.-  
22 070, the court, unless otherwise agreed by all parties, shall instruct  
23 the jury to answer special interrogatories or, if there is no jury,  
24 shall make findings, indicating

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

27 (2) the percentage of the total fault of all of the parties/  
28 to each claim that is allocated to each claimant, defendant, third-  
29 party defendant, and person who has been released from liability under  
AS 09.17.070.

1 (b) In determining the percentages of fault, the trier of fact  
2 shall consider both the nature of the conduct of each party at fault,  
3 and the extent of the causal relation between the conduct and the  
4 damages claimed. The trier of fact may determine that two or more  
5 persons are to be treated as a single party if their conduct was a  
6 cause of the damages claimed and the separate act or omission of each  
7 person cannot be distinguished.

8 (c) The court shall determine the award of damages to each  
9 claimant in accordance with the findings, subject to a reduction under  
10 AS 09.17.070, and enter judgment against each party liable. The court  
11 also shall determine and state in the judgment each party's equitable  
12 share of the obligation to each claimant in accordance with the re-  
13 spective percentages of fault.

14 (d) The court shall enter judgment against each party liable on  
15 the basis of joint and several liability, except that a party who is  
16 allocated less than 50 percent of the total fault allocated to all the  
17 parties may not be jointly liable for more than twice the percentage  
18 of fault allocated to that party.  
19

# Apportionment of Damages

SB 377

3           Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions  
4 involving fault of more than one party to the action, including third-  
5 party defendants and persons who have been released under AS 09.17.-  
6 070, the court, unless otherwise agreed by all parties, shall instruct  
7 the jury to answer special interrogatories or, if there is no jury,  
8 shall make findings, indicating

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

11                   (2) the percentage of the total fault of all of the parties  
12 to each claim that is allocated to each claimant, defendant, third-  
13 party defendant, and person who has been released from liability under  
14 AS 09.17.070; for this purpose the court may determine that two or  
15 more persons are to be treated as a single party.

16                   (b) In determining the percentages of fault, the trier of fact  
17 shall consider both the nature of the conduct of each party at fault  
18 and the extent of the causal relation between the conduct and the  
19 damages claimed.

20                   (c) The court shall determine the award of damages to each  
21 claimant in accordance with the findings, subject to a reduction under  
22 AS 09.17.070, and enter judgment against each party liable on the  
23 basis of rules of several liability. The court shall also determine  
24 and state in the judgment each party's equitable share of the obliga-  
25 tion to each claimant in accordance with the respective percentages of  
26 fault.

11. Effect of Release

HB 532

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Sec. 09.17.070. EFFECT OF RELEASE. When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

SB 377

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Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.060.

12. Contingency Fees  
SB 377 (only)

7           Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may  
8 not contract for or collect a contingency fee for representing a  
9 person seeking damages in connection with an action for personal  
10 injury based on negligence in excess of 25 percent of the amount  
11 recovered.

12           (b) If periodic payments for future damages are awarded, the  
13 present value of the periodic payments must be included in computing  
14 the total award from which attorney fees are calculated under this  
15 section.

16           (c) An attorney may not contract for or receive a fee for de-  
17 fending a person against a claim for damages in connection with an  
18 action for personal injury based on negligence, in excess of 25 per-  
19 cent of the amount recovered or if no amount is recovered by the  
20 plaintiff, 25 percent of the amount in controversy.

21           (d) The limitations in (a) - (c) of this section apply whether  
22 the recovery is by settlement, arbitration, or judgment.

This section takes effect only if section  
regarding Rule 82 (As 09.60.010) does not pass  
each house by at least 2/3 majority.

13. offer of judgment

Strike Definition

HB 532 ~~same~~

16 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
17 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
18 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
19 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
20 making a claim or the party defending against a claim may serve upon  
21 the adverse party an offer to allow judgment to be entered in complete  
22 satisfaction of the claim for the money or property or to the effect  
23 specified in the offer, with costs [COST] then accrued. If within 10  
24 days after the service of the offer the adverse party serves written  
25 notice that the offer is accepted, either party may then file the  
26 offer and notice of acceptance together with proof of service, and the  
27 clerk shall enter judgment. An offer not accepted within 10 days is  
28 considered withdrawn and evidence of that offer is not admissible  
29 except in a proceeding to determine the form of judgment after

1 verdict. If the judgment finally entered on the claim as to which an  
2 offer has been made under this section is not more favorable to the  
3 offeree than the offer, the interest awarded under AS 45.45.010(a) and  
4 accrued up to the date judgment is entered shall be adjusted as fol-  
5 lows:

6 (1) if the offeree is the party making the claim, the  
7 interest rate shall be reduced by five [TWO] percent a year;

8 (2) if the offeree is the party defending against the  
9 claim, the interest rate shall be increased by five [TWO] percent a  
10 year.

Offer of Judgment (cont).

SB 377

4           Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10  
5 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE  
6 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING  
7 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party  
8 making a claim or the party defending against a claim may serve upon  
9 the adverse party an offer to allow judgment to be entered in complete  
10 satisfaction of the claim for the money or property or to the effect  
11 specified in the offer, with cost then accrued. If within 10 days  
12 after the service of the offer the adverse party serves written notice  
13 that the offer is accepted, either party may then file the offer and  
14 notice of acceptance together with proof of service, and the clerk  
15 shall enter judgment. An offer not accepted within 10 days is con-  
16 sidered withdrawn and evidence of that offer is not admissible except  
17 in a proceeding to determine the form of judgment after verdict. If  
18 the judgment finally entered on the claim as to which an offer has  
19 been made under this section is not more favorable to the offeree than  
20 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]  
21 and accrued up to the date judgment is entered shall be adjusted as  
22 follows:

23           (1) if the offeree is the party making the claim, the  
24 interest rate shall be reduced by five [TWO] percent a year;

25           (2) if the offeree is the party defending against the  
26 claim, the interest rate shall be increased by five [TWO] percent a  
27 year.

# 14. Interest on Judgments

HB 532

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\* Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day the cause of action accrues.

SB 377

28 \* Sec. 4. AS 09.30.070 is amended to read:

29 Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on

1 judgments and decrees for the payment of money is equal to the 12th  
2 Federal Reserve district discount rate as determined under AS 45.45.  
3 010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded  
4 on a contract in writing, providing for the payment of interest until  
5 paid at a specified rate not exceeding the legal rate of interest for  
6 that type of contract, bears interest at the rate specified in the  
7 contract if the interest rate is set out in the judgment or decree.

8 \* Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

9 (b) Except when the court finds that the parties have agreed  
10 otherwise, prejudgment interest accrues from the day process is served  
11 on the defendant or the day the defendant received written notifica-  
12 tion of the claim, whichever is earlier. Evidence to be considered by  
13 the finder of fact may include the amount of the prejudgment interest  
14 that may be added to the award.

15. Awards

HB 532 (only)

15 || \* Sec. 4. AS 09.55.548 is repealed and reenacted to read:

6 ||       Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages  
17 || in a malpractice action shall be awarded in accordance with principles  
18 || of the common law.

16. Prevailing Party Attorney Fees

HB 532

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\* Sec. 5. AS 09.60.010 is amended by adding a new subsection to read:

(b) In making an award of attorney fees to a prevailing party, the court shall consider actual attorney fees incurred by each party in the civil action. Actual attorney fees shall be supported by affidavit from the attorney representing each party.

SB 377

15 \* Sec. 6. AS 09.60.010 is repealed and reenacted to read:

16 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING  
17 PARTY. The supreme court shall determine by rule or order the costs,  
18 if any, that may be allowed a prevailing party in a civil action.  
19 Unless specifically authorized by statute or by agreement between the  
20 parties, attorney fees may not be awarded to a party in a civil action  
21 for personal injury, death or property damage related to or arising  
22 out of fault, as defined in AS 09.17.900.

Jurisdiction

HB 532 (only)

\*Sec. 7. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases and proceedings as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$35,000 [\$25,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$35,000 [\$25,000];

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

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE PROPERTY OR] of the arrears and damage to the property does not exceed \$35,000 [\$25,000];

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$25,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.-030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020.

18. Severability

SB 377 (only)

29 \* Sec. 16. SEVERABILITY. If any provision of this Act, or the

1 application thereof to any person or circumstance is held invalid, the  
2 remainder of this Act and the application to other persons or circumstances  
3 shall not be affected thereby.

19.

Study

SB 377 (only)

4 \* Sec. 17. The Department of Law, with the assistance of the Department  
 5 of Commerce and Economic Development, shall contract for  
 6 (1) a study of closed insurance claims to identify  
 7 (A) the extent to which the legal system has or has not  
 8 been the cause of dramatic liability insurance increases and coverage  
 9 reduction in crisis lines in Alaska;  
 10 (B) how victims are faring under the present system; and  
 11 (C) what the various specific tort reform proposals will  
 12 actually accomplish;  
 13 (2) a study of insurance company finances to determine  
 14 (A) the extent to which dramatic liability insurance rate  
 15 increases and coverage limitations in Alaska are, or are not, cost-  
 16 justified in relation to awards, settlements, and relevant court  
 17 decisions in Alaska involving personal injury, death, or property  
 18 damage based on fault, and  
 19 (B) the extent to which legislative or regulatory actions  
 20 affecting the tort system in Alaska are necessary to resolve the  
 21 state's liability insurance crisis.

regulates - same ~~same~~ SB 377

- sec 12 - moved to HB 532
- sec 13 - " " HB 532
- sec 14 - delete
- sec 15 - applying - take HB 532
- sec 19 - delete
- ~~sec 18~~ immediate effective date

Alaska State Legislature  
House of Representatives



Labor and Commerce Committee

TO: Members, House Labor & Commerce Committee  
FR: Sid Billingslea, Committee Aide *KB*  
DT: 4/4/86  
RE: HB 532 Sectional analysis

The following is a sectional analysis of the latest draft of HB 532. I have excluded policy statements and background information.

---

.010 Limit and cap on noneconomic damages: Awards shall not exceed 25% of the present value of the amount awarded for economic damages, and in no cases shall the amount exceed 500,000 dollars.

.011 Defines noneconomic damages.

.020 Punitive damages: Raises the burden of proof from current "preponderance of evidence" to "clear and convincing" - the highest standard of proof in civil law. 50% of punitives go to the plaintiff, 50% to the state general fund. Precludes the state from joining a suit for damages.

.025 Damages resulting from intoxication, or in commission of a felony: If a claimant was legally under the influence of drugs or alcohol at the time of injury or death, and if he contributed more than 50% to that harm, he is barred from any recovery. The same applies if the claimant was engaged in the commission of a felony, if the felony was causally related to the injury or death. Nothing in this section is intended to bar the claimant's rights under 42USCsec.1983, the Civil Rights Statute.

.030 Itemized verdicts: Requires a jury or court to divide noneconomic and economic damages and itemize them.

.035 Periodic payments: Where the future damages in a personal injury case exceed 50 thousand dollars the court may require periodic payments to be scheduled, if it is in

the best interest of the party. The fund allocated for the total future damages award would be placed in escrow or trust.

(b) The remaining payments go to the judgment creditor's estate upon his death.

(c) Costs of structuring periodic payments are included in the award to the claimant.

(d) Allows for modification if unanticipated medical expenses arise.

(e) If the judgement debtor displays a continuing pattern of nonpayment, the court may hold him in contempt and order him to pay any damages resulting from his failure to pay, including costs and attorney fees.

(f) If a judgment debtor fails to pay in a timely manner, the judgment creditor may ask the court to order the rest of the periodic payments to be made in a lump sum. The lump sum would not be reduced to present value, and interest may be awarded.

.040 Verification of Claims: Every pleading entered by either the plaintiff or defendant shall be verified. Requires element of intent.

.045 Limits liability of directors, officers and superintendents of nonprofit corporations, public and private hospitals and school districts to gross negligence and to acts or omissions outside the scope of duty.

.050 Effect of contributory fault. The percentage of fault for which the plaintiff is to blame is reduced from the award, but does not bar recovery.

.055 Collateral benefits: After the award is rendered the defendant may introduce evidence of nonsubrogated benefits received by the plaintiff, which may be deducted from the award. The plaintiff may in response introduce evidence of the cost of the collateral benefits received by him; these may be offset from the amount credited to the defendant. Plaintiff may also admit costs of actual attorney fees which exceeded the amount awarded by the court. The defendant may not introduce evidence of benefits which are subrogated, life insurance benefits or gratuitous benefits.

.060 Apportionment of damages: Factfinder determines the percentage of fault to each party. Factfinder may treat two parties as a single party in a master-servant, principal-agent relationship; also allows two or more persons to be treated as a single person if the cause and the separate acts of each person cannot be distinguished. Example: A&B independently start fires. The fires burn, join, and destroy plaintiff's property. Each fire itself would have destroyed the property, A&B are each 100% at fault. Only 100% may be collected as damages. The

factfinder may hold each defendant jointly liable for 100% of the damages. This is the classic joint liability situation.

(c) Court states each party's share of fault and obligation to pay the award.

(d) Each party is jointly and severally liable for damages, except if a party is under 50% at fault he may be held responsible for no more than twice that percentage of the award, should there be insolvent defendants, or defendants who cannot pay their entire share.

Example 1: A&B are sued. A is held 10% at fault, B 90%. B has money and can pay his amount. A pays 10% and B 90%

Example 2: same, only B cannot pay all of his portion. A's 10% is doubled, and A is responsible for 20% of the total.

Example 3: If A is 51% or more at fault and B cannot pay, A pays total award.

.070 Effect of release: When a party is released from the suit for whatever reason, the dollar amount of that release is deducted from the award.

.900 Defines fault

09.10.075: Actions under \$75,000 must be arbitrated before resorting to the courts.

.065 Offers of judgment: Up until 10 days before trial a party may offer to settle. If the offer is not accepted, and if the offeree does not better the offer in trial, the offeree is penalized by either adding (if the offeree is the defense) or subtracting (if the offeree is the plaintiff) 5% interest to the award per year. The amount is in addition to the statutory percentage. The interest penalty dates back to the occurrence.

.43.110 Confirmation of award

.160 Allows 60 days to file appeal from arbitration for a trial de novo.

.55.548 damages are awarded under principles of common law.

.60.010 Attorney fees: Except where statute authorizes payment of attorney fees, the Supreme Court shall determine by rule or order what fees and costs shall be awarded the prevailing party in a case. But--unless authorized by statute or agreement between parties attorney fees may not be awarded in a civil case. Abolishes Civil Rule 82, by the Supreme Court, authorizing payment of attorney fees.e

.60.035 Costs and Attorney fees for arbitration appeal: If a party appeals from arbitration and does not better his lot by 10% over (or under) the arbitration award, he is to pay the prevailing party's actual costs and fees.

A new section has been added which would enable a party to petition the court for review of the fees that party paid its attorney for reasonableness. Establishes certain criteria the court may consider in its review. Remaining sections grant and restate jurisdiction of the courts and note civil rules amended by the bill.

Original sponsors: Cotten, Binkley,  
Collins, et al

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 532 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska  
7 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;  
8 and providing for an effective date."

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

10 \* Section 1. AS 09 is amended by adding a new chapter to read:

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. In an action to recover  
13 damages for personal injury based on negligence, damages for noneco-  
14 nomic losses <sup>to each person</sup> shall be limited to 25 percent of the present value of  
15 the damages awarded for economic losses, or \$500,000 whichever amount  
16 is lower.

17 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not  
18 be awarded in an action, whether in tort, contract, or otherwise,  
19 unless supported by clear and convincing evidence. Fifty percent of  
20 any punitive or exemplary damages that may be adjudged against the  
21 party defending the claim shall be awarded to the benefit of the state  
22 and when paid deposited in the general fund.

23 (b) The amount of punitive damages awarded to the state shall be  
24 considered a part of the amount recovered by the claiming party for  
25 purposes of calculating an award of attorney fees.

26 (c) Except for purposes of seeking execution on a judgment, the  
27 state may not bring or be joined in an action based on punitive dam-  
28 ages that may be awarded under this section.

29 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OF

1 COMMISSION OF A CRIME. A person who suffers personal injury or death  
2 may not recover damages for the personal injury or death if the in-  
3 juries or death occurred while the person was

4 (1) under the influence of intoxicating liquor or a con-  
5 trolled substance listed in AS 11.71.140 - 11.71.190 and the condition  
6 of being under the influence of the intoxicating liquor or controlled  
7 substance contributed more than 50 percent to the person's injuries or  
8 death; if there was 0.10 percent or more by weight of alcohol in the  
9 person's blood or 0.10 grams or more of alcohol per 210 liters of the  
10 person's breath, it is presumed that the person was under the influ-  
11 ence of intoxicating liquor;

12 (2) engaged in the commission of a felony, if the felony  
13 was causally related to the injury or death in time, place, or activi-  
14 ty; however, nothing in this paragraph shall affect a right of action  
15 under 42 U.S.C. 1983.

16 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
17 for personal injury are awarded by the court or jury, the verdict  
18 shall be itemized between economic loss and noneconomic loss, if any,  
19 and economic loss shall be further itemized by category. Itemization  
20 of economic loss by category includes: (1) amounts intended to com-  
21 pensate for reasonable expenses that have been incurred, or which will  
22 be incurred, for necessary medical, surgical, x-ray, dental, or other  
23 health or rehabilitative services, drugs, and therapy; (2) amounts  
24 intended to compensate for lost wages or loss of earning capacity; and  
25 (3) all other economic losses granted by the fact finder. A verdict  
26 shall further determine the amounts intended to compensate for injury  
27 or losses incurred before the verdict and amounts intended to compen-  
28 sate for losses that will be incurred in the future.

29 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action where the

1 damages for personal injury include an award for future damages in  
2 excess of \$75,000, the court may, if it determines that it is in the  
3 interest of the injured party or the public, require that the portion  
4 of the total award allocated for future damages be paid into the court  
5 and placed in a trust account in a bank or savings and loan associa-  
6 tion or placed with a licensed escrow agent and paid to the judgment  
7 creditor in periodic payments rather than in a lump-sum payment.

8 (b) A judgment ordering payment of future damages by periodic  
9 payment shall specify the recipient, the dollar amount of the pay-  
10 ments, the interval between payments, and the number of payments or  
11 the period of time over which <sup>Adjust payments monthly</sup> payments shall be made. Payments may be  
12 modified only as provided in (d) of this section or in the event of  
13 the death of the judgment creditor, in which case payments may not be  
14 reduced or terminated, but shall be paid to persons to whom the judg-  
15 ment creditor owed a duty of support, as provided by law, immediately  
16 before death. In the event the judgment creditor owed no duty of  
17 support to dependents at the time of the judgment creditor's death,  
18 the money remaining in the trust shall be distributed in accordance  
19 with a will of the deceased judgment creditor or under the intestate  
20 laws of the state if the deceased had no will.

21 (c) The court shall include as part of the costs awarded to the  
22 claimant the costs of providing periodic payment of future economic  
23 losses <sup>using MIAA model.</sup> ~~through a trust account as required by this section.~~

24 (d) The court that rendered the original judgment may, upon  
25 petition of the judgment creditor, modify the judgment to award and  
26 apportion the unpaid future damages specified in AS 09.17.030 if the  
27 judgment creditor incurs unanticipated medical expenses that periodic  
28 payments paid to date do not cover.

29 (e) If the court finds that the judgment debtor has exhibited a

1 continuing pattern of failing to make payments required under (b) of  
2 this section, the court shall, in addition to the required periodic  
3 payments, order the judgment debtor to pay the judgment creditor any  
4 damages caused by the failure to make periodic payments, including  
5 costs and attorney fees.

6 (f) If at any time following entry of judgment, a judgment  
7 debtor fails to make a payment in a timely fashion according to the  
8 terms of the part of the judgment related to periodic payments, the  
9 judgment creditor may petition the court that rendered the original  
10 judgment for an order requiring payment by the judgment debtor of the  
11 outstanding payments in a lump sum. In calculating the amount of the  
12 lump-sum judgment under this section, the court shall total the re-  
13 maining periodic payments due and owing to the judgment creditor.  
14 This amount may not be converted to its present value. The court may  
15 also require the payment of interest on the outstanding judgment.

16 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. Every complaint,  
17 answer, cross-claim, and counterclaim shall be signed and verified by  
18 the party or the attorney of the party filing the pleading and shall  
19 bear a statement that the person signing the pleading believes the  
20 statements made in the pleading are true. If the court finds that a  
21 statement made in the complaint, answer, cross-claim, or counterclaim  
22 was knowingly untrue, ~~and~~ upon motion of a party, the person signing  
23 the pleading shall be compelled to show cause why the person signing  
24 the pleading should not be held in contempt of court.

25 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS, OFFICERS  
26 AND SUPERINTENDENTS. (a) Unless the act or omission constituted  
27 gross negligence, a person may not recover <sup>lost</sup> damages for <sup>personal expense for</sup> an act or  
28 omission to act, in the course and scope of official duties, from the  
29 following:

1 (1) a member of the board of directors or an officer of a  
2 nonprofit corporation;

3 (2) a member of the board of directors of a public or <sup>local</sup>  
4 <sup>a certain category of</sup> private hospital; *(would exclude private nonprofit - open to ?)*

5 (3) a member of a school board or superintendent of a  
6 school district;

7 (4) an elected or appointed official of a political subdivi-  
8 sion of the state.

9 (b) Notwithstanding (a) of this section, the duties and liabil-  
10 ities of a director or officer of a nonprofit corporation to the  
11 corporation or the corporation's shareholders may not be limited or  
12 modified.

13 Sec. 09.17.050. EFFECT OF <sup>contributory</sup> CONTRIBUTORIAL FAULT. In an action  
14 based on fault seeking to recover damages for injury or death to  
15 person or harm to property, <sup>contributory</sup> contributory fault charge to the  
16 claimant diminishes proportionately the amount awarded <sup>compensatory</sup> compensatory  
17 damages for an injury attributable to the claimant's <sup>contributory</sup> contributory  
18 fault, but does not bar recovery.

19 Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder  
20 has rendered an award to a claimant, and after the court has awarded  
21 costs and attorney fees, a defendant may introduce evidence of amounts  
22 received or to be received by the claimant as compensation for the  
23 same injury from collateral sources that do not have a right of subro-  
24 gation against the claimant by law or contract.

25 (b) If the defendant elects to introduce evidence under (a) of  
26 this section, the claimant may introduce evidence of

27 (1) the amount that the actual attorney fees incurred by  
28 the claimant exceed the amount of attorney fees <sup>under P.S. 82</sup> awarded to the claim-  
29 ant; and

1 (2) the amount that the claimant has paid or contributed to  
2 secure the right to an insurance benefit introduced by the defendant  
3 as evidence.

4 (c) If the total amount of collateral benefits introduced as  
5 evidence under (a) of this section exceeds the total amount that the  
6 claimant introduced as evidence under (b) of this section, the court  
7 shall deduct from the amount awarded the claimant, the amount by which  
8 the value of the benefits under (a) of this section exceeds the amount  
9 of payments under (b) of this section.

10 (d) Notwithstanding (a) of this section, the defendant may not  
11 introduce evidence of

12 (1) benefits that cannot be reduced or offset by federal  
13 law;

14 (2) a deceased's life insurance policy; or

15 (3) gratuitous benefits provided to the claimant.

16 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions  
17 involving fault of more than one party to the action, including third-  
18 party defendants and persons who have been released under AS 09.17.-  
19 070, the court, unless otherwise agreed by all parties, shall instruct  
20 the jury to answer special interrogatories or, if there is no jury,  
21 shall make findings, indicating

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

24 (2) the percentage of the total fault of all of the parties  
25 to each claim that is allocated to each claimant, defendant, third-  
26 party defendant, and person who has been released from liability under  
27 AS 09.17.070.

28 (b) In determining the percentages of fault, the trier of fact  
29 shall consider both the nature of the conduct of each party at fault,

and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.070, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) The court shall enter judgment against each party liable on the basis of joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party.

Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the dollar amount of the release, covenant not to sue, or similar agreement.

Sec. 09.17.900. DEFINITION. In this chapter "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability; the term also includes breach of warranty, unreasonable assumption of risk not constituting an

enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages; legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

\* Sec. 2. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may not bring an action for damages based on injury to person or property when the amount in controversy is less than \$75,000, exclusive of costs, interest and attorney fees, unless the controversy is first arbitrated under AS 09.43.

\* Sec. 3. AS 09.30.065 is amended to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with cost then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 45.45.010(a) and accrued up

1 to the date judgment is entered shall be adjusted as follows:

2 (1) if the offeree is the party making the claim, th  
3 interest rate shall be reduced by five [TWO] percent a year;

4 (2) if the offeree is the party defending against th  
5 claim, the interest rate shall be increased by five [TWO] percent  
6 year.

7 \* Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:

8 (b) Except when the court finds that the parties have agree  
9 otherwise, prejudgment interest accrues from the day the cause o  
10 action accrues.

11 \* Sec. 5. AS 09.43.110 is amended to read:

12 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application o  
13 a party, the court shall confirm an award unless

14 (1) within the time limits imposed by AS 09.43.120 an  
15 09.43.130 grounds are urged for vacating or modifying or correctin  
16 the award, in which case the court shall proceed as provided i  
17 AS 09.43.120 and 09.43.130; or

18 (2) an appeal is taken under AS 09.43.160(c).

19 \* Sec. 6. AS 09.43.160 is amended by adding a new subsection to read:

20 (c) An award made as a result of arbitration required by AS 09.  
21 10.075 may be appealed to the proper court. The appeal shall be file  
22 within 60 days after notice of an award is made under AS 09.43.080  
23 The court shall grant a trial de novo if an appeal is filed under thi  
24 subsection.

25 \* Sec. 7. AS 09.55.548 is repealed and reenacted to read:

26 Sec. 09.55.548. AWARDS. Damages shall be awarded in accordanc  
27 with principles of the common law. The fact finder in a malpractic  
28 action shall render any award for damages in accordance with AS 09.17

29 \* Sec. 8. AS 09.60.010 is repealed and reenacted to read:

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Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING PARTY. (a) The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action.

(b) The court may, upon petition by a party to a civil action, determine the reasonableness of that party's attorney fee agreement. The court shall take into consideration

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the attorney or attorneys performing the services;

(8) whether the fee is fixed or contingent;

(9) whether the fixed or contingent fee agreement was in writing and whether the client was aware of the right to petition the court under this section.

\* Sec. 9. AS 09.60 is amended by adding a new section to read:

1                   Sec. 09.60.035. COSTS AND ATTORNEY FEES ALLOWED FOR ARBITRATION  
2 APPEAL. If a party appeals an award made as a result of arbitration  
3 required by AS 09.10.075, and the appellate court increases or de-  
4 creases the award by more than 10 percent, the prevailing party on  
5 appeal shall also be awarded actual costs and attorney fees incurred  
6 as a result of the appeal.

7 \* Sec. 10. AS 22.10.020(d) is amended to read:

8                   (d) The superior court has jurisdiction in all matters appealed  
9 to it (1) from a subordinate court; (2) by a party to an arbitration  
10 award under AS 09.43.160(c); [,] or (3) an administrative agency when  
11 appeal is provided by law. The hearings on appeal from a final order  
12 or judgment of a subordinate court or administrative agency shall be  
13 on the record unless the superior court, in its discretion, grants a  
14 trial de novo, in whole or in part.

15 \* Sec. 11. AS 22.15.030(a) is amended to read:

16                   (a) The district court has jurisdiction of civil cases and  
17 proceedings as follows:

18                   (1) for the recovery of money or damages when the amount  
19 claimed exclusive of costs, interest and attorney fees does not exceed  
20 \$25,000;

21                   (2) for the recovery of specific personal property, when  
22 the value of the property claimed and the damages for the detention do  
23 not exceed \$25,000;

24                   (3) for the recovery of a penalty or forfeiture, whether  
25 given by statute or arising out of contract, not exceeding \$25,000;

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

29                   (5) for establishing the fact of death of any person in the

manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the property or of the arrears and damage to the property does not exceed \$25,000;

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$25,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$25,000;

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.-030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020;

(11) over an appeal by a party to an arbitration award under AS 09.43.160(c) when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$25,000.

\* Sec. 12. AS 09.16 is repealed.

\* Sec. 13. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatories listed in AS 09.17.060 regarding the amount of damages and the percentages of fault to be allocated among the parties and to itemize the verdict regarding economic and noneconomic loss as specified in AS 09.17.030.

\* Sec. 14. AS 09.17.060 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 52 by requiring the court to make specific findings regarding the amount of damages and the percentages of fault to be allocated among the parties.

1 \* Sec. 15. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act  
2 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring  
3 the court to include a specific item in its judgment.

4 \* Sec. 16. AS 09.17.040 enacted in sec. 1 of this Act has the effect of  
5 amending Alaska Rule of Civil Procedure 11 by requiring verification of  
6 claims, answers, counterclaims, and cross-claims.

7 \* Sec. 17. AS 09.30.065 as amended by sec. 3 of this Act has the effect  
8 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
9 interest accrues from the day the cause of action accrues.

10 \* Sec. 18. AS 09.60.010 as amended by sec. 8 of this Act has the effect  
11 of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of  
12 attorney fees, unless allowed by statute or by agreement of the parties.

13 \* Sec. 19. APPLICABILITY. Sections 1 - 12 of this Act apply to all  
14 causes of action accruing on or after the effective date of this Act.

15 \* Sec. 20. This Act takes effect immediately in accordance with AS 01.-  
16 10.070(c).

1 no will.

2 (d) If the court finds that the judgment debtor has exhibited a  
3 continuing pattern of failing to make payments required under (c) of  
4 this section, the court shall, in addition to the required periodic  
5 payments, order the judgment debtor to pay the judgment creditor any  
6 damages caused by the failure to make periodic payments, including  
7 costs and attorney fees.

8 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the  
9 attorney of the party shall sign and verify each complaint, answer,  
10 cross-claim, and counterclaim that the party files. The verification  
11 must include a statement that the person signing the pleading believes  
12 the statements made in the pleading are true. If the court finds that  
13 a statement made in the complaint, answer, cross-claim, or counter-  
14 claim was knowingly untrue, and upon motion of a party the person  
15 signing the pleading shall be compelled to show cause why the person  
16 signing the pleading should not be held in contempt of court.

17 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS, OFFICERS  
18 AND SUPERINTENDENTS. (a) Unless the act or omission constituted  
19 gross negligence, a person may not recover damages for an act or  
20 omission to act, in the course and scope of official duties, from the  
21 following:

22 (1) a member of the board of directors or an officer of a  
23 nonprofit corporation;

24 *Order's language could*  
*delete K&H* (2) a member of the board of directors of a public or  
25 nonprofit hospital or a community-based advisory board of a hospital;

26 *Av Gross implies this* (3) a member of a school board or superintendent of a  
27 school district;

28 (4) an elected or appointed official of a political subdivi-  
29 sion of the state.

**JOHN SUND, REPRESENTATIVE**


*2505 2nd Avenue  
Ketchikan, Alaska 99901  
(907) 225-5552*

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*While in Juneau  
P. O. Box V  
Juneau, Alaska 99811  
(907) 465-4919*

May 7, 1986

To: House Judiciary Members

From: Rep. John Sund 

Re: SB377

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Attached please find a side-by-side comparison of the House and Senate versions of Senate Bill 377, dealing with tort reform.

## COMPARISON OF SB 377 - TORT REFORM

(Provided by Sen. Eliason's staff)

SENATE JUDICIARY	SENATE LABOR & COMMERCE	SENATE FINANCE (Version #2)
<p><u>Findings &amp; Purpose</u> - reforms are necessary to increase availability and affordability of insurance</p> <p><u>Actions That Must Be Arbitrated</u> - a case less than \$75,000 for injury to person or property must be arbitrated first</p> <p><u>Noneconomic Damages</u> - can recover non-economic damages; no limit is set</p> <p><u>Punitive Damages</u> - may not be awarded unless supported by clear and convincing evidence. Fifty percent of punitive damages shall be awarded to the State; attorney fees based on total award</p> <p><u>Damages Resulting From Intoxication or Commission of a Crime</u> - a person may not recover damages for personal injuries if the person was intoxicated or committing a crime when the incident occurred and the intoxicating liquor contributed more than 50% to the person's injuries</p> <p><u>Itemized Verdicts</u> - verdict shall itemize economic and noneconomic loss; economic loss shall include past and future medical costs, loss wages, and others; shall outline the costs before and after verdict</p> <p><u>Periodic Payments</u> - no reference</p> <p><u>Verification of Civil Claims</u> - person filing a claim, complaint, answer, etc. shall verify in writing the information is correct</p>	<p><u>Findings &amp; Purpose</u> - no reference</p> <p><u>Actions That Must Be Arbitrated</u> - a case less than \$100,000 for personal injury only must be arbitrated first</p> <p><u>Noneconomic Damages</u> - can recover non-economic damages; may not exceed \$250,000 for each claim based on a separate incident</p> <p><u>Punitive Damages</u> - no reference</p> <p><u>Damages Resulting From Intoxication or Commission of a Crime</u> - no reference</p> <p><u>Itemized Verdicts</u> - identical to Senate Judiciary</p> <p><u>Periodic Payments</u> - at the request of a judgment creditor, damages shall be paid in periodic payments if award is over \$50,000</p> <p><u>Verification of Civil Claims</u> - no reference</p>	<p><u>Findings &amp; Purpose</u> - identical to Senate Judiciary</p> <p><u>Actions That Must Be Arbitrated</u> - a case less than \$25,000 for injury to a person or property must be arbitrated first</p> <p><u>Noneconomic Damages</u> - identical to Senate Labor and Commerce</p> <p><u>Punitive Damages</u> - must be proven that the cause of injury was caused by an individual committing a crime or deliberate or malicious misconduct; award goes to the plaintiff</p> <p><u>Damages Resulting From Intoxication or Commission of a Crime</u> - similar to Senate Judiciary</p> <p><u>Itemized Verdicts</u> - verdict shall itemize past economic loss, past noneconomic loss, future economic loss, future noneconomic loss and punitive damages</p> <p><u>Periodic Payments</u> - at the request of either party, damages shall be paid in periodic payments if award is over \$100,000</p> <p><u>Verification of Civil Claims</u> - similar to Senate Judiciary</p>

COMPARISON OF SB 377 - TORT REFORM - con't.

SENATE JUDICIARY	SENATE LABOR & COMMERCE	SENATE FINANCE (Version #2)
<p><u>Limited Liability of Certain Directors</u> - no reference</p>	<p><u>Limited Liability of Certain Directors</u> - no reference</p>	<p><u>Limited Liability of Certain Directors</u> - a board member is not liable for an act committed in the course of official duties unless the act constitutes gross negligence</p>
<p><u>Effect of Contributory Fault</u> - contributory fault diminishes recovery, but does not bar compensation</p>	<p><u>Effect of Contributory Fault</u> - same as Senate Judiciary</p>	<p><u>Effect of Contributory Fault</u> - same as Senate Judiciary</p>
<p><u>Collateral Benefits</u> - collateral sources may be deducted from an award if the collateral exceeds the actual attorney fees incurred which exceed the fees awarded</p>	<p><u>Collateral Benefits</u> - no reference</p>	<p><u>Collateral Benefits</u> - claimant can only recover damages that exceed amounts received from collateral sources</p>
<p><u>Apportionment of Damages</u> - requires the jury or court to apportion damages between each party. Each party is assigned a percentage of fault, and damages are awarded based on the percentages. Judgment is based on joint and several liability. A party less than 50% at fault pays not more than twice the percentage of fault.</p>	<p><u>Apportionment of Damages</u> - requires the jury or court to apportion damages between each party. Each party is assigned a percentage of fault, and damages are awarded based on the percentages. Judgment will be made on the basis of several liability.</p>	<p><u>Apportionment of Damages</u> - identical to Senate Labor and Commerce</p>
<p><u>Effect of Release</u> - same as Senate Labor and Commerce, except the claim is reduced by the dollar amount of the release</p>	<p><u>Effect of Release</u> - if a person settles a claim, the settlement does not release anyone else. The claim is reduced by the amount of the released person's share of obligation</p>	<p><u>Effect of Release</u> - if a person settles a claim, the settlement does not release anyone else.</p>
<p><u>Contingent Fee Agreements</u> - no reference</p>	<p><u>Contingent Fee Agreements</u> - no reference</p>	<p><u>Contingent Fee Agreements</u> - an attorney may not receive a fee in excess of 25% of the amount recovered</p>
<p><u>Definition</u> - defines fault</p>	<p><u>Definition</u> - defines fault and future damages</p>	<p><u>Definition</u> - defines fault</p>

COMPARISON OF SB 377 - TORT REFORM - con't

SENATE JUDICIARY	SENATE LABOR & COMMERCE	SENATE FINANCE (Version #2)
<p><u>Offers of Judgment</u> - either party may make an offer 30 days before the trial. If the offer is less favorable than the judgment, interest rate is reduced 5% if the claimant offered and increased 5% if the defendant offered.</p> <p><u>Interest on Judgment</u> - Interest accrues from the day the cause of action accrues</p> <p><u>Confirmation of an Award</u> - an award made under arbitration may be appealed to the proper court</p> <p><u>Awards</u> - damages in malpractice action shall be awarded with principles of the common law</p> <p><u>Attorney Fees</u> - court may, if petitioned by either party, determine the reasonableness of the attorney fees</p> <p><u>Attorney Fees Allowed for Arbitration</u> - a party appeals an arbitrated award and if the court either increases or decreases the award by more than 10%, the prevailing party shall be awarded attorney fees</p> <p><u>Amends</u> - Rule 49, Rule 52, Rule 58, Rule 11, Rule 68</p> <p><u>Repeals</u> - AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, 09.16.060</p> <p><u>Arbitration Appeals</u> - Superior Court will hear arbitration appeals over \$25,000</p>	<p><u>Offers of Judgment</u> - if a party defending offers a settlement that is more favorable than the judgment finally entered, the claim shall bear no interest from the date of offer to the date of settlement.</p> <p><u>Interest on Judgment</u> - no reference</p> <p><u>Confirmation of an Award</u> - identical to Senate Judiciary</p> <p><u>Awards</u> - no reference</p> <p><u>Attorney Fees</u> - attorney fees cannot be awarded unless the court finds malice, bad faith or reckless disregard of the rights of another</p> <p><u>Attorney Fees Allowed for Arbitration</u> - no reference</p> <p><u>Amends</u> - Rule 49, Rule 52, Rule 58, Rule 68, Rule 82</p> <p><u>Repeals</u> - Identical to Senate Judiciary</p> <p><u>Arbitration Appeals</u> - will be heard in Superior Court</p>	<p><u>Offers of Judgment</u> - either party may make an offer 10 days before the trial begins. If the offer is less favorable than the judgment, interest rate is reduced 2% if claimant offered and increased by 2% if the defendant offered.</p> <p><u>Interest on Judgment</u> - the rate of interest of judgments is equal to the 12th Federal Reserve district discount rate. Interest accrues from the day process is served on the defendant.</p> <p><u>Confirmation of an Award</u> - identical to Senate Judiciary</p> <p><u>Awards</u> - identical to Senate Judiciary</p> <p><u>Attorney Fees</u> - attorney fees may not be awarded in a civil action</p> <p><u>Attorney Fees Allowed for Arbitration</u> - identical to Senate Judiciary</p> <p><u>Amends</u> - Rule 49, Rule 52, Rule 58, Rule 68, Rule 82, Rule 11</p> <p><u>Repeals</u> - Identical to Senate Judiciary</p> <p><u>Arbitration Appeals</u> - will be heard in District Court</p>

COMPARISON OF SB 377 - TORT REFORM

SENATE JUDICIARY	SENATE LABOR & COMMERCE	SENATE FINANCE (Version #2)
<p><u>Legislative Intent</u> - no reference</p> <p><u>Effective Date</u> - immediate effective date</p>	<p><u>Legislative Intent</u> - the Division of Insurance is to monitor premiums and report to the legislature every March starting March 1, 1987 for three years</p> <p><u>Effective Date</u> - immediate effective date</p>	<p><u>Legislative Intent</u> - identical to Senate Labor and Commerce</p> <p><u>Effective Date</u> - Except for AS 09.17.080, this Act takes effective immediately. AS 09.17.080 only takes effect if sec.10 does not pass by 2/3 majority vote.</p>