

SB

377/532 FILE #2

TORT REFORM

(BILLS, FISCAL NOTES,
Amendments)

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 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 guilty plea or plea of nolo contendere, and the felony substantially contributed to the injury or death. This section does not affect right of action under 42 U.S.C. 1983.

Senate version

26 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISSION 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 (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 the
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 activity;
11 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.

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 del or 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

Senate 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 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.

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 percentage of
26 fault.

11 Effect of Release

House version

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

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

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

Senate version

27 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
28 sue, or similar agreement entered into by a claimant and a person
29 liable discharges that person from liability to the claimant, but it

1 does not discharge another person liable upon the same claim unless
2 the release, covenant not to sue, or similar agreement provides for
3 discharge. However, the claim of the releasing person against other
4 persons is reduced by the amount of the released person's equitable
5 share of the obligation, determined in accordance with the provisions
6 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

Have 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] ther. 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. Offer 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.

* 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, damage in a malpractice action shall be awarded in accordance with principle 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

Howe 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.

(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

7 | * Sec. 15. APPLICABILITY. Sections 1 - 3 of this Act apply to a
8 | 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

AMENDMENT -- HCS CSSB 377(Jud)

Delete all of section 16 and replace with the following:

* 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 Fifteenth State Legislature.

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

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10 * Sec. 16. 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).

3002

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.

2. Punitive Damages
SB 377 (only)

23

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

3. Damages from Intoxication or Crime

HR 532

12 Sec. 09.17.010. DAMAGES RESULTING FROM COMMISSION OF A CRIME.
13 person who suffers personal injury or death may not recover damage
14 for the personal injury or death if the injuries or death occurs
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
17 guilty plea or plea of nolo contendere, and the felony substantially
18 contributed to the injury or death. This section does not affect
19 right of action under 42 U.S.C. 1983.
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SB 377

26 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISS-
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 the
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

21 Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damage
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) amount
29 intended to compensate for lost wages or loss of earning capacity; and
1 (3) all other economic losses granted by the fact finder. A verdict
2 shall further determine the amounts intended to compensate for injury
3 or losses incurred before the verdict and amounts intended to compen-
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
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



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

* Sec. 6. AS 09.63 is amended by adding a new section to read:

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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.

(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.

7. Limited Liability

HB 532

24 Sec. 09.17.040. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
25 OFFICERS. (a) Unless the act or omission constituted gross negli-
26 gence, a person may not recover tort damages for personal injury,
27 death, or damage to property for an act or omission to act in the
28 course and scope of official duties, as a member or officer of the
29 following:

1 (1) a member of the board of directors or an officer of
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 an
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
8 citizen's advisory committee of a municipality 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 (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).

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 emis-
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

16 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an acti
17 based on fault seeking to recover damages for injury or death
18 person or harm to property, contributory fault chargeable to t
19 claimant diminishes proportionately the amount awarded as compensato
20 damages for an injury attributable to the claimant's contributo
21 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.

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

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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

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 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.

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

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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 $\frac{2}{3}$ majority.

13. Offer of Judgment

HB 532

16 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than
17 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING
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 compliance
22 with 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
24 ten 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 offer
26 and notice of acceptance together with proof of service, and the
27 clerk shall enter judgment. An offer not accepted within 10 days shall
28 be 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
2 the offer has been made under this section is not more favorable to
3 the offeree than the offer, the interest awarded under AS 45.45.010(a)
4 accrued up to the date judgment is entered shall be adjusted as follows:
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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
10 a year.

Offers 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.

11 * Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

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

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* Sec. 4. AS 09.55.548 is repealed and reenacted to read:
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.

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.

17. 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

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.

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 5/6/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered CSSB 377(Fin)am

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

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CSSB 377(JUD) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Robin L. Topka

SIGNING OTHER RECOMMENDATIONS:

William Miller - NO REC

Letty's Pass the Finance Bill
ROSE BROWN - No R.

Dr. Cochran - NO REC

William Miller
Chairman

Ford
5/7/86 pm

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 09.60.070 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

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

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

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

8 * Sec. 16. (a) The Department of Law, with the assistance of the
9 Department of Commerce and Economic Development, shall conduct

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

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

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

15 (C) what the various specific tort reform proposals will
16 actually accomplish;

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

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

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

26 (b) The departments may not hire additional staff or expend funds
27 that would necessitate a supplemental appropriation for the studies
28 required under (a) of this section.

29 * Sec. 17. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

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Ford
5/7/86 *WMM*

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
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 16 injured.

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 18 ages for physical impairment or disfigurement.

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 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, noneconomic loss, and

1 punitive damages if any, and economic loss shall be further itemized
 2 by category. Itemization of economic loss by category includes: (1)
 3 amounts intended to compensate for reasonable expenses that have been
 4 incurred, or which will be incurred, for necessary medical, surgical,
 5 x-ray, dental, or other health or rehabilitative services, drugs, and
 6 therapy; (2) amounts intended to compensate for lost wages or loss of
 7 earning capacity; and (3) all other economic losses granted by the
 8 fact finder. A verdict shall further determine the amounts intended
 9 to compensate for injury or losses incurred before the verdict and
 10 amounts intended to compensate for losses that will be incurred in the
 11 future.

12 Sec. 03.17.040. PERIODIC PAYMENTS. (a) In an action to recover
 13 damages, the court shall, at the request of an injured party, enter
 14 judgment ordering that amounts awarded a judgment creditor for future
 15 damages be paid to the maximum extent feasible by periodic payments
 16 rather than by a lump-sum payment if the award equals or exceeds
 17 \$100,000 in future damages.

18 (b) The court may require security be posted, in order to ensure
 19 that funds are available as periodic payments become due. The court
 20 may not require security to be posted if an authorized insurer, as
 21 defined in AS 21.90.900, acknowledges to the court its obligation to
 22 discharge the judgment.

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 28 the annual rate of change in the consumer price index for all urban
 29 consumers for the Anchorage Metropolitan Area as published by the

1 Bureau of Labor Statistics of the United States Department of Labor
 2 for the immediately preceding year. Payments may be modified only in
 3 the event of the death of the judgment creditor, in which case pay-
 4 ments may not be reduced or terminated, but shall be paid to persons
 5 to whom the judgment creditor owed a duty of support, as provided by
 6 law, immediately before death. If the judgment creditor owed no duty
 7 of support to dependents at the time of the judgment creditor's death,
 8 the money remaining shall be distributed in accordance with a will of
 9 the deceased judgment creditor accepted into probate or under the
 10 intestate laws of the state if the deceased had no will.

11 (d) If the court finds that the judgment debtor has exhibited a
 12 continuing pattern of failing to make payments required under (c) of
 13 this section, the court shall, in addition to the required periodic
 14 payments, order the judgment debtor to pay the judgment creditor any
 15 damages caused by the failure to make periodic payments, including
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 20 death, or damage to property for an act or omission to act in the
 21 course and scope of official duties, as a member or officer of the
 22 following:

- 23 (1) a member of the board of directors or an officer of a
 24 nonprofit corporation;
- 25 (2) a member of the board of directors of a public or
 26 nonprofit hospital, or a member of a citizen's advisory board of any
 27 hospital;
- 28 (3) a member of a school board of a school district;
- 29 (4) a member of the governing body, a commission, or a

1 citizen's advisory committee of a municipality of the state.

2 (b) Notwithstanding (a) of this section, the duties and liabilities
3 of a director or officer of a nonprofit corporation to the
4 corporation or the corporation's shareholders may not be limited or
5 modified.

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

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13 damages for the injury attributable to the claimant's contributory
14 fault, but does not bar recovery.

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19 same injury from collateral sources that do not have a right of subro-
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21 (b) If the defendant elects to introduce evidence under (a) of
22 this section, the claimant may introduce evidence of

23 (1) the amount that the actual attorney fees incurred by
24 the claimant in obtaining the award exceed the amount of attorney fees
25 awarded to the claimant by the court; and

26 (2) the amount that the claimant has paid or contributed to
27 secure the right to an insurance benefit introduced by the defendant
28 as evidence.

29 (c) If the total amount of collateral benefits introduced as

1 evidence under (a) of this section exceeds the total amount that the
2 claimant introduced as evidence under (b) of this section, the court
3 shall deduct from the total award the amount by which the value of the
4 nonsubrogated sum awarded under (a) of this section exceeds the amount
5 of payments under (b) of this section.

6 (d) Notwithstanding (a) of this section, the defendant may not
7 introduce evidence of

8 (1) benefits that under federal law cannot be reduced or
9 offset;

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

14 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions
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16 party defendants and persons who have been released under AS 09.17.-
17 090, the court, unless otherwise agreed by all parties, shall instruct
18 the jury to answer special interrogatories or, if there is no jury,
19 shall make findings, indicating

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

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

26 (b) In determining the percentages of fault, the trier of fact
27 shall consider both the nature of the conduct of each party at fault,
28 and the extent of the causal relation between the conduct and the
29 damages claimed. The trier of fact may determine that two or more

1 persons are to be treated as a single party if their conduct was a
2 cause of the damages claimed and the separate act or omission of each
3 person cannot be distinguished.

4 (c) The court shall determine the award of damages to each
5 claimant in accordance with the findings, subject to a reduction under
6 AS 09.17.090, and enter judgment against each party liable. The court
7 also shall determine and state in the judgment each party's equitable
8 share of the obligation to each claimant in accordance with the re-
9 spective percentages of fault.

10 (d) The court shall enter judgment against each party liable on
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12 allocated less than 50 percent of the total fault allocated to all the
13 parties may not be jointly liable for more than twice the percentage
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21 vide; but it reduces the claim against the others to the extent of any
22 amount stipulated by the release or the covenant, or in the amount of
23 the consideration paid for it, whichever is the greater; and

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

26 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
27 acts or omissions that are in any measure negligent or reckless toward
28 the person or property of the actor or others, or that subject a
29 person to strict tort liability. The term also includes breach of

1 warranty, unreasonable assumption of risk not constituting an enforce-
2 able express consent, misuse of a product for which the defendant
3 otherwise would be liable, and unreasonable failure to avoid an injury
4 or to mitigate damages. Legal requirements of causal relation apply
5 both to fault as the basis for liability and to contributory fault.

6 * Sec. 2. AS 09.30.065 is amended to read:

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

29 (1) if the offeree is the party making the claim, the

1 interest rate shall be reduced by five [TWO] percent a year;

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

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

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

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

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

18 (b) Except when the court finds that the parties have agreed
19 otherwise, prejudgment interest accrues from the day the cause of
20 action accrues.

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

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

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

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

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

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

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

16 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
17 09.16.060 are repealed.

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

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

28 * Sec. 11. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act
29 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring

1 the court to include a specific item in its judgment.

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

5 * Sec. 13. AS 09.30.070(b) as added by sec. 4 of this Act has the
6 effect of amending Alaska Rule of Civil Procedure 68 by providing that
7 prejudgment interest accrues from the day the cause of action accrues.

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

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

13 * Sec. 16. The Department of Law, with the assistance of the Department
14 of Commerce and Economic Development, shall conduct

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

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

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

20 (C) what the various specific tort reform proposals will
21 actually accomplish;

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

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

28 (B) the extent to which legislative or regulatory actions
29 affecting the tort system in Alaska are necessary to resolve the

1 state's liability insurance crisis.

2 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
3 10.070(c).

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Original sponsors: Cotten, Binkley,
Collins, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 532 (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; amending Alaska
7 Rules of Civil Procedure 11, 19, 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. 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.

20 Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages
21 for personal injury are awarded by the court or jury, the verdict
22 shall be itemized between economic loss and noneconomic loss, if any,
23 and economic loss shall be further itemized by category. Itemization
24 of economic loss by category includes: (1) amounts intended to com-
25 pensate for reasonable expenses that have been incurred, or which will
26 be incurred, for necessary medical, surgical, x-ray, dental, or other
27 health or rehabilitative services, drugs, and therapy; (2) amounts
28 intended to compensate for lost wages or loss of earning capacity; and
29 (3) all other economic losses granted by the fact finder. A verdict

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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.

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

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.

24 Sec. 09.17.040. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
25 OFFICERS. (a) Unless the act or omission constituted gross negli-
26 gence, a person may not recover tort damages for personal injury,
27 death, or damage to property for an act or omission to act in the
28 course and scope of official duties, as a member or officer of 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
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 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 (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). also (c) (4)?

16 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
17 based on fault seeking to recover damages for injury or death to
18 person or harm to property, contributory fault chargeable to the
19 claimant diminishes proportionately the amount awarded as compensatory
20 damages for an injury attributable to the claimant's contributory
21 fault, but does not bar recovery.

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

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

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

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

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

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

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

(3) gratuitous benefits provided to the claimant.

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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

1 AS 09.17.070.

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

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

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

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

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

29 (2) it discharges the tortfeasor to whom it is given from

1 all liability for contribution to any other tortfeasor.

2 Sec. 09.17.900. DEFINITIONS. In this chapter

3 (1) "fault" includes acts or omissions that are in any
4 measure negligent or reckless toward the person or property of the
5 actor or others, or that subject a person to strict tort liability;
6 the term also includes breach of warranty, unreasonable assumption of
7 risk not constituting an enforceable express consent, misuse of a
8 product for which the defendant otherwise would be liable, and unrea-
9 sonable failure to avoid an injury or to mitigate damages; legal
10 requirements of causal relation apply both to fault as the basis for
11 liability and to contributory fault;

12 (2) "future damages" includes damages for future medical
13 treatment, care or custody, loss of future earnings, or loss of bodily
14 function of the claimant.

15 * Sec. 2. AS 09.30.065 is amended to read:

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.

11 * Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

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

15 * Sec. 4. AS 09.55.548 is repealed and reenacted to read:

16 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.

19 * Sec. 5. AS 09.60.010 is amended by adding a new subsection to read:

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

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.

10 * Sec. 7. AS 22.15.030(a) is amended to read:

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

13 (1) for the recovery of money or damages when the amount
14 claimed exclusive of costs, interest and attorney fees does not exceed
15 \$35,000 [\$25,000];

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

19 (3) for the recovery of a penalty or forfeiture, whether
20 given by statute or arising out of contract, not exceeding \$35,000
21 [\$25,000];

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

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

27 (6) for the recovery of the possession of premises in the
28 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
29 PROPERTY OR] of the arrears and damage to the property does not exceed

1 \$35,000 [\$25,000];

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

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

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

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

12 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
13 09.16.060 are repealed.

14 * Sec. 9. AS 09.17.020 and 09.17.060 enacted in sec. 1 of this Act have
15 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
16 jury to answer the special interrogatories listed in AS 09.17.060 regarding
17 the amount of damages and the percentages of fault to be allocated among
18 the parties and to itemize the verdict regarding economic and noneconomic
19 loss as specified in AS 09.17.030.

20 * Sec. 10. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
21 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
22 specific findings regarding the amount of damages and the percentages of
23 fault to be allocated among the parties.

24 * Sec. 11. AS 09.17.020 and 09.17.060 enacted in sec. 1 of this Act
25 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
26 the court to include a specific item in its judgment.

27 * Sec. 12. AS 09.63.045 enacted in sec. 6 of this Act has the effect of
28 amending Alaska Rule of Civil Procedure 11 by requiring verification of
29 claims, answers, counterclaims, and cross-claims.

1 * Sec. 13. AS 09.30.070 as amended by sec. 3 of this Act has the effect
2 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
3 interest accrues from the day the cause of action accrues.

4 * Sec. 14. AS 09.60.010 as amended by sec. 5 of this Act has the effect
5 of amending Alaska Rule of Civil Procedure 82 by requiring the court to
6 consider the actual attorney fees incurred in the civil action.

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

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

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Original sponsors: Cotten, Binkley,
Collins, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 532 (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; 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. (a) In an action to
13 recover damages for personal injury based on negligence, damages for
14 noneconomic losses shall be limited to \$500,000 for each person
15 injured.

16 (b) The limit under (a) of this section does not apply to
17 damages for physical impairment or disfigurement.

18 Sec. 09.17.020. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
19 person who suffers personal injury or death may not recover damages
20 for the personal injury or death if the injuries or death occurred
21 while the person was engaged in the commission of a felony, the person
22 has been convicted of the felony, including conviction based on a
23 guilty plea or plea of nolo contendere, and the felony contributed to
24 the injury or death.

25 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
26 for personal injury are awarded by the court or jury, the verdict
27 shall be itemized between economic loss and noneconomic loss, if any,
28 and economic loss shall be further itemized by category. Itemization
29 of economic loss by category includes: (1) amounts intended to

1 compensate for reasonable expenses that have been incurred, or which
2 will be incurred, for necessary medical, surgical, x-ray, dental, or
3 other health or rehabilitative services, drugs, and therapy; (2)
4 amounts intended to compensate for lost wages or loss of earning
5 capacity; and (3) all other economic losses granted by the fact
6 finder. A verdict shall further determine the amounts intended to
7 compensate for injury or losses incurred before the verdict and
8 amounts intended to compensate for losses that will be incurred in the
9 future.

10 Sec. 09.17.035. PERIODIC PAYMENTS. (a) The court may enter a
11 judgment that future damages be paid in whole or in part by periodic
12 payments rather than by a lump-sum payment; the judgment shall in-
13 clude, if necessary, other provisions to assure that funds are avail-
14 able as periodic payments become due. Insurance from an authorized
15 insurer as defined in AS 21.90.900 or from the Medical Indemnity
16 Corporation of Alaska is sufficient assurance that funds will be
17 available. Any part of the award that is paid on a periodic basis
18 shall be adjusted annually according to changes in the consumer price
19 index in the community where the claimant resides. The court shall
20 include as a part of the costs awarded to the claimant the costs of
21 providing periodic payment of future damages.

22 (b) A judgment ordering payment of future damages by periodic
23 payment shall specify the recipient, the dollar amount of the pay-
24 ments, the interval between payments, and the number of payments or
25 the period of time over which payments shall be made. Payments may be
26 modified only as provided in (c) of this section or in the event of
27 the death of the judgment creditor, in which case payments may not be
28 reduced or terminated, but shall be paid to persons to whom the judg-
29 ment creditor owed a duty of support, as provided by law, immediately

1 before death. In the event the judgment creditor owed no duty of
2 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 or under the intestate laws of the
5 state if the deceased had no will.

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

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

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

27 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. Every complaint,
28 answer, cross-claim, and counterclaim shall be signed and verified by
29 the party or the attorney of the party filing the pleading and shall

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

7 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
8 OFFICERS. (a) Unless the act or omission constituted gross negli-
9 gence, a person may not recover damages for personal injury, death, or
10 damage to property for an act or omission to act in the course and
11 scope of official duties, from the following:

12 (1) a member of the board of directors or an officer of a
13 nonprofit corporation;

14 (2) a member of the board of directors or a member of a
15 citizen's advisory board of a public or nonprofit hospital;

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

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

19 (b) Notwithstanding (a) of this section, the duties and liabil-
20 ities of a director or officer of a nonprofit corporation to the
21 corporation or the corporation's shareholders may not be limited or
22 modified.

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

26 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
27 based on fault seeking to recover damages for injury or death to
28 person or harm to property, contributory fault chargeable to the
29 claimant diminishes proportionately the amount awarded as compensatory

1 damages for an injury attributable to the claimant's contributory
2 fault, but does not bar recovery.

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

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

11 (1) the amount that the actual attorney fees incurred by
12 the claimant in obtaining the award exceed the amount of attorney fees
13 awarded to the claimant by the court; and

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

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

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

25 (1) benefits that under federal law cannot be reduced or
26 offset;

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

28 (3) gratuitous benefits provided to the claimant.

29 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions

1 involving fault of more than one party to the action, including third-
2 party defendants and persons who have been released under AS 09.17.-
3 070, the court, unless otherwise agreed by all parties, shall instruct
4 the jury to answer special interrogatories or, if there is no jury,
5 shall make findings, indicating

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

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

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

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

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

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

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

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

12 Sec. 09.17.900. DEFINITIONS. In this chapter

13 (1) "fault" includes acts or omissions that are in any
14 measure negligent or reckless toward the person or property of the
15 actor or others, or that subject a person to strict tort liability;
16 the term also includes breach of warranty, unreasonable assumption of
17 risk not constituting an enforceable express consent, misuse of a
18 product for which the defendant otherwise would be liable, and unrea-
19 sonable failure to avoid an injury or to mitigate damages; legal
20 requirements of causal relation apply both to fault as the basis for
21 liability and to contributory fault;

22 (2) "future damages" includes damages for future medical
23 treatment, care or custody, loss of future earnings, or loss of bodily
24 function of the claimant.

25 * Sec. 2. AS 09.30.065 is amended to read:

26 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
27 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
28 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
29 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party

1 making a claim or the party defending against a claim may serve upon
2 the adverse party an offer to allow judgment to be entered in complete
3 satisfaction of the claim for the money or property or to the effect
4 specified in the offer, with cost then accrued. If within 10 days
5 after the service of the offer the adverse party serves written notice
6 that the offer is accepted, either party may then file the offer and
7 notice of acceptance together with proof of service, and the clerk
8 shall enter judgment. An offer not accepted within 10 days is con-
9 sidered withdrawn and evidence of that offer is not admissible except
10 in a proceeding to determine the form of judgment after verdict. If
11 the judgment finally entered on the claim as to which an offer has
12 been made under this section is not more favorable to the offeree than
13 the offer, the interest awarded under AS 45.45.010(a) and accrued up
14 to the date judgment is entered shall be adjusted as follows:

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

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

20 * Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

21 (b) Except when the court finds that the parties have agreed
22 otherwise, prejudgment interest accrues from the day the cause of
23 action accrues.

24 * Sec. 4. AS 09.55.548 is repealed and reenacted to read:

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

28 * Sec. 5. AS 09.60.010 is amended by adding a new subsection to read:

29 (b) In making an award of attorney fees to a prevailing party,

1 the court shall consider actual attorney fees incurred by each party
2 in the civil action. Actual attorney fees shall be supported by
3 affidavit from the attorney representing each party.

4 * Sec. 6. AS 22.15.030(a) is amended to read:

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

7 (1) for the recovery of money or damages when the amount
8 claimed exclusive of costs, interest and attorney fees does not exceed
9 \$35,000 [\$25,000];

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

13 (3) for the recovery of a penalty or forfeiture, whether
14 given by statute or arising out of contract, not exceeding \$35,000
15 [\$25,000];

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

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

21 (6) for the recovery of the possession of premises in the
22 manner provided under AS 09.45.070 - 09.45.160 when the value of the
23 property or of the arrears and damage to the property does not exceed
24 \$35,000 [\$25,000];

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

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

1 (9) over civil actions for taking utility service and for
2 damages to or interference with a utility line filed under AS 42.20.-
3 030;

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

6 * Sec. 7. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
7 09.16.060 are repealed.

8 * Sec. 8. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act have
9 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
10 jury to answer the special interrogatories listed in AS 09.17.060 regarding
11 the amount of damages and the percentages of fault to be allocated among
12 the parties and to itemize the verdict regarding economic and noneconomic
13 loss as specified in AS 09.17.030.

14 * Sec. 9. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
15 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
16 specific findings regarding the amount of damages and the percentages of
17 fault to be allocated among the parties.

18 * Sec. 10. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
19 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
20 the court to include a specific item in its judgment.

21 * Sec. 11. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
22 amending Alaska Rule of Civil Procedure 11 by requiring verification of
23 claims, answers, counterclaims, and cross-claims.

24 * Sec. 12. AS 09.30.070 as amended by sec. 3 of this Act has the effect
25 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
26 interest accrues from the day the cause of action accrues.

27 * Sec. 13. AS 09.60.010 as amended by sec. 5 of this Act has the effect
28 of amending Alaska Rule of Civil Procedure 82 by requiring the court to
29 consider the actual attorney fees incurred in the civil action.

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* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all causes of action accruing on or after the effective date of this Act.

* Sec. 15. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Memorandum

Alaska Court System

TO: [

Arthur H. Snowden, II
Administrative Director

DATE :

April 29, 1986

FROM:

Karla L. Forsythe *KLF*
Staff Counsel

SUBJECT:

Fiscal Impact of CSHB 532
(L & C) if Arbitration is
Deleted

Without costs attributable to arbitration, the fiscal note on CSHB 532 (L & C) decreases to a total of \$88,473, which funds a full-time fully-vested retired superior court judge and an in-court clerk, as well as needed supplies and one-time equipment expenses. The need for a full-time judge position is based on the Labor and Commerce substitute, which includes periodic payments, apportionment of fault to defendants previously released from liability, and also abolishes Civil Rule 82 attorney fees. To the extent the House Judiciary Committee amends these provisions, the fiscal impact could decrease even further.

KF/k1

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 532 (L&C)
 Title : An Act Relating to Text Reform

Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		80.7	80.7	80.7	80.7	80.7
TRAVEL		6.2	6.2	6.2	6.2	6.2
CONTRACTUAL SUPPLIES		721.8	721.8	721.8	721.8	721.8
EQUIPMENT		1.0	1.0	1.0	1.0	1.0
LAND & STRUCTURES		6.7				
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		816.4	809.7	809.7	809.7	809.7

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		816.4	809.7	809.7	809.7	809.7
FEDERAL FUNDS						
OTHER						
TOTAL		816.4	809.7	809.7	809.7	809.7

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe/Robert G. Fisher / 13/ Phone : 264-8215
 Division : Alaska Court System Date : 4/9/85

Approved by Commissioner : Arthur H. Snowden, II / 15/ Date : 4/9/85
 Agency : Alaska Court System

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CSHB 532 (L & C) Fiscal Note Narrative

This legislation impacts the court system in two areas: expanded judicial workload and mandatory arbitration.

Expanded Judicial Workload

The presiding judge for the third judicial district anticipates that new procedures incorporated in this bill (such as hearings to determine whether defendants who have defaulted on periodic payments should be held in contempt and the amount of related damages which should be assessed) will increase the court's workload by 20% for each trial. This estimate also includes judge time expended on additional litigation which will result from attempts to transfer proportional liability to persons who have signed releases before trial, and litigation to resolve interpretation questions with the legislation. Also, more cases will go to trial because of diminished incentives to settle resulting from the prohibition on the award of Civil Rule 82 Attorneys Fees.

It is anticipated that the increased workload could be handled statewide by funding the equivalent of a pro tem judge. Pro tem funding is less costly than funding new judge positions because salary and benefits for retired pro tem judges are significantly lower. Additionally, since these judges are not permanently assigned to one court location, normal space and staffing requirements are avoided.

The provisions of this legislation which establish new procedures for the court come into play only when a case goes to trial. According to figures provided by the Anchorage trial court, approximately 5% of the cases filed go to trial, resulting in 105 personal injury trials statewide.

It is estimated that a personal injury trial averages two weeks. The total number of personal injury trials multiplied by two weeks of a judge's time total 210 judge weeks.

The estimated 20% additional judicial workload attributable to these expanded proceedings totals 42 judge weeks. Since a standard judicial work year averages 40 work weeks (excluding holidays, vacation and training), it is estimated that one judge would be required to process the additional statewide workload.

In order to avoid duplicative hearings, the court system favors binding arbitration rather than the option of de novo court trials. In the event that this legislation is not amended to provide for binding arbitration, the court system assumes for purposes of this fiscal note that the court would be required to bear the cost of arbitrators for those parties who are unable to afford this expense. It is estimated that 1216 personal injury cases statewide would be subject to the mandatory arbitration provision because they fall under \$75,000. It is assumed that a third of the parties will not be able to afford the expenses of arbitrators. Thus, the court system will be required to bear these expenses in 401 cases.

Assuming an arbitration lasting 12 hours and an estimated average hourly compensation rate for the arbitrator of \$150, the cost of an arbitration totals \$1,800. The estimated total cost of an arbitrator for all cases under \$75,000 is \$721,800. Additionally, the court system assumes that for parties in outlying rural areas who are unable to afford the costs of arbitrators, it will be less costly to fly these persons to central urban areas rather than to fly arbitrators to the outlying areas and pay for their room and board. The additional air fare and per diem costs total \$6,155. Based on these assumptions, the total costs of mandatory arbitration is \$727,955.

ALASKA COURT SYSTEM
 CSHB 532 (L & C) - TORT REFORM
 FISCAL IMPACT

Personnel:

	Salary	Benefits	Total
Pro Tem, Superior Court Judge (PFT, using fully-vested retired judge) (See Schedule #2)	\$19,332	\$26,779	\$46,111
In-Court Clerk (PFT, 12B)	25,740	8,863	34,603

Total Personnel			80,714
 Travel costs for indigent bush parties in manda- tory arbitration cases. (See Schedule #3)			 6,155
 Contractual cost of arbitrators for indigent parties in mandatory arbitration cases. (See Schedule #3)			 721,800
 Supplies			 1,000
 Equipment: (one-time items)			
New employee equipment - office furniture and reference materials			6,759

Total FY 87 Cost			\$816,428
			=====

Schedule #2

ALASKA COURT SYSTEM

ESTIMATION OF JUDICIAL RESOURCES
NEEDED TO PROCESS INCREASED WORKLOAD

CSHB 532 (L & C) - TORT REFORM

	Anchorage	Rest of State	Total
Number of civil damage cases (a)	1,458	638	2,096
Estimated percentage of cases going to trial	5%	5%	5%
Estimated number of trials	73	32	105
Estimated length of trial in weeks	2	2	2
Estimated judicial time in weeks	146	64	210
Estimated workload increase from legislation	20%	20%	20%
Estimated additional judicial workload in weeks	29	13	42
Estimated average number of work- weeks in judicial year (b)	40	40	40
Estimated number of judges needed to process additional workload	0.73	0.33	1.05

Notes:

- (a) Based on FY 05 case filings. All civil damage case filings assumed to be personal injury cases.
- (b) Estimated number of work-weeks, net of holidays, vacation and training.

Schedule #3

ALASKA COURT SYSTEM
ESTIMATED FISCAL IMPACT OF MANDATORY ARBITRATION
CSHB 532 (L & C) - TORT REFORM

	Anchorage	Rest of State	Total
Number of civil damage cases (a)	1,458	638	2,096
Estimated percentage of cases under \$75,000	58%	58%	58%
Estimated number of cases under \$75,000	846	370	1,216
Estimated percentage of indigent parties	33%	33%	33%
Estimated number of cases involving indigent parties	279	122	401
Estimated average length of arbi- tration hearing in hours	12	12	12
Estimate average hourly rate of arbitrator	\$150	\$150	\$150
Estimated average cost of each case	\$1,800	\$1,800	\$1,800
Estimated total cost of arbitrators	\$502,200	\$219,600	\$721,800
Estimated travel cost for indigent parties living in bush areas. (See Schedule #4)	\$0	\$6,155	\$6,155
Estimated total cost of mandatory arbitration	\$502,200	\$225,755	\$727,955

Notes:

- (a) Based on FY 85 case filings. All civil damage case filings assumed to be personal injury cases.

ALASKA COURT SYSTEM

ESTIMATED TRAVEL COSTS FOR INDIGENT BUSH PARTIES

CEHB 532 (L & C) - TORT REFORM

Bush Courts	Number of Case Filings	Percent Under \$75,000	Number of Cases Under \$75,000	Percent Indigent Defendants	Number of Indigent Cases	Air Fare to Nearest Urban Court (a)	Estimated Air Fare Cost	Estimated Per Diem Cost (b)	Estimated Total Travel Cost
Barrow	5	58%	3	33%	1	\$500	\$500	\$315	\$815
Bethel	30	58%	17	33%	6	302	1,812	1,680	3,492
Kotzebue	5	58%	3	33%	1	426	426	280	706
Nome	6	58%	3	33%	1	426	426	280	706
Valdez	6	58%	3	33%	1	156	156	280	436
								Total Cost	\$6,155

Notes:

(a) Bush courts served by urban courts:

Barrow served by Fairbanks
 Bethel served by Anchorage
 Kotzebue served by Anchorage
 Nome served by Anchorage
 Valdez served by Anchorage

(b) Estimated to require three and one half days of per diem.

APR 29 '86 11:18 ACR 2ND JUD DIST FAX:276-6342



Trial Courts

Courts of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

GOLDEEN GOODFELLOW
Assistant Area Court Administrator/
Clerk of Court

(907) 264-0440

Memorandum

To: Karla Forsythe
Staff Counsel

From: Goldeen Goodfellow
AACA/Clerk of Court *AG*

Re: Personal Injury Statistics

Date: April 9, 1986

We again went through all of the Case Characterization Forms which we have in LeEllen's office at this time. They picked out the personal injury cases and put them into categories of (1) \$75,000 or less, (2) more than \$75,000 and (3) no amount stated. They looked at a total of 203 Case Characterization Forms for personal injury cases. The breakdown is as follows:

\$75,000 and under -	118 cases -	58.1%
more than \$75,000 -	61 cases -	30.1%
amounts not stated -	24 cases -	11.8%

If you want me to, I can continue to monitor the Case Characterization Sheets as they come in and add to the above figures.

cc: Douglas J. Sardahely, Presiding Judge
Albert H. Szal, Area Court Administrator . . .

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HCS CSSB 377 (Jud.)
 Title: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58, 60;..."
 Sponsor: Sen. Kelly
 Requestor: House Judiciary Committee
 Date of Request: May 7, 1986

FISCAL DETAIL

Agency Affected: Department of Law
 BRU: Legal Services
 Components: Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

The committee substitute substantially reduces the scope of the study to be conducted by the Department of Law eliminating the need for fiscal note funds.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 5/7/86
 Approved by Commissioner: Richard I. Pegues / For
Harold G. Brown, Attorney General Date: 5/7/86
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: May 7, 1986

REQUEST
Bill/Resolution No.: House CS for
SSSB (JUD)
Title: An act relating to civil
actions, etc.
Sponsor: Kelly, Abood, Bennett, et al.
Requestor:
Date of Request: May 7, 1986

FISCAL DETAIL
Agency Affected:
BRU:
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary House CS for SSSB 377 (JUD) removes or modifies the original bill language to delete any fiscal benefit to the State of Alaska's estimated ultimate loss and loss expense, i.e., "noneconomic damages" limit changed from \$250,000 to \$1,000,000, "punitive" damages not mentioned in revised bill, "periodic payment" provision changed, "joint and several" provision change, "release or covenant not to sue" provision change, "offers of judgment" provision change.

Prepared By: Donald Hitchcock, Director
 Division: Risk Management

Phone: 465-2180
 Date: May 7, 1986

Approved by Commissioner: Eleanor Andrews
 Agency: Department of Administration

Date: _____

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: 5/7/86

REQUEST

Bill/Resolution No.: HCS for CSSB 377 (Jud)
 Title: An Act Relating to Civil
Actions

Sponsor: Kelly, Abood, et al.
 Requestor: House Judiciary
 Date of Request: 5/7/86

FISCAL DETAIL

Agency Affected: Alaska Court System
 BRU: Trial Court

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Karla Forsythe Phone: 264-8228
 Division: General Counsel, Alaska Court System Date: 5/7/86

Approved by Commissioner: Arthur H. Snowden, II *AHS II* Date: 5/7/86
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL IMPACT

HCS for CSSB 377 (Judiciary)

Analysis

The House Judiciary Committee substitute does not include several provisions contained in earlier versions of tort reform legislation which would have significantly impacted the courts' workload (court monitoring of periodic payments, elimination of Civil Rule 82 attorney fees, and arbitration). Revised language relating to the effect of a release from liability should diminish the likelihood of increased litigation resulting from the so-called "empty chair defense." It is anticipated that any workload increase attributable to this version of the legislation can be absorbed with existing resources.

Pelletier

5/6/86
7pm

(d) In all actions involving fault of more than one party to the action, a release, covenant not to sue, or similar agreement entered into by a claimant and a person liable shall, unless otherwise agreed by all parties, be provided by the court to the jury for its consideration.

Patterson #2
5/6/86 pm

9.17.015

1. Awards for future economic loss shall be adjusted for future earning capacity and inflation, ~~and then shall be reduced to present value~~
2. Awards for future damages shall be reduced to present value, adjusted for inflation.

Wage increases



20.04 FUTURE EARNING CAPACITY

jury instructions
from Pettigrew 5/6/86
20.04
pm

The (first, second, etc.) item of claimed loss is the reduction in the ability of the plaintiff to earn money in the future.

You may award the plaintiff a fair amount for any reduction in (his) future ability to earn money that (he) is reasonably probable to experience.

[In fixing this amount you must determine the difference between the plaintiff's ability to earn money before the (accident) [for (his) life expectancy as it then existed] and (his) ability to earn after the accident [with (his) current life expectancy.] To do this you may consider the plaintiff's health, physical and mental abilities, (his) work habits and occupation before the accident and the nature, and the extent of (his) injuries and how long and to what extent (his) injuries will affect (his) earning ability in the future.]

[In deciding the plaintiff's future earning ability both before and after the accident you may consider the wages he earned before and after the accident and any reasonably probable increases in those wages due to promotions or automatic step increases. You should not consider any likely pay increases due to increases in the cost of living, and you should not make any deduction for any likely income taxes applicable to these earnings.]

Use Note

This instruction should be used with Instruction 20.01A or 20.01B when loss of future earning capacity is claimed.

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Use Note

This instruction should be used with Instruction 20.01A or 20.01B when loss of future earning capacity is claimed.

In many jurisdictions only the first two paragraphs or something comparable are used without the additional specificity of the two bracketed paragraphs. The two bracketed paragraphs do represent Alaska law.

If this instruction is given, Instructions 20.17 (Life Expectancy) and 20.18 (Future Damages) should also be given. The clauses relating to life expectancies should be given only if it is claimed the injury is permanent.

Comment

An award of damages for loss of future earnings or diminished earning capacity has been approved in Saslow v. Rexford, 395 P.2d 36, 42 (Alaska 1964) (see, trial court's instruction on diminished earning capacity at 41); Patrick v. Sedwick, 413 P.2d 169, 173, 175 (Alaska 1966); National Bank of Alaska v. McHugh, 416 P.2d 239, 244 (Alaska 1966); City of Fairbanks v. Nesbett, 432 P.2d 607, 615-17 (Alaska 1967); Beaulieu v. Elliott, 434 P.2d 665, 668 (Alaska 1967); Chugach Electric Association v. Lewis, 453 P.2d 345, 351 (Alaska 1969); Fruit v. Schreiner, 502 P.2d 133, 145 (Alaska 1972); Morrison v. State, 516 P.2d 402, 403-05 (Alaska 1973); State v. Guinn, 555 P.2d 530, 544 n.35 (Alaska 1976); Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 934 (Alaska 1977).

The court has stated that the "[i]mpairment of earning capacity means the permanent diminution of the ability to earn money. [Citing Restatement of Torts § 906, Comment c at 550 (1939)] The determination of award of impairment of future earning capacity involves two distinct considerations, namely, determination of the extent of an earning capacity and the measurement of loss therefrom.' City of Fairbanks v. Nesbett, 432 P.2d 607, 617 (Alaska 1967).

Evidence that plaintiff's wages were higher for the year after the accident than for the year before and that plaintiff was working steadily at the time of trial is not necessarily conclusive in showing lack of impairment of earning capacity. The court has held that where there is evidence that plaintiff has suffered a permanent injury, the whole span of the plaintiff's life must be considered. Among factors to be considered are the plaintiff's pre- and post-injury occupational competence and whether avenues of earning occupational advancement are now closed to the plaintiff. See, Chugach Electric Association v. Lewis, 453 P.2d 345, 351 (Alaska 1969).

The court has approved an instruction regarding future earning capacity which directed:

If you find that the plaintiff is entitled to a verdict and you find from the evidence that plaintiff's power to earn money has been so impaired by the injuries in question that he will suffer a pecuniary loss in the future (that is from the date of this trial) from such impairment, then you

will award him such sum as will reasonably compensate him for any future detriment he is reasonably certain to suffer.

In fixing this amount, you may consider what the plaintiff's health, physical ability and earning power were before the accident and what they are now, the nature and extent of his injuries, whether or not they are reasonably certain to be permanent or if not permanent, the extent of their duration, the possibilities of diminution of earning capacity, all to the end of determining the effect of his injuries upon his future earning capacity and the present value of any loss so suffered. [Emphasis added].

Saslow v. Rexford, 395 P.2d 36, 41 (Alaska 1964). The court approved this instruction, interpreting it to say that the jury could award only damages which were reasonably certain to result from the injury, and that the possibility of decreased earning capacity was one factor to be considered. Id. at 42.

In a ruling related to the application of the "reasonable certainty" standard, the court has held that in most circumstances, a loss in future earning capacity cannot be inferred from the mere showing of permanent injury but that the plaintiff must present sufficient evidence so that earning capacity before and after the injury may be compared and the fact-finder may determine whether there has been an impairment in earning capacity and the extent of that impairment. The need for evidence of impairment is particularly important when the nature of the plaintiff's injury and occupation is such that the jury could not use its common knowledge and experience to determine the extent of the impairment of the plaintiff's earning capacity, City of Fairbanks v. Nesbett, 432 P.2d 607, 616-17 (Alaska 1967) (case involving ankle injury to lawyer). But see Chugach Electric Association v. Lewis, 453 P.2d 345, 351 (Alaska 1969), in which the court implies that jury could invoke its collective wisdom and experience in determining impact of eye injury to future wages and job opportunities of an electrical lineman.

The Alaska court appears to have held that alternative post-injury employment should not be considered in determining the damage award for impairment of future earning capacity in Saslow v. Rexford, 395 P.2d 36, 42 (Alaska 1964). However, the court in Beaulieu v. Elliott, 434 P.2d 665, 668 (Alaska 1967) noted that the fact that the plaintiff could be employed in an alternative occupation should be considered in determining the award for loss of future earning capacity. Similarly, in awarding damages for the loss of future earnings in Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 934 (Alaska 1977), the trial court used the difference between the amount of earnings of the plaintiff's employment before and after his injury, projected over his work-life. In sum, actual alternative employment or a reasonable probability for future employment may be considered in determining

the damage award for impairment of future earning capacity in Saslow v. Rexford, 395 P.2d 36, 42 (Alaska 1964). However, the court in Beaulieu v. Elliott, 434 P.2d 665, 668 (Alaska 1967) noted that the fact that the plaintiff could be employed in an alternative occupation should be considered in determining the award for loss of future earning capacity. Similarly, in awarding damages for the loss of future earnings in Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 934 (Alaska 1977), the trial court used the difference between the amount of earnings of the plaintiff's employment before and after his injury, projected over his work-life. In sum, actual alternative employment or a reasonable probability for future employment may be considered in determining a damage award for loss in earning capacity.

In a related matter on the subject of mitigation, the court has held that an award for future loss of earnings is not to be reduced by the amount the plaintiff receives from a disability retirement pension, at least when the damage award represents his expected future earnings exclusive of retirement pay and the disability pension is equivalent to his expected retirement income. Beaulieu v. Elliott, 434 P.2d 665, 672 (Alaska 1967).

The court initially had held that in determining an award for loss of future earnings, wage increases which commonly occur as one progresses in his chosen profession were not to be taken into account. Beaulieu v. Elliott, 434 P.2d 665, 672 (Alaska 1967). Subsequently, the court has allowed consideration of automatic step increases in salary which are based on length of service, State v. Guinn, 555 P.2d 530, 546 (Alaska 1976), and merit increases (based on increase in employee's skills and experience) which are shown with reasonable certainty as likely to occur, Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 937 (Alaska 1977). Beaulieu's reference to the non-consideration of wage increases has been limited expressly to wage increases attributable to inflation, Id. at 937.

A difficult area is the determination of a damage award for the impairment of earning capacity of a minor or housewife. Alaska case law does not offer a great deal of guidance. The court has noted that in cases involving injuries to infants or housewives, the theory of impairment of earning capacity can be inferred from the general nature of the injuries, City of Fairbanks v. Nesbett, 432 P.2d 607, 616 n.22 (Alaska 1967). In Morrison v. State, 516 P.2d 402 (Alaska 1973), the damage award for loss of future earning capacity to the minor-plaintiff was at issue. At the time of her injury, the plaintiff was 13.5 years old and had a life expectancy of 50 years. In determining the total loss of future earning capacity, the trial court considered that the plaintiff would work 5 years as a secretary at \$8000 per year then marry and therefore awarded \$40,000, Id. at 404. The Supreme Court objected to the projected marriage date as the cut-off point for determining lost earning capacity (but did not object to the use of the 5 years a secretary formula):

Appellant is, of course, entitled to recover the full amount for her diminished earning capacity. This is not to say that she is necessarily entitled to the full amount which she would earn were she to be employed for her entire life. The trial court could properly allow as an offset against the overall amount a sum which reflects the fact that appellant can still function to some degree as a housewife. But even if appellant were able to function as a normal housewife, she would still be entitled to an award for impaired earning capacity, because she has lost the capacity to work in commercial enterprises.

Id. at 405. This statement suggests that some figure representing life-time earning capacity from full-time employment is to be determined and this figure is to be reduced by an amount representing the reasonable value of services as a housewife. How these figures are to be determined is unclear although the first figure may be based on the figures for average lifetime earnings of Alaskan females. Id. at 405.

In determining damages for the loss in future earning capacity, the award is to be based on preinjury life expectancy rather than on a shortened expectancy due to the injury. This is so because "the tortfeasor should not be able to reap the benefit of the victim's shortened life occasioned by permanent injury for which the wrongdoer is responsible." Morrison v. State, 516 P.2d 402, 406 (Alaska 1973) [citing Restatement of Torts § 924, comment e at 625 (1939) and C. McCormick, Handbook on the Law of Damages § 86 at 303-04 (1935)].

20.18 FUTURE DAMAGES--PRESENT VALUE REDUCTION

As I have instructed you, you may decide it is reasonably certain that the plaintiff will have some future losses resulting from the (accident). In fixing an amount for those future losses you should disregard the fact that any amount you award the plaintiff may be paid before the actual loss occurs. You should also disregard the fact that the value of money may change over time.

[When it is appropriate I will make an adjustment in your award to reflect these matters. To do so, I need you to answer (two) (three) questions:

1. For each item of future loss, for what period of time will the loss occur? and

2. Imagine that a person of ordinary skill, experience, and prudence has money to invest on (date), and that this person wants to invest the money for the period of time over which the plaintiff's future losses will occur. What annual interest rate would this person earn on a safe investment?]

[3. Is the value of money reasonably likely to change for the period of time which the plaintiff's future losses will occur, and, if so, will the value increase or decrease and at what rate, expressed as a percentage? In other words, if you decide that a dollar would go up or down in value at a rate of 10%, or 1%, or whatever percent per year, that would be your answer to this question? If you decide that the value of money will not change over time, your answer should be "no change."]

Use Note

This first paragraph of this instruction should be used whenever future damages are claimed.

The second bracketed paragraph should be used whenever an item of future damage is to be reduced to present value. The bracketed third question should be used if it is believed inflation must be taken into account if a future damage award is reduced to present value.

Comment

The Alaska Supreme Court has held that damage awards for loss in future earning capacity should not be reduced to present value. Beaulieu v. Elliott, 434 P.2d 665, 670-71 (Alaska 1967). It is the court's reasoning that the annual inflation rate would offset any dividends from "safe" investments and therefore an award reduced to present value could not be utilized to realize the plaintiff's full future earnings without undue risk. Additionally, the court notes that wages increases which generally occur as one progresses in his occupation usually are not considered in making a damage award, Id. at 671-72. In Beaulieu, the court also held that damage awards for future pain and suffering are not to be reduced to present value, Id. at 676.

A damage award for loss of retirement benefits may result in a double recovery if not reduced to present value. This is so because a figure for total retirement benefits is based on the result of the investment and return upon employer contributions over many years. The plaintiff would have the opportunity to invest an award, the size of which is based on projected investment. See, Alaska Airlines, Inc. v. Sweat, 568 P.2d 916, 933 (Alaska 1977) and earlier section on miscellaneous damages.

The court has suggested that in a case in which the award of damages for loss in earning capacity is to be based on the difference in earning potential between pre- and post-injury employment of the plaintiff, the award might be reduced to present value if it can be shown that the actual gap in earnings between the jobs will remain constant in the future, as then inflation would have no effect, Alaska Airline, Inc. v. Sweat, 568 P.2d 916, 934 (Alaska 1977). If both sets of wages were to increase by the same percentage, the actual gap in wages would increase and a reduction to present value would be improper, Id. at 934.

The Alaska Supreme Court has not indicated specifically whether future medical expenses should be reduced to present value, but it would appear that the same analysis relating to loss of earning capacity would apply.

It appears that most cases will not involve reductions to present value. The first paragraph instructs the jury not to implicitly take either the present value problem or inflation

into account. However, in those few situations in which a present value reduction is required, it appears to be the better approach to allow the jury to provide a factual basis for such reduction but to allow the judge to make the actual calculation. This is particularly true where some but not all future losses must be reduced. Thus, the jury is asked three questions. The first two require the jury to decide the period of future loss and the rate of interest to be used in calculating present value. It could be argued that the instruction over-simplifies the problem because the investment rate may change during the period of future losses and the timing of future loss may not be evenly distributed over the entire period. The law has for the most part avoided consideration of how specific the calculation must be by merely instructing the jury to make the calculation without disclosing their methodology.

For most cases the process established by this instruction will approach a fair result and one consistent with the Alaska Supreme Court's recognition in Beaulieu that only an approximation is possible in the best of circumstances when estimating future damage awards. In the unusual case, such as where a high percentage of future loss will be incurred shortly after the verdict is rendered this instruction may need to be modified.

The holding in Beaulieu that abandoning the present value reduction balances the effects of inflation has avoided the necessity for the court to examine if and how inflation should be used where a present value reduction is authorized. Courts have taken widely divergent approaches to inflation. Some ignore it altogether, regarding its use by the jury to be too speculative. Sleeman v. Chesapeake & O. Ry. Co., 414 F.2d 305 (6th Cir. 1970). Others allow the jury to consider inflation but limit the extent to which experts may testify as to inflationary trends. Johnson v. Serra, 521 F.2d 1289 (8th Cir. 1975). And still others allow wide-ranging expert testimony. United States v. English, 521 F.2d 63 (9th Cir. 1975). The Alaska Rules of Evidence tend to encourage the use of expert testimony generally. See Rules 702, 703.

AMENDMENT -- HCS CSSB 377(Jud)

Delete all of section 16 and replace with the following:

* 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 Fifteenth State Legislature.

RT

A M E N D M E N T

Offered in the HOUSE

By Gruenberg ✓

TO: CSSSHB 532(Jud) (Ford 5/5/86)

Taylor

Page 7, lines 21 - 22, following "entered":

Delete: "in complete satisfaction of the claim"

Insert: "[IN COMPLETE SATISFACTION OF THE CLAIM]"

Page 7, line 29 - Page 8, line 1, following "determine":

Delete: "the form of judgment after verdict"

Insert: "costs and attorney fees [THE FORM OF JUDGMENT AFTER VERDICT]"

Page 8, line 3, following "offer,":

Insert: "the offeree shall pay costs ^{*incurred after service of the offer*} and the court may ^{*also*} require payment of reasonable actual attorney fees incurred after service of the offer, and"

Page 8, after line 10, insert a new bill section to read:

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

(b) The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further

proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days before the commencement of hearings to determine the amount or extent of liability.

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

Renumber remaining bill sections accordingly.

Page 10, line 27, delete "sec. 6" and insert "sec. 7"

Page 11, line 1, delete "sec. 3" and insert "sec. 4"

Page 11, line 4, delete "sec. 5" and insert "sec. 6"

Page 11, line 7, delete "1 - 8" and insert "1 - 9"



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 28, 1986

The Honorable Jan Faiks
The Honorable John Sackett
Co-Chairs, Senate Finance Committee
AND

The Honorable M. Mike Miller
Chairman, House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: Tort Reform

Dear Senators Faiks and Sackett, Representative Miller:

Today, I am recommending that we take clear and measured steps toward tort reform through a number of moderate changes to our current civil justice system. The first steps I propose include 1) revision of the common law concerning joint and several liability, 2) statutory changes to allow courts to award and monitor periodic payments of future economic damages in appropriate cases, and 3) a requirement that a percentage of all punitive damage awards be turned over to the state, to be used to promote legal services for the poor and disadvantaged of Alaska.

The real goal of tort reform is affordable insurance that will allow small businesses, non-profit groups, and individual Alaskans to operate, secure in the knowledge that they have the coverage they need at rates they can afford. It is to that end that I am recommending these changes.

In addition, and equally important, I am asking the Legislature to authorize and fund a thorough study of both the claims experience and the true financial condition of the insurance industry in Alaska. We need to uncover the real facts behind the present insurance crisis, to determine whether additional modifications to the judicial system are warranted, and to consider whether additional legislative actions might ease the present insurance crisis.

I am not, however, convinced that our civil justice system can be held solely responsible for the current insurance crisis. Nor am I convinced that tort reform will result in

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lower insurance premiums or more availability of insurance at any price. Many experts believe the current crisis is simply the result of a downturn in the economic cycle of the insurance industry, and that changes in the cost and availability of insurance may come about in the near future as a consequence of normal market forces.

Both this Administration and the Legislature have been the subject of tremendous lobbying efforts by a variety of interest groups who want to bring about significant changes in our civil justice system. The rationale behind many of the arguments advanced is sometimes confusing and occasionally misleading. I have received hundreds of communications from small businessmen, day-care operators, fishermen, professionals, and people from all walks of life, including those who represent the insurance industry, suggesting that significant tort reform will lead to lower insurance premiums and more availability of insurance coverage.

I have carefully considered the arguments and various proposals concerning tort reform. Generally, before I support any legislation, I must first be assured that the legislation is fair, equitable, and just for all Alaskans, not just certain special interest groups. I also must be assured that the rights of Alaskans who are the unfortunate victims of accidents in this state are fully protected. A balance needs to be struck between the rights of victims to compensation for their injuries and legitimate concerns for a more equitable distribution of the cost and risk of injury. The end result of any modification to our civil justice system must be fairness to all Alaskans, including the small businessman, the professional, the urban resident, the villager, the poor, and the disadvantaged.

Probably the most significant tort reform measure currently under consideration by the Legislature is an amendment to the legal doctrine of joint and several liability. This is an area of law which society has developed over the course of many years. Under this doctrine, when a fact finder determines that two or more defendants are each at fault in causing an injury to a plaintiff, that plaintiff may recover all of his damages against any one defendant and it is the defendants' responsibility to collect among themselves.

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Problems arise where one or more of the defendants is insolvent or otherwise judgment proof. In such a case, another defendant may have to pay all of the injured person's damages and the paying defendant may have no recourse to recover the amount he paid in excess of his "fair" share. The doctrine of joint and several liability developed because society, recognizing that some inequities will result in any case where one of the parties responsible for the injury cannot pay his or her share, decided that it would be more equitable for a guilty defendant to bear the added burden, rather than the injured victim.

This doctrine, however, often results in inequities of another form. Where only one of the defendants has the financial ability to pay, that defendant may end up paying 100 percent of the plaintiff's damages, even though that defendant is only 5 or 10 percent negligent in the particular case. This is the so-called "deep-pocket" problem. Municipalities, the State, and persons responsible enough to maintain insurance are often required to pay large sums of money when their actual contribution arguably should be much less.

Given these competing considerations, there is currently under consideration one proposal modifying joint and several liability which attempts to strike a fair balance between the rights of the victim, which must be protected, and the rights of the financially responsible defendant. This version provides that a party may be held liable for up to -- but not more than -- twice the party's percentage of fault in the accident. It recognizes that pure several liability, which is supported by some advocates of tort reform, may result in victims not being adequately compensated for their injuries, while pure joint and several liability, as it is currently applied, may unjustly burden those who are financially responsible.

A second concept drawing much attention is a proposal to put a cap on non-economic damages, which are generally referred to as pain and suffering. One version of a tort reform bill which I have seen purports to limit any award for non-economic damages to 25 percent of the present value of the economic damages awarded, or \$500,000.00, whichever is less. Since a significant portion of economic damages frequently involves lost wages, under this provision a successful businessman or a brain surgeon would have a right to more non-economic damages than an Alaskan who lives by a subsistence way of life, a housewife who does not work

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outside the home, a teenager who has not yet had the opportunity to demonstrate his or her income earning capabilities, or an older retired Alaskan -- even where the amount of pain and suffering sustained by each was equal. This is unacceptable: it discriminates among Alaskans on the basis of wealth, is constitutionally questionable, and fails to consider the rights of accident victims. As I stated earlier, I cannot support legislation that is not fair and equitable for all Alaskans.

Another tort reform measure currently under consideration is whether society should require parties to arbitrate cases where the amount claimed by the plaintiff is relatively small. Although I agree that there are undoubtedly better ways to resolve disputes than taking all matters to court, I believe this proposal has some serious problems, because it would infringe upon the right of people to be compensated in small cases. Under the proposed legislation, the cost of an arbitration must be borne by the parties. This is in contrast to our traditional system of justice in which the courts are funded by the State and everyone has a right of access to the courts to redress grievances. By requiring the cost of an arbitrator to be borne by the parties -- a cost which could be very significant in any given case -- persons with relatively small but nonetheless legitimate claims will be effectively prevented from recovering for their injuries. In addition, there appears to be little consideration of the difficulties and costs inherent in holding arbitration hearings in the small, more remote villages of Alaska, where the court system already exists but an arbitration mechanism does not. In my opinion, further study of alternative dispute resolution mechanisms is necessary before we enact legislation to require arbitration, and I recommend this idea be considered in the interim by the Legislature.

With respect to the idea of periodic -- rather than lump sum -- payments of awards for future economic loss (such as future wages), I would recommend that the courts be given the discretion to require that the portion of a judgment representing future economic loss be paid into a trust account or used to purchase an annuity and thereafter paid in periodic installments to the victim. The Legislature should indicate that payments for future economic losses should, in the appropriate case, be made on a periodic basis. I would not propose that periodic payments of future economic loss be required in every case, nor should periodic

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payments ever be used to reduce the liability or obligations of the defendant.

Finally, with respect to proposals dealing with the award of punitive damages (which frequently result in an undeserved windfall to the plaintiffs), I believe we should provide that 50 percent of all punitive damages awarded in any case be turned over to the State. This money should be placed in a special fund, which we could call the Legal Justice Fund, created for the purpose of providing legal services for the poor. I have asked the Department of Law to advise the Legislature on how this might be accomplished and proposed legislation is attached.

There are several other tort reform proposals presently before the Legislature, but at this time I think that we should proceed with caution. I have suggested a couple of things that can be done at this time. However before we do more, we need to develop the specific information necessary to tailor future modifications to accomplish the desired result.

There are two sides to the tort reform issue. In order to accomplish something meaningful in the years to come, I suggest that any modification to our civil justice system should be coupled with a complete study, financed by the Legislature and performed during the interim, which focuses on two major areas concerning the insurance crisis. First, a detailed and thorough examination should be undertaken of closed claims by line in Alaska for insurance companies doing business in Alaska. Second, a thorough examination should be made of insurance company financial operations, expenditures, and profitability.

From the closed claims study we would be able to identify:

- (a) the extent to which the legal system has or has not been the cause of dramatic liability insurance premium increases and coverage reduction in crisis lines in Alaska;
- (b) how victims are faring under the present system; and
- (c) what the various specific tort reform proposals will actually accomplish.

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The analysis of insurance company finances will enable us to determine:

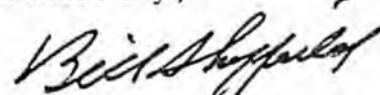
(a) the extent to which dramatic liability insurance rate increases and coverage limitations in Alaska are -- or are not -- cost-justified,

(b) what alternatives exist to limiting coverage and raising rates; and

(c) the legislative and/or regulatory actions which may be necessary to resolve the State's liability insurance crisis.

I believe these proposals represent a genuine first step towards tort reform by successfully balancing the competing interests involved in this issue while guaranteeing that the rights of all Alaskans are protected. In addition, the proposed interim study would greatly assist not only the Legislature -- but Alaskans generally -- to see precisely what has caused our current insurance crisis and what can be done to correct it.

Sincerely,



Bill Sheffield
Governor

Attachments

* Sec. _____ AS 37.05 is amended by adding a new section to read:

Sec. 37.05.153. LEGAL JUSTICE FUND. There is established as a separate trust fund in the state treasury the Legal Justice Fund. The fund consists of amounts contributed by persons who are awarded punitive or exemplary damages in a civil action under AS 09.17.020. Money in the fund may not be diverted for a purpose other than for providing legal services for the poor in civil or criminal matters.

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. Each claiming party must agree that 50 percent of any punitive or exemplary damages that may be adjudged against the party defending the claim will be contributed to the legal justice fund established in AS 37.05.-153. Money in the fund shall be held in trust to finance legal services for the poor.

(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.