

HB

158

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/18/96

DATE TURNED INTO OFFICE: 4/9/96

The Finance Committee considered CS FOR HOUSE BILL NO. 158(FIN) am(ct rls pld)(efd fld)
 Relating to civil actions; amending Alaska Rule of Civil Procedure 95.

*SCS(Fin)
coming*

and recommends:

- be replaced with 5 CS CS HB 158 (FIN)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical change
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Alvin Kruis</i>	✓				
<i>Reed E. Allen</i>	✓				
Co-Chair: <i>D. Pat</i>	✓	Co-Chair:			
Co-Chair: <i>Kirk Halford</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

#6	DOLAW	3/1/96	0	
#7	DC+ED	3/1/96	0	
#8	DOA	3/4/96	0	
#9	Courts	3/17/96	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 9
 Bill Revision: SCS CS HB 158 (JUD)
 (S) Publish Date: 3-20-96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: 03/12/96 Dept. Affected: Alaska Court System
 Title: Tort Reform BRU: Trial Courts
 Sponsor: Rep. Porter Component: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES				5.0	10.0	10.0
TRAVEL						
CONTRACTUAL				431.0	852.0	852.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	436.0	862.0	862.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	436.0	862.0	862.0
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	436.0	862.0	862.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 03/12/96
 Approved by: Arthur H. Snowden, II, Administrative Director Date: 03/12/96
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

SCS CSHB 158 (JUD) am proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, several of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

Section 11 modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed over 10,000 times per year, so even small increases in time spent per case can have a major impact on clerical staff. This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 12 requires all tort claims of \$100,000 or less to be submitted to non-binding arbitration. A total of 1,422 tort claims were filed in superior and district court in FY 95. An estimated 1,067 would be subject to mandatory arbitration. Arbitrators in Anchorage who are attorneys or former judges typically charge \$150 - \$175 per hour for their services. Arbitrators specializing in tort arbitration advise that this process can be expected to last two to five days (including time for drafting a decision, making decisions on allowable discovery, etc.), for a charge of \$2400 to \$7000. The supreme court will adopt rules requiring parties to pay the costs of arbitration. However, the state will still incur substantial costs from this process because if arbitration is mandatory, the state will be required to pay the costs for those plaintiffs and defendants who are legally indigent. This fiscal note assumes that the average arbitration will cost \$4000, and that 20 percent of litigants will be indigent. Note that 95 percent of all tort cases already settle before trial, and thus arbitration will not appreciably reduce court costs for those cases. The cases which go to trial are those in which after full discovery, the parties still can not agree on the value a jury will put on a claim. Those cases are unlikely to settle as a result of an arbitrator's opinion rendered early in the process. Thus, this section will probably not reduce the state's costs of running the civil justice system.

Section 17 essentially codifies Civil Rule 11, with one significant difference. CR 11 gives a judge the discretion to impose sanctions in any civil case (not just tort cases)

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

in which a party has engaged in improper practice. Section 17, on the other hand, would require a judge to impose sanctions in such cases. The federal courts imposed a similar requirement from 1983 to 1993. They experienced a tremendous increase in the number of requests for hearings and sanctions, as attorneys used this as a tool to gain advantage in litigation. As a result of this increase, the federal courts went back to a system almost identical to CR 11. This note assumes that the federal experience will be repeated in Alaska, and that additional judicial time will be spent in a significant percentage of the 24,000 civil cases filed per year.

SCS CSHB 158 (JUD) am can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by SCS CSHB 158 (JUD). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

FISCAL NOTE

..0. 8

Bill Version: SCS CSHB 158 (Jud)

STATE OF ALASKA
1996 LEGISLATIVE SESSION

(S) Publish Date: 3/8/96

Revision Date: _____
Title: "An Act relating to civil actions: amending Alaska Rules of Civil Procedure 49.68, and 95....."
Sponsor: Rep. Porter
Requestor: (S) JUD

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability claims exposure and the amount Risk Management will ultimately pay in liability loss settlements will be reduced by this legislation.

The extent of such savings is difficult to forecast, due to the uncertainty that any of the limitations in the type of claims that may be filed or amounts of damages that can be awarded will actually be realized in future liability claims that may be filed against the State arising from accidents that have not yet occurred.

Risk Management loss funding is collected solely through interagency receipts of premiums assessed each State agency. In future years, Risk Management's liability premium assessments will reflect the reductions actually realized by this legislation as our premium charges are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director
Division: Risk Management

Phone: 465-5723
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/4/96

PREPARER TO [Redacted] LEGISLATIVE OFFICE
For [Redacted] Office

No. 7

FISCAL NOTE

Bill Version: SCS CS HB 158 (Jud)

(S) Publish Date: 3/8/96

STATE OF ALASKA 1996 LEGISLATIVE SESSION

Revision Date: _____
Title: Civil Liability

Department: Commerce and Economic Development

BRU: Insurance

Component: Operations

Sponsor: Reps. Porter, Toohy, Mulder, Olson

Requestor: Senate Judiciary Committee

COMPONENT SERIAL NO. _____ #354

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0.8	0.8	0.8	0.8		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.8	0.8	0.8	0.8	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
---------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated Pro. Rec.	0.8	0.8	0.8	0.8		
TOTAL	0.8	0.8	0.8	0.8	0.0	0.0

Estimate of any current year (FY 96) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

The only additional cost the division would incur is mailing notification to the affected companies twice per year through the implementation year.

500 companies x 2 x \$.32 postage = \$320

Plus estimated printing costs of \$250 x 2 = \$500

While it is likely the number of companies in the subsequent mailings would decrease over the four-year period, there is no way to anticipate when companies would submit the rate reduction filings, so no fiscal change is reflected year-to-year.

Prepared by: Joan Brown, Administrative Officer *[Signature]*

Phone: 465-2597

Division: Insurance

Date: 3/1/96

Approved by Commissioner: William L. Hensley *[Signature]*

Date: 3-1-96

Agency: Commerce and Economic Development

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FISCAL NOTE

No. 6

Bill Version: SCS CS HB158(Jud)

(S) Publish Date: 3/8/96

**STATE OF ALASKA
1996 LEGISLATIVE SESSION**

Revision Date: 3/1/96 Dept. Affected: Department of Law
 Title: "...relating to civil actions; amending
Rules 68, 82(b) and 95..." BRU: Civil Division
 Sponsor: Representative Porter Component: General Legal Services
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Senate Judiciary Committee substitute for HB 158 amends Title 9, the Alaska Code of Civil Procedure, to provide far-reaching changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to change the distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be significantly reduced, the impact on the department's defense of personal injury claims will be negligible.

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 3/1/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 3/1/96
 Agency: Department of Law

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4-4-96
SR

9-LS0328\R.3 'moved
Ford
3/25/96 Adopted

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

SENATE FINANCE
COMMITTEE
Amendment Number: 1
Bill Number: SCS (Jud)
Sponsor: _____ Date: 4-1-96
Logged In By: ak

- 1 Page 11, line 19:
- 2 Delete "09.55.548,"

4-4-96
SR

9-LS0328\R.5 Moved
Ford
4/1/96 Adopted

A M E N D M E N T

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

SENATE FINANCE
COMMITTEE
Amendment Number: 3
Bill Number: SCS (Jud)
Sponsor: _____ Date: 4/2/96
Logged In By: _____

- 1 Page 2, line 23:
- 2 Delete "one-half"
- 3 Insert "90 percent"

- 4 Page 5, line 3:
- 5 Delete "one-half"
- 6 Insert "90 percent"

4/4/96

9-LS0328\R.6 -
Ford
4/1/96

SR
Moved
Adopted
H-2

A M E N D M E N T

SENATE FINANCE
COMMITTEE
Amendment Number: 4
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 2, line 29, after "damage":
- 2 Insert "based on a defect in the design, planning, supervision, construction, or
- 3 observation of an improvement to real property"

- 4 Page 3, line 3, after "specifications":
- 5 Insert ", construction standards prevailing at the time of construction,"

- 6 Page 3, lines 27 - 29:
- 7 Delete all material.

- 8 Reletter the following subsection accordingly.

4-4-96
SR
Mould
Adopted
4-2

9-LS0328\R.7
Ford
4/1/96

A M E N D M E N T

SENATE FINANCE
COMMITTEE

Amendment Number: 5
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 5, line 9:
- 2 Delete "[THE COURT MAY NOT"
- 3 Insert "The court may waive this requirement if the person in whose favor
- 4 judgment is entered agrees to waive the posting of security and the court determines
- 5 that waiver is prudent in the action [NOT"

- 6 Page 5, line 12:
- 7 Delete ".J"
- 8 Insert ".J."

4-14-96

9-LS0328\R.8.
Ford
4/1/96
SR
moved
Adopted
4-2

A M E N D M E N T

SENATE FINANCE
COMMITTEE
Amendment Number: 6
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 5, line 16, following "inflation":
- 2 Insert "or the formula for the increases"

- 3 Page 5, lines 25 - 27:
- 4 Delete "In this subsection. "inflation" means the change in the Consumer Price
- 5 Index for Anchorage, all items index, compiled by the Bureau of Labor Statistics, United
- 6 States Department of Labor."

4/9/96 pm
SR mod
Adopted

9-LS0328R.10
Ford
4/1/96

A M E N D M E N T

SENATE FINANCE
COMMITTEE

Amendment Number: 8

Bill Number: _____

Sponsor: _____ Date: 4/2/96

Logged In By: _____

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

- 1 Page 6, line 15, following "made.":
- 2 Insert "In comparing the offer to judgment finally entered, the court may not
- 3 consider prejudgment interest payable under the judgment during the period between
- 4 when payment would have been made under the offer and the date of entry of
- 5 judgment."

4/9/96 pm
SR
moved
A. Leggett

9-LS0328\R.11
Ford
4/1/96

A M E N D M E N T

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

SENATE FINANCE
COMMITTEE
Amendment Number: 9
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

- 1 Page 6, lines 15 - 17:
- 2 Delete ". This section does not apply to an offer made by a defendant in an
- 3 action in which there are two or more defendants, unless all the defendants join in the
- 4 offer"

4/9/96
SR
moved
Adopted
p.m

9-LS0328R.12
Ford
4/1/96

A M E N D M E N T

SENATE FINANCE
COMMITTEE

Amendment Number: 10

Bill Number: _____

Sponsor: _____ Date: 4/2/96

Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 7, line 10, following "before":
- 2 Insert "or after"

4/9/96
PM
SR
Mover
Adopted

9-LS0328R.13
Ford
4/1/96

A M E N D M E N T

SENATE FINANCE
COMMITTEE
Amendment Number: 11
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 7, line 21, following "experience":
- 2 Insert "or who meet other qualifications as prescribed by the court"

4/9/96
pm
3R
moud
Adopted

9-LS0328\R.14
Ford
4/1/96

A M E N D M E N T

SENATE FINANCE
COMMITTEE
Amendment Number: 12
Bill Number: _____
Sponsor: _____ Date: 4/2/96
Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 8, line 9, following "photographs.":
- 2 Insert "This paragraph may not be construed to require the arbitrator to use or rely on
- 3 any documents that the arbitrator has reason to doubt as to the document's authenticity or
- 4 accuracy."

4/19/96
pm
SR
moved
as
amended
A. Lusk

9-LS0328R.15
Ford
4/1/96

A M E N D M E N T

SENATE FINANCE
COMMITTEE
Amendment Number: 13
Bill Number: _____
Sponsor: _____ Date: 4/19/96
Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

1 Page 6, lines 1 - 24:

2 Delete all material and insert:

3 **** Sec. 10.** AS 09.30.065 is repealed and reenacted to read:

4 Sec. 09.30.065. OFFERS OF JUDGMENT. (a) At any time more than 10
5 days before the trial begins either the party making a claim or the party defending
6 against a claim may serve upon the adverse party an offer to allow judgment to be
7 entered in complete satisfaction of the claim for the money or property or to the effect
8 specified in the offer, with costs then accrued. If within 10 days after the service of
9 the offer the adverse party serves written notice that the offer is accepted, either party
10 may then file the offer and notice of acceptance together with proof of service, and
11 the clerk shall enter judgment. An offer not accepted within 10 days is considered
12 withdrawn and evidence of that offer is not admissible except in a proceeding to
13 determine the form of judgment after verdict.

14 (b) If the judgment finally entered on the claim as to which an offer has been
15 made under this section is at least five percent less favorable to the offeree than the
16 offer, the offeree shall pay costs as allowed under the Alaska Rules of Civil Procedure
17 and all reasonable attorney fees incurred by the offeror from the date the offer was
18 made: ~~This section does not apply to an offer made by a defendant in an action in~~
19 ~~which there are two or more defendants, unless all the defendants join in the offer.~~

20 Page 8, line 27:

21 Delete "AS 09.30.065"

22 Insert "AS 09.30.065(b)"

4/9/96
pm Last sentence deleted.

4-9-96
pm
Adopted

9-LS0328\R.16
Ford
4/1/96

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

SENATE FINANCE
COMMITTEE

Amendment Number: 14

Bill Number: _____

Sponsor: _____ Date: 4/2/96

Logged In By: _____

1 Page 9, line 22:

2 Delete "staff"

3

4 Page 10, line 1, following "services":

5 Insert "offered by the health care provider"

6 Page 10, line 10:

7 Delete "is a member of a hospital's medical staff or who has otherwise"

8 Insert "has"

4/9/96
pm

9-LS0328VR.17

Ford

4/1/96

SR
Adoptive

A M E N D M E N T

OFFERED IN THE SENATE

TO: SCS CSHB 158(JUD)

SENATE FINANCE
COMMITTEE

Amendment Number: 15

Bill Number: _____

Sponsor: _____ Date: 4/2/96

Logged In By: _____

- 1 Page 1, lines 3 - 4:
- 2 Delete "; and providing for an effective date"

- 3 Page 12, lines 12 - 18:
- 4 Delete all material.

4/9/96
pm

SR
9-LS0328\ Amend.

#16
p. 7, line 8
Adopted

SENATE CS FOR CS FOR HOUSE BILL NO. 158^{FIN}(~~JUD~~)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/8/96
Referred: L&C, FIN

Sponsor(s): REPRESENTATIVES PORTER, Toohy, Mulder, Ogan

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Rules 68, 82(b), and 95, Alaska Rules
2 of Civil Procedure, repealing Rule 72.1, Alaska Rules of Civil Procedure, and
3 amending Rule 601, Alaska Rules of Evidence; and providing for an effective
4 date."

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

6 * Section 1. PURPOSE. It is the purpose of this Act to
7 (1) enact further reforms that create a more equitable distribution of the cost
8 and risk of injury;
9 (2) reduce costs associated with the civil justice system, while ensuring that
10 adequate and appropriate compensation for persons injured through the fault of others is
11 available;
12 (3) help match losses with compensation by helping to
13 (A) ensure that money paid to an injured person is available when
14 anticipated expenses or losses occur;

1 (B) ensure that a claimant with substantial injury requiring long-term
2 treatment will have money available for future medical care;

3 (C) reduce reparation system costs by eliminating those portions of
4 awards that are not needed to compensate the claimant;

5 (D) eliminate duplicate recoveries;

6 (E) reduce the costs of litigation;

7 (F) establish appropriate thresholds for a damage award in order to
8 allow predictability of liability exposure; and

9 (G) reduce the ultimate costs to the state and to local governments of
10 providing medical services to those who cannot otherwise afford those services;

11 (4) reduce the amount of litigation proceeding to trial by modifying the
12 allocation of attorney fees and court costs based on the offer of judgment and the final court
13 award thereby providing a financial incentive to both parties to settle the dispute;

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

16 (6) clarify the circumstances in which hospitals are held directly liable for the
17 actions of health care providers not employed by the hospital;

18 (7) encourage health care providers to provide quality medical care in all areas
19 of this state at a cost that is affordable;

20 (8) stabilize the rapidly escalating costs of health care by curtailing the rapid
21 escalation in malpractice premiums and thereby make broader based health care available to
22 more residents of the state;

23 (9) require that one-half of punitive damages awarded by a court be deposited
24 into the general fund for the benefit of the public welfare and to deter future harm to the
25 public.

26 * **Sec. 2.** AS 09.10.055 is repealed and reenacted to read:

27 **Sec. 09.10.055. STATUTE OF REPOSE OF 15 YEARS.** (a) Notwithstanding
28 the disability of minority described under AS 09.10.140(a), a person may not bring an
29 action for personal injury, death, or property damage unless commenced within 15
30 years of the earlier of the date of

31 (1) substantial completion of the construction alleged to have caused

1 the personal injury, death, or property damage; however, the limitation of this
2 paragraph does not apply to a claim resulting from an intentional or reckless disregard
3 of specific project design plans and specifications or building codes; or

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

6 (b) This section does not apply if

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

8 (A) exposure to a hazardous substance; in this subparagraph,
9 "hazardous substance" means an element or compound that, when it enters into
10 the air or on the surface or subsurface land or water of the state, presents an
11 imminent and substantial danger to public or individual health and welfare;

12 (B) an intentional act or gross negligence;

13 (C) fraud or fraudulent misrepresentation;

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

15 (E) a defective product; in this subparagraph, "product" means
16 an object that has intrinsic value, is capable of delivery as an assembled whole
17 or as a component part, and is introduced into trade or commerce; "product"
18 includes an element or compound that if ingested by humans or if humans are
19 exposed to, or are in contact with the element compound or product, poses a
20 threat to human health;

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

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

25 (4) a longer period of time for bringing the action was provided under
26 a contract.

27 (c) The limitation imposed under (a) of this section is tolled during any period
28 in which there exists the presence of a foreign body in the body of the injured person
29 and the action is based on the presence of the foreign body.

30 (d) In this section, "substantial completion" means the date when construction
31 is sufficiently completed to allow the owner or a person authorized by the owner to

1 occupy the improvement or to use the improvement in the manner for which it was
2 intended.

3 * Sec. 3. AS 09.10.070 is amended to read:

4 Sec. 09.10.070. ACTIONS FOR CERTAIN TORTS AND CERTAIN
5 STATUTORY LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as
6 otherwise provided by law, a [A] person may not bring an action (1) for libel,
7 slander, assault, battery, seduction, or false imprisonment [, OR FOR ANY INJURY
8 TO THE PERSON OR RIGHTS OF ANOTHER NOT ARISING ON CONTRACT
9 AND NOT SPECIFICALLY PROVIDED OTHERWISE]; (2) upon a statute for a
10 forfeiture or penalty to the state; or (3) upon a liability created by statute, other than
11 a penalty or forfeiture; unless the action is commenced within two years.

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

13 Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO
14 PERSON OR PROPERTY. (a) A person may not bring an action for personal injury,
15 death, property damage, or injury to the rights of another not arising on contract,
16 unless the action is brought within two years of the accrual of the action.

17 (b) This section does not apply if a shorter period of time for bringing the
18 action is imposed under another provision of law.

19 * Sec. 5. AS 09.17.020 is amended to read:

20 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
21 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear
22 and convincing evidence of outrageous conduct, including acts done with malice or
23 bad motives, or reckless indifference to the interest of another person.

24 * Sec. 6. AS 09.17.020 is amended by adding new subsections to read:

25 (b) The amount of punitive damages awarded by a court or jury under (a) of
26 this section may not exceed three times the amount of compensatory damages awarded
27 or \$300,000, whichever amount is greater.

28 (c) The limit under (b) of this section does not apply to punitive damages
29 awarded by a court or jury against a person who, as proven by a preponderance of the
30 evidence, was attempting to commit or committing a felony if the person bringing the
31 action was a victim of that offense and the offense substantially contributed to the

1 injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

2 (d) If a person receives an award of punitive damages, the court shall require
3 that one-half of the award be deposited into the general fund of the state. This
4 subsection does not grant the state the right to file or join a civil action to recover
5 punitive damages.

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

7 (e) If a judgment is paid by periodic payments, the [THE] court shall
8 [MAY] require security be posted [,] in order to ensure that funds are available as
9 periodic payments become due. [THE COURT MAY NOT REQUIRE SECURITY
10 TO BE POSTED IF AN AUTHORIZED INSURER, AS DEFINED IN AS 21.90.900,
11 ACKNOWLEDGES TO THE COURT ITS OBLIGATION TO DISCHARGE THE
12 JUDGMENT.]

13 * Sec. 8. AS 09.17.040(f) is amended to read:

14 (f) A judgment ordering payment of future damages for personal injury or
15 death by periodic payment shall specify the recipient, the dollar amount of the
16 payments, including any increases in future payments for anticipated inflation, the
17 interval between payments, and the number of payments or the period of time over
18 which payments shall be made. Payments may be modified only in the event of the
19 death of the judgment creditor, in which case payments may not be reduced or
20 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
21 of support, as provided by law, immediately before death. In the event the judgment
22 creditor owed no duty of support to dependents at the time of the judgment creditor's
23 death, the money remaining shall be distributed in accordance with a will of the
24 deceased judgment creditor accepted into probate or under the intestate laws of the
25 state if the deceased had no will. In this subsection, "inflation" means the change
26 in the Consumer Price Index for Anchorage, all items index, compiled by the
27 Bureau of Labor Statistics, United States Department of Labor.

28 * Sec. 9. AS 09.17.080 is amended by adding a new subsection to read:

29 (e) Notwithstanding any other provision of this section, fault may not be
30 allocated to a person against whom an action cannot be brought as a result of
31 application of a statute of repose, including AS 09.10.055.

1 * Sec. 10. AS 09.30.065 is amended to read:

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

20 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE
21 INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR;

22 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE
23 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
24 YEAR].

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

26 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments and
27 decrees for the payment of money, including prejudgment interest, is three percent
28 above the interest rate set by the United States Bureau of the Public Debt for five-
29 year treasury notes in effect on the day on which the judgment or decree is entered
30 [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in
31 writing, providing for the payment of interest until paid at a specified rate not exceeding
32 the legal rate of interest for that type of contract, bears interest at the rate specified in

1 the contract if the interest rate is set out in the judgment or decree.

2 * Sec. 12. AS 09.55.535 is repealed and reenacted to read:

3 Sec. 09.55.535. MANDATORY ARBITRATION. (a) A person who files an

4 action for personal injury, death, or property damage shall also submit the claim to the

5 court for arbitration ^{or if requested by one of the parties <no action>} unless the action is excluded under (b) of this section.

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

7 (1) amount in controversy, excluding interest, costs, and attorney fees,

8 exceeds \$100,000; ^{or is eligible for small claims court;} this paragraph does not apply if, for purposes of arbitration only, the

9 person bringing the claim waives the amount in controversy that exceeds \$100,000;

10 (2) parties have, under a written agreement made before the accrual of

11 the action, agreed to submit the claim to arbitration; or

12 (3) action

13 (A) is a class action;

14 (B) seeks equitable or declaratory relief;

15 (C) concerns the title to real property;

16 (D) is a probate action;

17 (E) is an appeal from a court of limited jurisdiction;

18 (F) involves divorce or domestic relations;

19 (G) is an appeal from action by an administrative agency.

20 (c) The court shall maintain a list of attorneys with at least five years of civil

21 practice experience, or retired judges, who have consented to serve as arbitrators. From

22 the list of attorneys or retired judges the court shall appoint an arbitrator to review the

23 claim and conduct the hearing. Each party may exercise a peremptory challenge of an

24 arbitrator appointed by the court.

25 (d) A party to arbitration shall comply with the Alaska Rules of Civil Procedure

26 regarding mandatory discovery and may also take the deposition of an opposing party

27 or conduct a mental or physical examination as allowed under the Alaska Rules of Civil

28 Procedure. A party may not conduct further discovery except as allowed by the

29 arbitrator or as allowed by agreement between the parties. Discovery shall be completed

30 within 30 days after the arbitrator is selected, except as otherwise allowed by the

31 arbitrator.

32 (e) The arbitrator shall set a date for a hearing on the claim. The hearing date

4/9/96
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Adopted

1 shall be as soon as feasible, but not more than 60 days after the selection of the
2 arbitrator, except as allowed by the arbitrator.

3 (f) The arbitrator shall conduct the hearing as necessary to ascertain facts in a
4 timely manner. A witness may testify telephonically if allowed by the arbitrator. The
5 Alaska Rules of Evidence do not apply to an arbitration hearing, except as determined
6 by the arbitrator or by the Alaska Supreme Court. The Alaska Supreme Court shall
7 establish a list of documents that shall be presumptively admissible in an arbitration
8 hearing without prior establishment of authenticity or foundation, including bills, reports,
9 medical records, or photographs.

10 (g) An arbitrator shall render a decision within 30 days after hearing a claim
11 under (e) of this section. The decision must contain findings of fact, conclusions of law,
12 and an award or denial of damages. The decision of the arbitrator may be rejected by
13 a party.

14 (h) Not more than seven days after the decision of the arbitrator is issued, a
15 party may reject the decision of the arbitrator and file a request with the appropriate
16 court for a trial on all issues raised by the claim. A timely filed request for trial shall
17 proceed in the appropriate court.

18 (i) In a trial of a claim that has been arbitrated under this section, the decision
19 of the arbitrator is admissible to the extent allowed under applicable rules of court, but
20 the arbitrator may not be called as a witness. If a party rejects the decision of the
21 arbitrator and litigates the claim in court, but fails to improve that party's position, the
22 court shall award costs as allowed by law or under the Alaska Rules of Civil Procedure
23 and reasonable attorney fees to the opposing party.

24 (j) The Alaska Supreme Court shall adopt rules necessary to implement this
25 section.

26 (k) Notwithstanding AS 09.30.065, a claim subject to arbitration under this
27 section is not subject to the offer of judgment provisions of AS 09.30.065.

28 * Sec. 13. AS 09.55 is amended by adding a new section to read:

29 Sec. 09.55.551. **EXPERT WITNESS QUALIFICATION.** In an action based
30 upon professional negligence, a person may not testify as an expert witness on the issue
31 of the appropriate standard of care unless the witness is a professional who is licensed
32 in this state or is licensed in another state or country and

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

3 (2) is certified by a board recognized by the state as having
4 acknowledged expertise and training directly related to the particular field or matter at
5 issue.

6 * Sec. 14. AS 09.55.560 is amended by adding a new paragraph to read:

7 (4) "professional negligence" means a negligent act or omission in
8 rendering professional services.

9 * Sec. 15. AS 09.65 is amended by adding a new section to read:

10 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.

11 (a) A hospital is not liable for civil damages as a result of an act or omission by a
12 health care provider who is not an employee or actual agent of the hospital if the hospital
13 provides notice that the health care provider is an independent contractor and the health
14 care provider is insured as described under (c) of this section. The notice required by
15 this subsection must be posted conspicuously in all admitting areas of the hospital,
16 published at least annually in a newspaper of general circulation in the area, and must
17 be in substantially the following form:

18 Notice of Limited Liability

19 The following health care providers are independent contractors
20 and are not employees of the hospital:

21 (List specific health care providers)

22 The hospital is responsible for exercising reasonable care in granting staff privileges to
23 practice in the hospital, for reviewing those privileges on a regular basis, and for taking
24 appropriate steps to revoke or restrict privileges in appropriate circumstances. The
25 hospital is not otherwise liable for the acts or omissions of a health care provider who
26 is an independent contractor.

27 (b) This section does not preclude liability for civil damages that are the
28 proximate result of the hospital's own negligence or intentional misconduct.

29 (c) A hospital is not immune from liability under (a) of this section for an act
30 or omission of a health care provider who is an independent contractor unless the
31 health care provider has liability insurance coverage in the amount of at least
32 \$2,500,000 per incident and the coverage is in effect and applicable to those health

1 care services that the hospital is required to provide by law or by accreditation
2 requirements.

3 (d) In this section,

4 (1) "health care provider" means a doctor of medicine, psychologist,
5 osteopath, dentist, optometrist, chiropractor, optician, pharmacist, podiatrist, or certified
6 registered nurse anesthetist, who is licensed in this state;

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

9 (3) "independent contractor" means a licensed health care provider who
10 ~~is a member of a hospital's medical staff or who has otherwise~~ been granted specified
11 privileges to render health care services directly or indirectly to patients at the hospital,
12 but who is not an employee or actual agent of the hospital in connection with the
13 rendition of the health care services.

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

15 Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A
16 FELONY. (a) A person who suffers personal injury or property damage may not
17 recover damages for the personal injury or property damage if the injury occurred while
18 the person was committing or attempting to commit a felony, or fleeing from the
19 commission of a felony, and the person has been convicted of the felony, including
20 conviction based on a guilty plea or plea of nolo contendere, and the felony substantially
21 contributed to the injury or property damage.

22 (b) The personal representative of a deceased person may not recover damages
23 for the person's death if the court determines by clear and convincing evidence that the
24 death occurred while the person was committing or attempting to commit a felony, or
25 fleeing from the commission of a felony, and that the felony substantially contributed to
26 the death.

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

28 Sec. 09.68.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER
29 PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party represented
30 by an attorney shall be signed by at least one attorney of record in the attorney's
31 individual name, whose address shall be stated. A party who is not represented by an
32 attorney shall sign the party's pleading, motion, or other paper and state the party's

1 address. Except when otherwise specifically provided by the Alaska Rules of Civil
2 Procedure or statute, pleadings need not be verified or accompanied by affidavit. The
3 signature of an attorney or party constitutes a certificate by the signer that the signer has
4 read the pleading, motion, or other paper; that to the best of the signer's knowledge,
5 information, and belief formed after reasonable inquiry it is well grounded in fact and
6 is warranted by existing law or a good faith argument of the extension, modification, or
7 reversal of existing law; and that it is not interposed for any improper purpose, including
8 to harass or to cause unnecessary delay or needless increase in the cost of litigation. If
9 a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed
10 promptly after the omission is called to the attention of the pleader or movant. If it is
11 alleged or appears that a pleading, motion, or other paper is signed in violation of this
12 section, the court, upon motion or upon its own initiative, may set the matter for hearing.
13 If the court determines that a pleading, motion, or other paper is signed in violation of
14 this section, the court shall impose upon the person who signed it, a represented party,
15 or both, an appropriate sanction that may include an order to pay to the other party the
16 amount of the reasonable expenses incurred because of the filing of the pleading, motion,
17 or other paper, including costs and attorney fees, and monetary sanctions not to exceed
18 \$10,000.

19 * Sec. 18. AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.548, 09.55.560(2),
20 and 09.55.560(3) are repealed.

21 * Sec. 19. Rule 68, Alaska Rules of Civil Procedure, is amended by adding a new subsection
22 to read:

23 (d) The provisions of this rule do not apply to a claim subject to arbitration
24 under AS 09.55.535.

25 * Sec. 20. AS 09.30.065, as amended by sec. 10 of this Act, has the effect of amending Rule
26 68, Alaska Rules of Civil Procedure, by changing the provisions governing offers of judgment
27 and by providing that the rule does not apply to an offer in a civil action in which there are two
28 or more defendants, unless all defendants join in the offer.

29 * Sec. 21. Rule 72.1, Alaska Rules of Civil Procedure, is repealed.

30 * Sec. 22. AS 09.55.535(i), enacted in sec. 12 of this Act, has the effect of amending Rule
31 601, Alaska Rules of Evidence, by prohibiting the use of an arbitrator as a witness in a
32 subsequent trial.

1 * Sec. 23. AS 09.55.535(i), enacted in sec. 12 of this Act, has the effect of amending Rule
2 82(b), Alaska Rules of Civil Procedure, by allowing the award of reasonable attorney fees in
3 certain actions.

4 * Sec. 24. AS 09.68.125, as enacted in sec. 17 of this Act, has the effect of amending Rule
5 95, Alaska Rules of Civil Procedure, by requiring imposition of sanctions for certain failures to
6 sign pleadings, motions, or other papers.

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

10 * Sec. 26. APPLICABILITY. This Act applies to all causes of action accruing on or after
11 the effective date of this Act.

12 * Sec. 27. This Act takes effect only if, on or before December 31, 1999, the director of the
13 division of insurance certifies to the lieutenant governor and to the revisor of statutes that the
14 liability insurance rates filed with the division of insurance have been reduced by at least 10
15 percent from those rates filed on January 1, 1995. In this section, "liability insurance" has the
16 meaning given in AS 21.12.070(a)(2).

17 * Sec. 28. If the condition described in sec. 27 of this Act is fulfilled, this Act takes effect
18 30 days after the date of the certification described in sec. 27 of this Act.

4/10/96

Copy given to
Larry. Hold for
direction from him.

sh

copy of letter dated 1/11, not sent
given to Larry also

4/20/96

11:45 am

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 158 (FIN)

Revision Date: 04/10/96

Dept. Affected: Alaska Court System

Title: Tort Reform

BRU: Trial Courts

Component: _____

Sponsor: Rep. Porter

Requestor: _____

COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	10.0	10.0	10.0	10.0	10.0	10.0
TRAVEL						
CONTRACTUAL	852.0	852.0	852.0	852.0	852.0	852.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	862.0	862.0	862.0	862.0	862.0	862.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (
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Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	862.0	862.0	862.0	862.0	862.0	862.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	862.0	862.0	862.0	862.0	862.0	862.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 04/10/96

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 04/10/96

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Alaska Court System
Fiscal Analysis
SCS CSHB 158 (FIN)

SCS CSHB 158 (FIN) am proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, several of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

Section 10 modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed over 10,000 times per year, so even small increases in time spent per case can have a major impact on clerical staff. This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 11 requires all tort claims of \$100,000 or less to be submitted to non-binding arbitration. A total of 1,422 tort claims were filed in superior and district court in FY 95. An estimated 1,067 would be subject to mandatory arbitration. Arbitrators in Anchorage who are attorneys or former judges typically charge \$150 - \$175 per hour for their services. Arbitrators specializing in tort arbitration advise that this process can be expected to last two to five days (including time for drafting a decision, making decisions on allowable discovery, etc.), for a charge of \$2400 to \$7000. The supreme court will adopt rules requiring parties to pay the costs of arbitration. However, the state will still incur substantial costs from this process because if arbitration is mandatory, the state will be required to pay the costs for those plaintiffs and defendants who are legally indigent. This fiscal note assumes that the average arbitration will cost \$4000, and that 20 percent of litigants will be indigent. Note that 95 percent of all tort cases already settle before trial, and thus arbitration will not appreciably reduce court costs for those cases. The cases which go to trial are those in which after full discovery, the parties still can not agree on the value a jury will put on a claim. Those cases are unlikely to settle as a result of an arbitrator's opinion rendered early in the process. Thus, this section will probably not reduce the state's costs of running the civil justice system.

Section 16 essentially codifies Civil Rule 11, with one significant difference. CR 11 gives a judge the discretion to impose sanctions in any civil case (not just tort cases)

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (FIN)

in which a party has engaged in improper practice. Section 17, on the other hand, would require a judge to impose sanctions in such cases. The federal courts imposed a similar requirement from 1983 to 1993. They experienced a tremendous increase in the number of requests for hearings and sanctions, as attorneys used this as a tool to gain advantage in litigation. As a result of this increase, the federal courts went back to a system almost identical to CR 11. This note assumes that the federal experience will be repeated in Alaska, and that additional judicial time will be spent in a significant percentage of the 24,000 civil cases filed per year.

SCS CSHB 158 (FIN) am can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by SCS CSHB 158 (FIN). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (FIN)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Additional judicial time necessitated by Section 17 to impose sanctions			\$10,000

Contractual Services

Cost of mandatory arbitration for indigent parties. This fiscal note assumes that 20% of the litigants (2 litigants per case) in the 1,067 cases subject to mandatory arbitration will be indigent and that arbitration will cost \$2,000 per litigant.

\$852,000

Modification of Statewide Court Information Processing System to provide automatic updating of prejudgment interest rates. This expenditure will reduce the personnel costs of entering interest rate information. This is a one-time cost.

5,000

Total Contractual Cost 857,000

Estimated Total Cost \$867,000

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 158 (FIN)

Revision Date: 04/10/96 Dept. Affected: Alaska Court System
 Title: Tort Reform BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Porter
 Requestor: _____ COMPONENT SERIAL NO. 768

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MISCELLANEOUS						
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CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

Fund Source (Thousands of Dollars)

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Estimate of any current year (FY 96) cost: None

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Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CHC* Phone: 264-8228
 Agency: Alaska Court System Date: 04/10/96
 Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CHC* Date: 04/10/96
 Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis
SCS CSHB 158 (FIN)

SCS CSHB 158 (FIN) am proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, several of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

Section 10 modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed over 10,000 times per year, so even small increases in time spent per case can have a major impact on clerical staff. This fiscal note reflects costs to streamline this process and thus keep clerical time increases to a minimum.

Section 11 requires all tort claims of \$100,000 or less to be submitted to non-binding arbitration. A total of 1,422 tort claims were filed in superior and district court in FY 95. An estimated 1,067 would be subject to mandatory arbitration. Arbitrators in Anchorage who are attorneys or former judges typically charge \$150 - \$175 per hour for their services. Arbitrators specializing in tort arbitration advise that this process can be expected to last two to five days (including time for drafting a decision, making decisions on allowable discovery, etc.), for a charge of \$2400 to \$7000. The supreme court will adopt rules requiring parties to pay the costs of arbitration. However, the state will still incur substantial costs from this process because if arbitration is mandatory, the state will be required to pay the costs for those plaintiffs and defendants who are legally indigent. This fiscal note assumes that the average arbitration will cost \$4000, and that 20 percent of litigants will be indigent. Note that 95 percent of all tort cases already settle before trial, and thus arbitration will not appreciably reduce court costs for those cases. The cases which go to trial are those in which after full discovery, the parties still can not agree on the value a jury will put on a claim. Those cases are unlikely to settle as a result of an arbitrator's opinion rendered early in the process. Thus, this section will probably not reduce the state's costs of running the civil justice system.

Section 16 essentially codifies Civil Rule 11, with one significant difference. CR 11 gives a judge the discretion to impose sanctions in any civil case (not just tort cases)

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (FIN)

in which a party has engaged in improper practice. Section 17, on the other hand, would require a judge to impose sanctions in such cases. The federal courts imposed a similar requirement from 1983 to 1993. They experienced a tremendous increase in the number of requests for hearings and sanctions, as attorneys used this as a tool to gain advantage in litigation. As a result of this increase, the federal courts went back to a system almost identical to CR 11. This note assumes that the federal experience will be repeated in Alaska, and that additional judicial time will be spent in a significant percentage of the 24,000 civil cases filed per year.

SCS CSHB 158 (FIN) am can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by SCS CSHB 158 (FIN). In this regard, note that several of the pro-~~cedural~~ attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (FIN)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Additional judicial time necessitated by Section 17 to impose sanctions			\$10,000

Contractual Services

Cost of mandatory arbitration for indigent parties. This fiscal note assumes that 20% of the litigants (2 litigants per case) in the 1,067 cases subject to mandatory arbitration will be indigent and that arbitration will cost \$2,000 per litigant.

\$852,000

Modification of Statewide Court Information Processing System to provide automatic updating of prejudgment interest rates. This expenditure will reduce the personnel costs of entering interest rate information. This is a one-time cost.

5,000

Total Contractual Cost 857,000

Estimated Total Cost \$867,000

FISCAL NOTE

Work Draft 4/23/96 Version D

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCSCSHB 158(RLS)

Revision Date: <u>4/25/96</u>	Dept. Affected: <u>Department of Law</u>
Title: <u>"...relating to civil actions; amending Rule 13(e), 68, and 82(b), Alaska Rules of Civil Procedure..."</u>	BRU: <u>Criminal Division, Civil Division</u>
Sponsor: <u>Representative Porter</u>	Component: <u>Criminal Division, General Legal Services</u>
Requester: <u>Senate Rules Committee</u>	COMPONENT SERIAL NO. <u>2085,2087</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	288.1	288.1	288.1	288.1	288.1	288.1
TRAVEL	12.5	12.5	12.5	12.5	12.5	12.5
CONTRACTUAL	110.0	110.0	110.0	110.0	110.0	110.0
SUPPLIES	8.1	8.1	8.1	8.1	8.1	8.1
EQUIPMENT	28.0	2.6	2.6	2.6	2.6	2.6
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	446.7	421.3	421.3	421.3	421.3	421.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF	268.5	252.8	252.8	252.8	252.8	252.8
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other - Interagency Receipts	178.2	168.5	168.5	168.5	168.5	168.5
TOTAL	446.7	421.3	421.3	421.3	421.3	421.3

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	3.0	3.0	3.0	3.0	3.0	3.0
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

In its earlier fiscal note comments, the Department of Law advised that HB 158 provides for far-reaching changes in state law that are intended to bring about reforms in a manner in which the state's civil justice system handles personal injury claims. At the time, we advised that the impact on the department's defense of personal injury claims would probably be negligible. However, since our last review the bill has been substantially altered, which will cause a substantial fiscal impact for the department. Of particular concern is new Section 21 as it appears in Version D of the Senate Rules Committee Work Draft, dated 4/23/96.

This section creates several new causes of action similar to but broader than common-law abuse of process, and makes some such causes of action compulsory claims and counterclaims in the underlying lawsuit. Claims against the opposing attorney would be filed in a separate, parallel suit. As drafted, this provision would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state that would have merit, but rather by encouraging a large number of unfounded claims that would increase.

Prepared by: <u>Richard I. Pegues, Director</u>	Phone: <u>465-3672</u>
Division: <u>Administrative Services Division</u>	Date: <u>4/25/96</u>
Approved by Commissioner: <u>Bruce M. Botelho, Attorney General</u>	Date: <u>4/25/96</u>
Agency: <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCSCSHB 158 (RLS)

ANALYSIS CONTINUATION:

litigation costs.

The department handles a disproportionate volume of pro se litigation, much of it initiated by prisoners. We estimate that in excess of 1000 pro se cases are pending at this time, in addition to several tens of thousands of pro se collection matters. We anticipate that many pro se litigants would assert that state filings and defenses violated this provision, would assert new claims on this basis in the main action, and would also file parallel suits against the state attorneys. This would complicate and increase the cost of handling litigation, and in some instances would force the state to hire private counsel to defend the state attorneys in the spin-off litigation. While the state could counterclaim on its own behalf under the provisions of Section 21, many of these litigants are judgment proof.

Section 21 would also complicate other litigation and increase state expenses. For example, we anticipate that the federal government would attempt to use these new causes of action as a defensive tool in suits the state has filed or will file against the United States or federal officials, and would seek to have the spin-off claims adjudicated by sympathetic federal judges. At a minimum, the state's legal costs would increase. (The increased defensive burden would fall solely on the state, since the United States is immune to liability under this provision, not having waived its sovereign immunity). Another potential source of expense would be suits by private citizens against troopers or other state employees. The Department of Law currently defends these suits under provisions of the collective bargaining agreements, but does not provide free representation for countersuits; these are left to the employee to bring through private counsel after the case is over. By making some such suits compulsory counterclaims in the main action, Section 21 could force the state to assert some claims of this type on the employee's behalf or, alternatively, lead the employee to hire private counsel to participate in the main action. Either eventuality would add complication and expense.

Overall, the Department estimates that Section 21 would increase the cost of litigation by about five percent in the civil division, and increase the cost of prisoners' rights litigation in the criminal division by about 12.5 percent. Based on the current number of equivalent positions handling civil litigation, this will result in an increase of two attorney positions in the civil division, one-half of an attorney position in the criminal division.

The department's weighted cost for an Attorney IV (journey-level trial attorney) is \$133,500 per year, excluding new position equipment. This cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel. Thus, the department's in-house staff cost would be \$267,000 for the civil division (\$133,500 in general funds and \$133,500 in interagency receipts), and \$66,800 in general funds for the criminal division. Additionally, due to conflicts, \$60,000 in outside counsel costs will probably be incurred by the civil division (half GF and half IAR), and \$15,000 in outside counsel GF costs will be incurred by the criminal division. Likewise, \$10,000 will be needed by the civil division for case travel (half GF and half IAR), and \$2,500 GF will be needed for case travel costs in the criminal division.

Finally, new positions include two PFT Attorney IVs and one PFT legal secretary in the civil division, and one PPT Attorney IV in the criminal division. Please also note that although no clerical support position is being added in the criminal division, proportionate support position funding is included in the standard attorney cost schedule to reduce clerics' support vacancy so that the new part-time attorney's clerical burden can be handled.

Amendments

~~1-15~~
16

(2) & (7) not offered
Phoned legal 4:50pm.

4/4/96
Withdrawn

9-LS0328\R.4

Ford
not offered

4/1/96

A M E N D M E N T

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

SENATE FINANCE
COMMITTEE
Amendment Number: 2
Bill Number: SCS (Jud)
Sponsor: _____ Date: 4/2/96
Logged In By: _____

- 1 Page 11, line 19:
- 2 Delete "09.55.548,"

4-4-96
SR

9-LS0328R.9

4/9/96 Ford
4/1/96

NOT OFFERED
PM

A M E N D M E N T

SENATE FINANCE
COMMITTEE

Amendment Number: 7

Bill Number: _____

Sponsor: _____ Date: 4/2/96

Logged In By: _____

OFFERED IN THE SENATE
TO: SCS CSHB 158(JUD)

- 1 Page 5, lines 28 - 31:
- 2 Delete all material.

- 3 Renumber the following bill sections accordingly.

- 4 Page 11, line 25:
- 5 Delete "sec. 10"
- 6 Insert "sec. 9"

- 7 Page 11, line 30:
- 8 Delete "sec. 12"
- 9 Insert "sec. 11"

- 10 Page 12, line 1:
- 11 Delete "sec. 12"
- 12 Insert "sec. 11"

- 13 Page 12, line 4:
- 14 Delete "sec. 17"
- 15 Insert "sec. 16"

- 16 Page 12, line 17:
- 17 Delete "sec. 27"
- 18 Insert "sec. 26"

- 1 Page 12, line 18:
- 2 Delete "sec. 27"
- 3 Insert "sec. 26"

FISCAL NOTE

No. 5

Version: CSHB 158 (FIN)

(H) Publish Date: 3/22/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: 03/20/95

Dept. Affected: Alaska Court System

Title: Tort Reform

BRU: Trial Courts

Components: _____

Sponsor: Rep. Porter

Requestor: _____

COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	3.1	3.1	3.1	3.1	3.1	3.1
TRAVEL						
CONTRACTUAL	7.9	7.9	7.9	7.9	7.9	7.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	11.0	11.0	11.0	11.0	11.0	11.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	11.0	11.0	11.0	11.0	11.0	11.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	11.0	11.0	11.0	11.0	11.0	11.0

POSITIONS

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Agency: Alaska Court System Date: 03/20/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CS* Date: 03/20/95
 Agency: Alaska Court System

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Alaska Court System
Fiscal Analysis
CSHB 158 (FIN)

CSHB 158 (Fin) proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, at least one of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

CSHB 158 (Fin) repeals and reenacts AS 09.17.070, relating to collateral benefits. This amendment essentially provides that the amount which a defendant owes to a plaintiff will be reduced by whatever insurance benefits or other benefits the plaintiff has already received as compensation. Implementation will require extra trial time, in order for the jury to hear testimony regarding the types of coverage which might be involved, the amounts paid, and determining which payments may be offset. The current statute relating to collateral benefits is substantially less complex. Moreover, at the present time only the judge hears the testimony, and then only if the jury has returned a verdict for the plaintiff. The proposed system is thus less efficient and results in longer trials and more jury costs.

CSHB 158 (Fin) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by CSHB 158 (Fin). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 last session conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 94, there were 875 tort cases filed. Approximately 38 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 47 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 38 default judgments entered, with all entered for the plaintiff. Determining collateral benefits will average one-half day of court time, including jury time. Time spent is discounted by two-thirds in default cases.

In district court in FY 94, there were 532 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and approximately 21 default judgments were entered. Because of the lower dollar value of cases, not as much time will be invested by litigants in determining collateral benefits; it is assumed that one-half as much court time will be used. District court jury costs are also less, because half as many jurors are used.

Alaska Court System

Fiscal Analysis

CSHB 158 (FIN)

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Personal Services</u>			
Pro Tem Judge, fully vested, Anchorage permanent part-time, 1 month	\$2,013	\$1,074	\$3,087
<u>Contractual Services</u>			
Jury Fees			7,925
Superior Court-			
38 - 1/2 day length collateral benefit hearings with 13 jurors at \$12.50 a half day (from trials)		6,175	
District Court-			
20 - 1/2 day length collateral benefit hearings with 7 jurors at \$12.50 a half day (from trials)		1,750	
			<hr/>
	Estimated Total Cost		<u>\$11,012</u>

FISCAL NOTE

No 4

Bill version: CS HB 158 (JUD)

(H) Publish Date: 3/8/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____
Title: Civil Liability

Department: Commerce and Economic Development

BRU: Insurance

Component: Operations

Sponsor: REPS. PORTER, Toohey

Requestor: Representative Porter

COMPONENT SERIAL NO. #354

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	
----------------------	--

CHANGE IN REVENUES	
--------------------	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ 0.0

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

ANALYSIS: (Attach a separate page if necessary)
No fiscal impact.

Prepared by: Joan Brown, Administrative Officer *[Signature]* Phone: 465-2597
 Division: Insurance Date: 2/8/95
 Approved by Commissioner: William L. Hensley *[Signature]* Date: 3/9/95
 Agency: Commerce and Economic Development

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 3
Bill Version: CS HB 158 (JUD)
(H) Publish Date: 3/8/95

Revision Date: _____
Title: "An Act relating to civil actions: amending Alaska Rules of Civil Procedure 49, 68, and 95....."
Sponsor: Porter and Toohey
Requestor: _____

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)
State agency civil liability claims exposure and the amount Risk Management will ultimately pay in liability loss settlements will be reduced by this legislation.
The extent of such savings is difficult to forecast, due to the uncertainty that any of the limitations in the type of claims that may be filed or amounts of damages that can be awarded will actually be realized in future liability claims that may be filed against the State arising from accidents that have not yet occurred.
Risk Management loss funding is collected solely through interagency receipts of premiums assessed each State agency.
In future years, Risk Management's liability premium assessments will reflect the reductions actually realized by this legislation as our premium charges are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director
Division: Risk Management

Phone: 465-5723
Date: _____

Approved by Commissioner: Mark Rover
Agency: Department of Administration

Date: 2/10/95

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FISCAL NOTE

NO. 2

Bill Version: CS HB 158 (JUD)

(H) Publish Date: 3/8/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to civil actions: amending Alaska Rules BRU: Legal Services
of Civil Procedure 49 and 68..." Component: Operations
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends Title 9, the Alaska Code of Civil Procedure, to provide various changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to create a more equitable distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be reduced, the impact on the department's defense of personal injury claims will be negligible..

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/13/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/13/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 158 (FIN)am
(ct rls pfl'd) (efd fld)

Revision Date: 2/3/96 Dept. Affected: Department of Law
 Title: "...relating to civil actions; amending Alaska Rule BRU: Civil Division
of Civil Procedure 95." Component: General Legal Services
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The amended version of CSHB 158 (FIN) amends Title 9, the Alaska Code of Civil Procedure, to provide far-reaching changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to change the distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted sharply away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be significantly reduced, the impact on the department's defense of personal injury claims will be negligible.

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/3/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/3/96
 Agency: Department of Law

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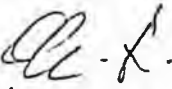
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 25, 1996

SUBJECT: Civil actions - (SCS CSHB 158(JUD))

TO: Senator Rick Halford
Attn: Larry Stevens

FROM: Michael F. Ford 
Legislative Counsel

The attached amendment 9-LS0328/R.3 corrects a drafting error made when the Senate Judiciary CS was produced. The repeal of AS 09.55.548 was in the House version because of sec. 10 of CSHB 158(FIN) am (ct rls pfd)(efd fld). That section was deleted in the Senate Judiciary CS and therefore the repeal of AS 09.55.548 should also have been removed from the Senate CS.

Please contact me if you have further questions.

MFF:glc:klb
96-182.glc

Attachment

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 158 (JUD)

Revision Date: 03/12/96 Dept. Affected: Alaska Court : em
 Title: Tort Reform BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Porter
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES				5.0	10.0	10.0
TRAVEL						
CONTRACTUAL				431.0	852.0	852.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	436.0	862.0	862.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (
----------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	436.0	862.0	862.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	436.0	862.0	862.0

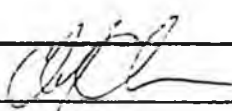

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel  Phone: 284-8228
 Agency: Alaska Court System Date: 03/12/96
 Approved by: Arthur H. Snowden, II, Administrative Director  Date: 03/12/96
 Agency: Alaska Court System

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

SCS CSHB 158 (JUD) am proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, several of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

Section 11 modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed over 10,000 times per year, so even small increases in time spent per case can have a major impact on clerical staff. This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 12 requires all tort claims of \$100,000 or less to be submitted to non-binding arbitration. A total of 1,422 tort claims were filed in superior and district court in FY 95. An estimated 1,067 would be subject to mandatory arbitration. Arbitrators in Anchorage who are attorneys or former judges typically charge \$150 - \$175 per hour for their services. Arbitrators specializing in tort arbitration advise that this process can be expected to last two to five days (including time for drafting a decision, making decisions on allowable discovery, etc.), for a charge of \$2400 to \$7000. The supreme court will adopt rules requiring parties to pay the costs of arbitration. However, the state will still incur substantial costs from this process because if arbitration is mandatory, the state will be required to pay the costs for those plaintiffs and defendants who are legally indigent. This fiscal note assumes that the average arbitration will cost \$4000, and that 20 percent of litigants will be indigent. Note that 95 percent of all tort cases already settle before trial, and thus arbitration will not appreciably reduce court costs for those cases. The cases which go to trial are those in which after full discovery, the parties still can not agree on the value a jury will put on a claim. Those cases are unlikely to settle as a result of an arbitrator's opinion rendered early in the process. Thus, this section will probably not reduce the state's costs of running the civil justice system.

Section 17 essentially codifies Civil Rule 11, with one significant difference. CR 11 gives a judge the discretion to impose sanctions in any civil case (not just tort cases)

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

in which a party has engaged in improper practice. Section 17, on the other hand, would require a judge to impose sanctions in such cases. The federal courts imposed a similar requirement from 1983 to 1993. They experienced a tremendous increase in the number of requests for hearings and sanctions, as attorneys used this as a tool to gain advantage in litigation. As a result of this increase, the federal courts went back to a system almost identical to CR 11. This note assumes that the federal experience will be repeated in Alaska, and that additional judicial time will be spent in a significant percentage of the 24,000 civil cases filed per year.

SCS CSHB 158 (JUD) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by SCS CSHB 158 (JUD). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

Alaska Court System
Fiscal Analysis
SCS CSHB 158 (JUD)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Additional judicial time necessitated by Section 17 to impose sanctions			\$10,000

Contractual Services

Cost of mandatory arbitration for indigent parties. This fiscal note assumes that 20% of the litigants (2 litigants per case) in the 1,067 cases subject to mandatory arbitration will be indigent and that arbitration will cost \$2,000 per litigant.

\$852,000

Modification of Statewide Court Information Processing System to provide automatic updating of prejudgment interest rates. This expenditure will reduce the personnel costs of entering interest rate information. This is a one-time cost.

5,000

Total Contractual Cost 857,000

Estimated Total Cost \$867,000



Alaska Office

4000 Old Seward Highway, Suite 201
Anchorage, Alaska 99503-6068(907) 563-5414
(907) 562-7804 FAX/MILL

By Fax with Hard Copy to Follow

April 19, 1994

Ms. Barbara Thurston
State of Alaska
Department of Commerce & Economic Development
Division of Insurance
PO Box 110805
Juneau, AK 99621-0805

Dear Ms. Thurston:

I am responding to your fax request for information received here on Friday, April 15, 1994. I understand that your inquiry is related to the current proposal in the legislature for a change in the statute of limitations. The maturation of our computer system and database over time did not allow me to obtain the information for you with a simple computer sort. Nevertheless, your inquiry piqued my curiosity and I have taken the time to manually extract the data that you have asked for. I hope you find it helpful.

From the time of its inception in 1976 as MICA to the present day as NORCAL, this company has had 21 suits arising out of the death of a minor. As you might expect, all of those cases were brought within the 2 year period, since the 2 year statute of limitations is applicable to a claim by the estate. In fact, 5 of the suits were brought within the year after the death and 16 more were brought in the second year. Six of the 21 cases were closed within a year of being filed; 2 with a payment and 4 without payment. Seven cases were closed within the second year of being filed; 2 with payment and 3 without payment. Five cases were closed in the third year after filing; 4 with payment and 1 without payment. Finally, 2 of the suits were closed within the fourth year after filing, both without payment. One of the cases remains open at the present time. That suit was filed within 2 years of the injury and we are now in the third year since it was filed. Nineteen of the death cases involved newborns in the first 8 months of life. The other 2 decedents were 18 months and 2 years old.

We have 44 suits involving injury of a minor. Six of them were brought within the first year after injury; 32 were brought within the 12-24 month post-injury period. Two more were brought in the third year after injury. Two were brought in the fifth year after injury and the remaining 2 were brought in the sixth year post-injury.

Eight of the 44 suits are pending as of this date. The other 36 are closed. Six were closed within a year after filing, with 3 involving payment and 3 closed without payment. Eleven were settled within 2 years of filing; 4 involved payment and 7 closed without payment. Twelve cases closed within the third year following the initiation of suit; 9 of them involved payment and 3 did not. Seven cases closed within the fourth year after suit was filed; 1 involved payment and 6 closed without payment.

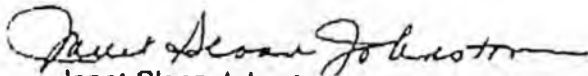
Twenty-four of these cases involved minors between newborns and under 8 months. Twelve of the minors were between the ages of 6 months and 12 years. Six children between the ages of 12 and 14 at the time of injury brought suit. Six more were injured when they were between ages 15 and 18.

My research confirmed my recollection as shared with you in our telephone conversation last week: there has never been a suit brought involving injury to a minor later than 6 years from the date of injury. Particularly when injury to the child is severe, I think there is a very compelling reason for suit to be brought within the first 2 years post-injury. While the child's claim may remain open for many years, the parent's claims for loss of consortium, emotional distress or the financial impact on the family that results from the birth of, for example, a brain damaged infant, are all claims that must be asserted within the first 2 years. Typically cases of severe injuries to minors are brought together with claims on behalf of their parents within the 2 year statute applicable to the parents.

I limited my research to actual suits. I did not go into claims asserted against our hospitals and physicians. There are a number of claims that have been asserted and either settled or rejected outside of litigation. I think the numbers there, were I to research them, would closely track what I have found in researching the suits.

I hope this information is helpful to you. Please do call if you have any questions.

Sincerely,



Janet Sloan Johnston
Branch Unit Manager, Claims

[sj/ks



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662 • FAX (907) 561-2063

April 2, 1996

Senator Mike Miller
Alaska State Legislature (MS 3100)
State Capitol
Juneau, AK 99801-1182

RE: HB 158 tort reform

Dear Senator Miller:

Attached is information about the rarity of late filing of claims of medical injury to infants and small children.

The data comes from the two largest insurers of physicians in Alaska, namely Norcal Mutual Insurance Company and Medical Insurance Exchange of California.

These data support our contention that it would be useful put language into HB 158 concerning claims of injury to infants and young children that a claim must be filed *within* two years of the alleged injurious event or until age eight, whichever date comes later.

Sincerely,

Rodman Wilson, MD
Acting Executive Director

MIEC

Medical Insurance Exchange of California

6250 Claremont Avenue • Oakland, CA 94618 • Telephone: (800)227-4527

FAX MESSAGE

DATE: April 1, 1996

No. of Pages Including this page: 1

Our FAX Number is: (510)654-4634

TO: Rodman Wilson, MD

FROM: Ron Neupauer

COMPANY: Alaska State Medical Association

RE: **Statute of Repose legislation**

Dear Doctor Wilson:

To answer the question you posed during this morning's telephone conversation I reviewed claims reported by MIEC's obstetrician and pediatrician policyholders over the last ten years.

Of 747 claims and suits reported by policyholders in these two specialties, only 14 (1.9%) resulted from medical incidents which occurred eight or more years prior to the date the claim was filed against the doctor.

Please let me know if you require any additional information about this.

Ron

Cordova District Fishermen United

Celebrating 61 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / Telephone (907) 424-3447 / Fax (907) 424-3430

DATE: April 3, 1996
TO: Honorable Senate Finance Committee Members
FROM: Dorne Hawxhurst, CDFU Executive Director
SUBJECT: House Bill 158-Tort Reform

Thank you for the opportunity to comment today on House Bill 158, a bill that Cordova District Fishermen United is strongly opposed to in its present form. On this page is the testimony we were prepared to deliver verbally this morning before the committee was interrupted and required to postpone its hearing. Please include it in the record, together with our prior comments about House Bill 158 that follows on the next two pages. Thank you for your consideration.

Punitive damages, by definition, should be of such an amount as to meaningfully punish a wrongdoer. For example, when the Exxon Corporation was found by an Alaskan jury to have been reckless in its behavior leading up to the 1989 oil spill disaster, that jury realized that any amount less than \$5 billion—the average equivalent of one year of profit for Exxon—would not be enough to punish a corporation of that size or actually teach the corporation a lesson. Had House Bill 158 been law prior to Exxon's reckless behavior, the corporation may not have been punished an amount in excess of approximately \$1 billion. One billion dollars is a lot to you and me. One billion dollars is "a drop in the bucket" to Exxon according to its former CEO.

With House Bill 158, your message to companies which act recklessly in Alaska is, "go ahead and cut corners." Reckless behavior becomes the cost-effective alternative to responsible behavior.

House Bill 158 is bad for business. House Bill 158 is bad for Alaska.

Thank you again for the opportunity to testify



Cordova District Fishermen United

Celebrating 60 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / Telephone (907) 424-3447 / Fax (907) 424-3430

October 17, 1995

The Honorable Robin A. Taylor
550 West 7th Avenue, Suite 600
Anchorage, Alaska 99501

Reference: House Bill 158, Tort Reform

Dear Senator Taylor:

It is my honor to write to you on behalf of Cordova District Fishermen United (CDFU). CDFU is the oldest fishing organization in Alaska. Our members include permit holders and crew participating in commercial fisheries in and around Prince William Sound and the Copper River. CDFU's mission is to preserve and perpetuate the fishing industry in Alaska and to promote safety at sea. Our recent experience with the tragedy/crisis of the *Exxon Valdez* oil spill compels us to write to you on the proposed tort reform bill, an issue critical to fishermen and to other working Alaskans.

The 1989 Exxon oil spill, the largest environmental disaster in American history, devastated Prince William Sound, and for a period of time ruined the lives and livelihoods of the people working to earn a living from the waters of the Sound. Some of those people recovered economically; some did not.

Not surprisingly, the fishermen of Prince William Sound and others filed suit against Exxon. It seems to me that that is what our courts are for, to protect the rights of American people from those who would otherwise freely take those rights away. Fortunately, the system worked in our case, and the fishermen (as well as Native subsistence resource users) were awarded their provable economic losses.

In addition, a conscientious jury of Alaskans decided that the Exxon Corporation recklessly allowed a known alcoholic to pilot a huge oil tanker through the clean waters of Prince William Sound. As an expression of societal disapproval, and as a deterrent to others who might be similarly reckless, the jury awarded substantial punitive damages to a mandatory "punitive damages class," composed of every Alaskan with provable losses caused by the spill, including fish processors, cannery workers, landowners, Native corporations, area businesses and oiled municipalities. If it survives the rigors of the appeal process, the award will be equitably shared among all these parties, who number well over 10,000 individuals and businesses.

Based on this experience, CDFU comments on two parts of the proposed tort reform bill that are particularly dangerous and offensive: the cap on noneconomic damages and the cap on punitive damages. Judge Holland allowed no noneconomic damages in the Exxon Case. Our compensatory damages award was based only on past provable receipts (and only through the 1993 fishing season). PWS continues to suffer ongoing damages that are depressing our fishing resources. It isn't over just because the trial ended. In truth, the real-life damages were much greater. For example, nothing was given for the cost to individuals and families of losing their property and their fishing vessels, for the emotional and financial cost of depression and family strife, and for the cost of sudden unexpected unemployment, all of which were very real and very common losses stemming from the oil spill.

Because of this experience, the fishermen and their families have learned first-hand what "noneconomic" losses are. Our experience is that they can be as great or much greater, in terms of real loss, than simple monetary damages might be. They are subjective because they are so tied to the experience of being human. But, that is

The Honorable Robin A. Taylor
October 16, 1995
page 2

no reason to arbitrarily limit or deny them to people. In fact, that is the very reason that determination of those kinds of damages must be left to juries of Alaskans to decide. For example, depending on its assets and resources, a \$10,000 monetary loss might be easily absorbed by some families. For other families it could set off a chain reaction leading to loss of a home and loss of hard-earned opportunities and dreams. That very real difference should be determined and accounted for on a case-by-case basis.

Surely there is no better example than the *Exxon Valdez* oil spill of why it would be criminal to cap punitive damages. Punitive damages exist to punish reckless and intentional wrongdoers and to prevent similar bad behavior in the future. It should go without saying that, to be effective, the punishment has to be felt by the bad guy. As Judge Holland ruled in the *Exxon Valdez* case:

A dollar amount which would seriously impact a small company might not even merit a footnote in annual report of one of the largest corporations in the world. If all companies, no matter how large or small, were assessed the same punishment for the same misconduct, the largest companies could afford to continue to misbehave.

If Alaska's legislators arbitrarily limit the amount of punitive damages available, they will not only have weakened the punishment available, they will actually have made some forms of bad behavior cost-effective. Absent the \$5 billion punitive damages award, the Prince William Sound Oil Spill may not have even appeared as a footnote on Exxon's financial statements. The \$5 billion punitive award represented just one year's net profits. One year after the Spill, in April of 1990, Exxon's chairman Mr. Rawl reassured Exxon's shareholders that, even taking into account the expense of the spill, "total shareholder return has averaged 23% compared to 20% of all S&P 500 companies. Exxon has remained financially strong, one of only 14 US-based industrial companies to merit a AAA credit rating." Thus, had damages been capped in the Exxon case, it would have been fair to say that the legislature had granted Exxon a license to despoil Alaska with relative impunity.

CDFU represents a group of hard-working Alaskans who are willing to accept a great deal of day-to-day risk to make a living in Alaska's commercial fisheries. We do not expect "something for nothing," nor do we support legislation that would accomplish that. However, we have had first-hand experience of suffering traumatic losses at the hands of a large, powerful, and wealthy wrongdoer. Based on that experience, we urge the Alaska legislature not to artificially limit damages available in court. Noneconomic damages allow jurors to evaluate the real-life losses that a person or family might have suffered through no fault of their own as the result of someone else's carelessness or worse. Limiting those damages forces the innocent victim to absorb the cost of another person's reckless behavior. It rewards the reckless person by allowing them to avoid paying the true cost of the injuries they cause.

Punitive damages are the only real hammer we have to stop people who would recklessly or intentionally hurt Alaskans for the sake of the "bottom line." If the legislature limits those tools, it does so only to the benefit of careless, reckless or intentional wrongdoers, and at the expense of ordinary Alaskans. In this era of increased emphasis on personal responsibility, it would be truly ironic if we enacted new laws that would allow those who recklessly harm others to evade responsibility for their actions.

For these reasons, we strongly urge the legislature to reject HB 158.

Sincerely,
CORDOVA DISTRICT FISHERMEN UNITED

Dorne Hawxhurst, Executive Director

ALASKA STATE
HOSPITAL & NURSING HOME
ASSOCIATION

April 2, 1996

Senator Rick Halford, Co-Chair
Senator Steve Frank, Co-Chair
Finance Committee
Alaska State Senate
Capitol Building
Juneau AK 99801

Re: Support Amendments
CSHB 158, Tort Reform

Dear Members of the Finance Committee:

Community hospitals and nursing homes from across the state join with other health care organizations, architects, engineers and the business community in asking the Senate Finance Committee to amend and pass and HB 158, the 1996 Comprehensive Liability (Tort) Reform Bill.

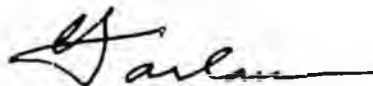
CSHB 158 addresses one of the most important issues confronting the Legislature this session. The cost of health care.

We would like the opportunity to work with you and your committee in revising CSHB 158. The Senate Judiciary Committee removed the section on "non-economic damages" and "collateral sources" which seriously weakens HB 158. The Judiciary Committee requirement (Section 27) to have liability premiums reduced by 10% by the end of 1999 is both unrealistic as it is unworkable.

We do not disagree with the language requiring physicians to have liability insurance (Section 15) but feel the requirement of \$2.5 million insurance coverage per incident is too costly.

Attached is our "statement" on the need for liability reform.

Sincerely,



Harlan R. Knudson
President/CEO

Encl: (1)

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

STATEMENT

SUPPORT - CSHB 158. COMPREHENSIVE LIABILITY REFORM

February, 1996

Community hospitals and nursing homes from across the state join with other health care organizations, architects, engineers and the business community in asking the Legislature to pass and the Governor to sign CSHB 158, the 1996 Comprehensive Liability Reform Bill.

CSHB 158 addresses one of the most important issues confronting the Legislature this session. The cost of health care.

It will not be possible to control costs within our healthcare system, if we do not control the costs related to the inefficiency of the liability system. Tillinghast, a consulting actuarial firm reported in 1992 that only 43% of tort costs of some \$132 billion nationwide went to the injured party. The remaining 57% went to the cost of litigation. (Administrative costs, 24%; defense costs 18% and plaintiff costs 15%.)

Medical liability costs include the cost of insurance, defensive medicine and the costs borne by the manufacturers of medicines and medical supplies.

Section 24, on page 14, line 29, of CSHB 158 is very to Alaska hospitals. Hospitals have become the deep pocket when uninsured or under-insured physicians are sued. An Alaska Supreme Court decision (Jackson v Power) holds hospitals liable for emergency room physician actions, even though the hospital or it's personnel did nothing wrong.

CSHB 158 is needed to help control health care costs and assure access to health services throughout Alaska.

For More Information Contact:

Harlan Knudson, President, ASHNEA
907-586-1790

ALASKA STATE HOSPITAL AND NURSING HOME ASSOCIATION
BACKGROUND - SUPPORT CSHB 158
1996 COMPREHENSIVE LIABILITY REFORM

1. IMPACT ON THE COST OF HEALTH CARE

A. Alaska Medical Malpractice Insurance Premium Costs

1982 - \$ 2,276,000
1992 - \$13,371,000

B. Comparison Liability Insurance Premiums Alaska Physicians & California Physician Where Components of CSHB 158 are the Law:

<u>Specialty</u>	<u>California</u>	<u>Alaska</u>
Anesthesia	\$10,000	\$26,500
Family Practice		
Minor Surgery	\$ 7,000	\$16,000
Major Surgery	\$19,000	\$26,500
Ob/Gyn	\$31,500	\$64,500

C. Cost of Defensive Medicine - Those procedures and tests ordered because of a perceived malpractice risk, and those procedures and tests not received by patients because of the perceived liability risk to the provider (i.e. provide gynecology but no obstetrics). A sample:

53% of 2.4 million skull x-rays ordered in emergency rooms across the country are reported not necessary. Estimated cost per x-ray \$140 x 1.27 million = \$178 million annual cost.

2. IMPACT ON ACCESS TO HEALTH CARE

Alaska's small rural communities continue to face the challenge of recruiting and retaining physicians, particularly family physicians wishing to provide obstetrical care. The cost of liability insurance is a factor in that recruitment process.

3. FAIRNESS WITHIN THE LEGAL SYSTEM

Liability claims of \$100,000 are not pursued because the cost of litigation would be more for the plaintiff than the award. There is no alternate process to resolve disputes. Why should it cost \$570,000 to return \$430,000 to an injured party?

INFORMATION ON THE ALASKA MEDICAL INDEMNITY CORPORATION (MICA)

MICA was created by the Alaska Legislature in 1975 to provide medical liability insurance for Alaska's physicians and hospitals. From 1975 to 1992 there 1258 cases were recorded. 172 claims were settled in the amount of \$25,878,228. \$9,772,447 was paid out in litigation expense. MICA was sold in 1990 because of potential federal tax liability that would have bankrupted the company.

More Information: Harlan Knudson, ASHNEA President, 907-586-1790.
4/95

Tort Reform Comparison

HB 158

Produced by House Judiciary, March 11, 1996

Section	Senate CS SHB-158 (OLD)	CSHB-158 (FINAL)
Statute of Repose.	15 years. Describes a time period within which any civil action must be filed with the court system.	8 years.
Certain Statutory Liabilities in two years.	Same.	The existing two year limit for actions involving libel, slander, assault, battery, seduction, or false imprisonment remains the same. This section removes unclear and conflicting language in statute.
Limitation on Actions Involving Injury to Personal Property.	Same.	Requires that a person commence a civil action for personal injury, death, or property damage within two years of the time the person knows, or should have known of the injury death or damage.
Noneconomic Damages.	Deleted.	Extends the definition for noneconomic losses to include claims for wrongful death. Limits damages to \$300,000 or \$500,000 for certain specified injuries. Provides an exception for damages awarded against a person committing or attempting to commit a felony.
Definition of Punitive Damages.	Same.	Clear and convincing evidence of outrageous conduct, including accidents with malice and bad motives, or reckless indifference to the interests of another person.
Award of Punitive Damages.	Same.	Three times the amount of noneconomic and economic damages awarded or \$300,000, whichever is greater.
Security for Periodic Payments.	Court requires security to be posted for any entity or person..	The State, self insured municipalities, or an authorized insurer are exempted from this section.
Inflation Adjustments for Periodic Payments.	Same.	Clarifies the method for increases in future periodic payments to cover inflation.
Collateral Benefits.	Deleted.	Jury is told what compensation the plaintiff has received for their injury from other sources; such as existing insurance policies or another defendant. Additionally, this section does not apply to federally funded programs which must seek repayment under federal law; or death benefits under a life insurance policy; or under workers compensation.
Apportionment of Fault.	Fault is allocated to only the parties named in the lawsuit.	Apportion fault to every person who is at fault for a party's injuries, rather than just those named in the lawsuit.
Offers of Judgment.	This section does not apply to multiple defendants unless all defendants join in the offer.	States that if a party makes an offer within 5% of the judgment and the offeree declines it, the offeree must pay the offeror the costs and attorney fees incurred from the lawsuit.
Prejudgment Interest Defined.	Interest is set at 3% above the interest rate set by the U.S. Bureau of Public Debt for 5 year treasury notes in effect on the day on which the judgment is entered.	Interest is set at 3% above the 12th Federal Reserve District Discount Rate in effect on January 2nd of the year in which the judgment or decree is entered

Prejudgment Interest.	Deleted.	Interest may not be awarded on future economic and noneconomic damages, or punitive damages.
Civil Liability of Hospitals for Nonemployees.	Same, except health care provider must carry \$2.5 million in liability insurance.	Provides that a hospital is not liable for civil damages resulting from an act or omission by a health care provider who is not an employee or actual agent of the hospital. The hospital must provide notice that the health care provider is an independent contractor and the notice of limited liability.
Damages Resulting from the Commission of Crimes.	Equivalent.	Provides that a person committing, attempting to commit, or fleeing from the commission of a felony whose action substantially contributed to the person's injury or death, is prohibited from recovering damages. Further, a personal representative of a deceased person who was in the act of committing that felony may not recover damages.
Signing of Pleadings, Motions; Sanctions.	Deleted. Same	Court shall impose sanctions upon frivolous or unwarranted pleadings upon the person who signed them. Sanctions include paying the other party for attorney's fees and a fine not to exceed \$10,000.
Mandatory Arbitration.	Mandates arbitration for all claims that do not exceed \$100,000 in damages. Offers of judgment are not subject to arbitration.	Arbitration not mandated.
Expert Witness Qualifications.	Section pertains to all expert witness qualifications.	Section only pertains to medical expert witness qualifications.
Mandatory Insurance Rate Rollback.	Act takes effect only if, on or before December 31, 1999, the liability insurance rates filed with the Division of Insurance have been reduced by at least 10% from those rates filed on January 1, 1995.	Act takes effect upon passage.
Definitions of Professional Negligence and Services in malpractice actions.	Broadly defines professionals to include all professional services.	Defines professionals only with regard to a health care provider.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 158- (FIN)am
(ct rls pfld) (efd fld)

Revision Date: 2/3/96 Dept. Affected: Department of Law
 Title: "...relating to civil actions; amending Alaska Rule BRU: Civil Division
of Civil Procedure 95." Component: General Legal Services
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 2087

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The amended version of CSHB 158 (FIN) amends Title 9, the Alaska Code of Civil Procedure, to provide far-reaching changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to change the distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted sharply away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be significantly reduced, the impact on the department's defense of personal injury claims will be negligible.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/3/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/3/96
 Agency: Department of Law

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SENATE

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3701

March 7, 1996

MEMO TO FILE

ATTENTION: Nancy, Rhonda, Heidi
Senate Secretary's Office

BILL/RES. NO.: CS FOR HOUSE BILL NO. 158(FIN) am(ct rls
pfd)(efd fld) "An Act relating to civil actions; amending Alaska Rule of
Civil Procedure 95."

This bill/resolution has not yet received a do pass recommendation.

Leave this note in the file.

Thank you.

SENATE COMMITTEE REPORT

DATE: 3/8/96

FURTHER: Finance

DATE TURNED INTO OFFICE: 3/14/96

The Labor & Commerce Committee considered CS FOR HB158(FIN) am(ct rls pld)(efd fld)
 Relating to civil actions; amending Alaska Rule of Civil Procedure 95.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous 5 CS CS HR 158 (jud)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		Mike Miller			✓
		John Ferguson			✓
		J. E. Saco	✓		
CHAIR: <u>Twin Kelly</u>		<u>Pass House Version</u>			AAA

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
✓ DOL	3/1/96	✓	
Commerce	3/1/96		.8
DOA	3/4/96	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE COMMITTEE REPORT

DATE: 5/1/95

FURTHER: L&C
Finance

DATE TURNED INTO OFFICE: 3/1/96

Judiciary Committee considered CS FOR HOUSE BILL NO. 158(FIN) am(ct rls pld)(efd fld)

Civil actions; amending Alaska Rule of Civil Procedure 95.

FISCAL FN
FORTHCOMING

FN+OFN

and recommends:

be replaced with SCS CS HB 158 (JUS)

adopt previous CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical change

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Lynley Green</i>			✓
		<i>Mike Miller</i>			✓
		<i>Al Adams</i>	②	X	UNCONSTIT - AT Draft Prob
CHAIR:		<i>Chris [Signature]</i>			✓

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

SCS	Dept. Law (Civil)	3/1/96	✓	
SCS	Finance (Disburse)	3/1/96		.8
SCS	Admin (Risk Mgt)	3/4/96	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

BILL: HB 158 SHORT TITLE: CIVIL LIABILITY
BILL VERSION: CSHB 158(FIN) AM(CT RLS PFLD)(EFD FLD)
SPONSOR(S): REPRESENTATIVE(S) PORTER, TOOHEY, MULDER, OGAN

CURRENT STATUS: (S) FIN

STATUS DATE: 03/18/96

TITLE: "AN ACT RELATING TO CIVIL ACTIONS; AMENDING ALASKA RULE OF CIVIL PROCEDURE 95."

02/06/95	253	(H)	READ THE FIRST TIME - REFERRAL(S)
02/06/95	253	(H)	JUDICIARY, FINANCE
03/08/95	635	(H)	JUD RPT CS(JUD) 4DP 2DNP
03/08/95	635	(H)	DP: VEZEY, GREEN, TOOHEY, BUNDE
03/08/95	635	(H)	DNP: FINKELSTEIN, B.DAVIS
03/08/95	635	(H)	FISCAL NOTE (COURT)
03/08/95	635	(H)	3 ZERO FISCAL NOTES (LAW, ADM, DCED)
03/09/95	691	(H)	COSPONSOR(S): MULDER
03/20/95	824	(H)	COSPONSOR(S): ROKEBERG
03/22/95	841	(H)	FIN RPT CS(FIN) 2DP 4NR 3AM
03/22/95	842	(H)	DP: MULDER, MARTIN
03/22/95	842	(H)	NR: HANLEY, PARNELL, THERRIAULT, FOSTER
03/22/95	842	(H)	AM: GRUSSENDORF, BROWN, NAVARRE
03/22/95	842	(H)	FISCAL NOTE (COURT)
03/22/95	842	(H)	3 ZERO FNS (LAW, ADM, DCED) 3/8/95
03/27/95	936	(H)	RULES TO CALENDAR 3/27/95
03/27/95	936	(H)	READ THE SECOND TIME
03/27/95	936	(H)	FIN CS ADOPTED UNAN CONSENT
03/27/95	936	(H)	AM NO 1 WITHDRAWN
03/27/95	937	(H)	AM NO 2 ADOPTED UNAN CONSENT
03/27/95	938	(H)	AM NO 3 FAILED Y17 N19 E4
03/27/95	939	(H)	AM NO 4 FAILED Y17 N19 E4
03/27/95	940	(H)	AM NO 5 FAILED Y16 N20 E4
03/27/95	941	(H)	AM NO 6 FAILED Y18 N18 E4
03/27/95	942	(H)	AM NO 7 FAILED Y18 N18 E4
03/27/95	944	(H)	AM NO 8 FAILED Y18 N18 E4
03/27/95	944	(H)	AM NO 9 ADOPTED UNAN CONSENT
03/27/95	945	(H)	AM NO 10 FAILED Y17 N19 E4
03/27/95	946	(H)	HELD IN SECOND READING TO 3/28 CALENDAR
03/28/95	955	(H)	AM NO 11 FAILED Y14 N19 E4 A3
03/28/95	956	(H)	AM NO 12 WITHDRAWN
03/28/95	957	(H)	RETURN TO RLS COMMITTEE
04/24/95	1468	(H)	RULES TO CALENDAR 4/24/95
04/24/95	1468	(H)	IN SECOND READING
04/24/95	1469	(H)	AM NO 13 OFFERED
04/24/95	1469	(H)	AM TO AM 13 ADOPTED UNAN CONSENT
04/24/95	1470	(H)	AM NO 13 AS AMENDED ADOPTED UNAN CONSENT
04/24/95	1470	(H)	AM NOS 14 & 15 NOT OFFERED
04/24/95	1470	(H)	AM NO 16 FAILED Y18 N20 E1 A1
04/24/95	1471	(H)	AM NO 17 FAILED Y18 N21 A1
04/24/95	1472	(H)	AM NO 18 ADOPTED UNAN CONSENT
04/24/95	1473	(H)	AM NO 19 ADOPTED Y21 N19
04/24/95	1473	(H)	AM NO 20 OFFERED
04/24/95	1474	(H)	AM NO 1 TO AM 20 FAILED Y20 N20
04/24/95	1475	(H)	AM NO 2 TO AM 20 FAILED Y20 N20
04/24/95	1475	(H)	AM NO 20 FAILED Y18 N22
04/24/95	1476	(H)	AM NO 21 ADOPTED UNAN CONSENT
04/24/95	1476	(H)	AM NO 22 OFFERED
04/24/95	1477	(H)	DIVISION OF AM 22 ADOPTED UNAN CONSENT

04/24/95	1477	(H)	AM NO 22, PT 1 FAILED Y18 N22
04/24/95	1478	(H)	AM NO 22, PT 2 FAILED Y19 N21
04/24/95	1479	(H)	AM NO 23 FAILED Y20 N20
04/24/95	1480	(H)	AM NO 24 FAILED Y18 N22
04/24/95	1481	(H)	AM NO 25 NOT OFFERED
04/24/95	1481	(H)	AM NO 26 FAILED Y19 N21
04/24/95	1482	(H)	AM NO 27 ADOPTED UNAN CONSENT
04/24/95	1483	(H)	AM NO 28 ADOPTED UNAN CONSENT
04/24/95	1483	(H)	AM NO 29 ADOPTED UNAN CONSENT
04/24/95	1483	(H)	AM NO 30 OFFERED
04/24/95	1485	(H)	HELD IN SECOND READING TO 4/25 CAL
04/25/95	1502	(H)	IN SECOND READING
04/25/95	1502	(H)	AM NO 30 FAILED Y17 N22 E1
04/25/95	1503	(H)	AM NO 31 WITHDRAWN
04/25/95	1503	(H)	AM NO 32 FAILED Y17 N22 E1
04/25/95	1504	(H)	AM NO 33 FAILED Y17 N22 E1
04/25/95	1505	(H)	AM NO 34 FAILED Y17 N22 E1
04/25/95	1505	(H)	AM NO 35 FAILED Y17 N22 E1
04/25/95	1506	(H)	AM NO 36 FAILED Y17 N22 E1
04/25/95	1507	(H)	AM NO 37 ADOPTED UNAN CONSENT
04/25/95	1508	(H)	AM NO 38 FAILED Y17 N22 E1
04/25/95	1508	(H)	AM NO 39 ADOPTED UNAN CONSENT
04/25/95	1509	(H)	AM NO 40 OFFERED
04/25/95	1509	(H)	AM TO AM 40 ADOPTED UNAN CONSENT
04/25/95	1509	(H)	AM NO 40 ADOPTED UNAN CONSENT
04/25/95	1510	(H)	AM NO 41 FAILED Y15 N24 E1
04/25/95	1510	(H)	AM NO 42 OFFERED
04/25/95	1511	(H)	AM TO AM 42 ADOPTED UNAN CONSENT
04/25/95	1511	(H)	AM NO 42 AS AMENDED FLD Y12 N27 E1
04/25/95	1512	(H)	AM NO 43 FAILED Y16 N23 E1
04/25/95	1512	(H)	AM NO 44 OFFERED
04/25/95	1513	(H)	AM 1 TO AM 44 UNAN CONSENT
04/25/95	1513	(H)	AM 2 TO AM 44 PASSED Y34 N5 E1
04/25/95	1514	(H)	AM NO 44 AS AMENDED ADOPTED UNAN CONSENT
04/25/95	1514	(H)	HELD IN SECOND READING TO 4/26 CALENDAR
04/26/95	1529	(H)	IN SECOND READING
04/26/95	1529	(H)	AM NO 45 FAILED Y16 N22 E1 A1
04/26/95	1530	(H)	AM NO 46, 47, 48 NOT OFFERED
04/26/95	1530	(H)	AM NO 49 FAILED Y17 N21 E1 A1
04/26/95	1531	(H)	AM 50 THRU 56 NOT OFFERED
04/26/95	1531	(H)	AM NO 57 FAILED Y17 N21 E1 A1
04/26/95	1532	(H)	AM NO 58 FAILED Y18 N21 E1
04/26/95	1533	(H)	AM NO 59 FAILED Y16 N22 E1 A1
04/26/95	1534	(H)	AM NO 60 NOT OFFERED
04/26/95	1534	(H)	AM NO 61 FAILED Y16 N22 E1 A1
04/26/95	1536	(H)	AM NO 62 FAILED Y16 N22 E1 A1
04/26/95	1536	(H)	AM NO 63 FAILED Y17 N22 E1
04/26/95	1537	(H)	AM NO 64 FAILED Y19 N20 E1
04/26/95	1538	(H)	AM NO 65 ADOPTED UNAN CONSENT
04/26/95	1539	(H)	ADVANCED TO THIRD READING 4/27 CALENDAR
04/26/95	1559	(H)	COSPONSOR(S): OGAN
04/27/95	1599	(H)	READ THE THIRD TIME CSHB 158(FIN)AM
04/27/95	1599	(H)	RETURN TO SECOND FOR AM 66 UNAN CONSENT
04/27/95	1599	(H)	AM NO 66 ADOPTED UNAN CONSENT
04/27/95	1599	(H)	AUTOMATICALLY IN THIRD READING
04/27/95	1600	(H)	PASSED Y24 N15 E1
04/27/95	1601	(H)	CT RULE/CIV PRO 49 FLD Y23 N16 E1
04/27/95	1601	(H)	CT RULE/CIV PRO 68 FLD Y23 N16 E1
04/27/95	1602	(H)	CT RULE/CIV PRO 95 PASSED Y28 N11 E1
04/27/95	1603	(H)	CT RULE/CIV PRO 702 FLD Y23 N16 E1

04/27/95	1604	(H)	EFFECTIVE DATE FAILED Y23 N16 E1
04/27/95	1604	(H)	NAVARRE NOTICE OF RECONSIDERATION
04/28/95	1640	(H)	HOLD TO 5/1 CAL FLD Y13 N25 E2
04/28/95	1640	(H)	RECON TAKEN UP - IN THIRD READING
04/28/95	1641	(H)	PASSED ON RECONSIDERATION Y23 N15 E2
04/28/95	1642	(H)	CT RULE/CIV PRO 49 FLD Y23 N15 E2
04/28/95	1643	(H)	CT RULE/CIV PRO 68 FLD Y23 N15 E2
04/28/95	1644	(H)	CT RULE/CIV PRO 95 FLD Y26 N12 E2
04/28/95	1644	(H)	CT RULE/CIV PRO 702 FLD Y23 N15 E2
04/28/95	1645	(H)	EFFECTIVE DATE FAILED Y23 N15 E2
04/28/95	1646	(H)	RESCIND PREVIOUS ACTION/FLG CT RULE 95
04/28/95	1647	(H)	PASSED Y31 N7 E2
04/28/95	1647	(H)	CT RULE/CIV PRO 95 PD Y33 N5 E2
04/28/95	1651	(H)	TRANSMITTED TO (S)
04/29/95	1681	(H)	COSPONSOR REMOVED: ROKEBERG
05/01/95	1376	(S)	READ THE FIRST TIME - REFERRAL(S)
05/01/95	1376	(S)	JUD, FIN
05/16/95	1899	(S)	L&C REFERRAL ADDED, L&C PRECEDES FIN
03/08/96	2656	(S)	JUD RPT SCS 2DNP 2AM (TITLE CHG)
03/08/96	2657	(S)	FISCAL NOTE TO SCS (DCED)
03/08/96	2657	(S)	FISCAL NOTE TO SCS FORTHCOMING (COURT)
03/08/96	2657	(S)	ZERO FISCAL NOTES TO SCS (LAW, ADM)
03/18/96	2773	(S)	L&C RPT 1NR 3 AM (JUD)SCS
03/18/96	2773	(S)	PREVIOUS FN (DCED)
03/18/96	2773	(S)	PREVIOUS ZERO FN (LABOR, ADM)
03/18/96	2773	(S)	REFERRED TO FINANCE
03/18/96	2773	(S)	REFERRED TO FINANCE

Updated by 11/19/96

1996 update
Note # 5

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 158 (FIN) AM

Revision Date: 02/05/96

Dept. Affected: Alaska Court System

Title: Tort Reform

BRU: Trial Courts

Sponsor: Rep. Porter

Component: _____

Requestor: _____

COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	3.0	3.0	3.0	3.0	3.0	3.0
TRAVEL						
CONTRACTUAL	7.9	7.9	7.9	7.9	7.9	7.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	11.0	11.0	11.0	11.0	11.0	11.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	11.0	11.0	11.0	11.0	11.0	11.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	11.0	11.0	11.0	11.0	11.0	11.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Phone: 264-8228
Date: 02/06/96

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Date: 02/06/96

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Alaska Court System
Fiscal Analysis
CSHB 158 (FIN) AM

CSHB 158 (Fin) am proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, at least one of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

CSHB 158 (Fin) am repeals and reenacts AS 09.17.070, relating to collateral benefits. This amendment essentially provides that the amount which a defendant owes to a plaintiff will be reduced by whatever insurance benefits or other benefits the plaintiff has already received as compensation. Implementation will require extra trial time, in order for the jury to hear testimony regarding the types of coverage which might be involved, the amounts paid, and determining which payments may be offset. The current statute relating to collateral benefits is substantially less complex. Moreover, at the present time only the judge hears the testimony, and then only if the jury has returned a verdict for the plaintiff. The proposed system is thus less efficient and results in longer trials and more jury costs.

CSHB 158 (Fin) am can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by CSHB 158 (Fin) am. In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 last session conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 94, there were 875 tort cases filed. Approximately 38 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 47 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 38 default judgments entered, with all entered for the plaintiff. Determining collateral benefits will average one-half day of court time, including jury time. Time spent is discounted by two-thirds in default cases.

In district court in FY 94, there were 532 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and approximately 21 default judgments were entered. Because of the lower dollar value of cases, not as much time will be invested by litigants in determining collateral benefits; it is assumed that one-half as much court time will be used. District court jury costs are also less, because half as many jurors are used.

Alaska Court System

Fiscal Analysis

CSHB 158 (FIN) AM

Personal Services

Position

Salary

Benefits

Total

Pro Tem Judge, fully vested, Anchorage, PPT, 1 month

\$2,013

\$1,028

\$3,041

Contractual Services

Jury Fees

7,925

Superior Court-

38 - 1/2 day length collateral benefit hearings with 13 jurors at \$12.50 a half day (from trials)

6,175

District Court-

20 - 1/2 day length collateral benefit hearings with 7 jurors at \$12.50 a half day (from trials)

1,750

Estimated Total Cost

\$10,966

1996 update
Note #2

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 158 (FIN)am
(ct rls pfid) (efd fld)

Revision Date: 2/3/96 Dept. Affected: Department of Law
 Title: "...relating to civil actions; amending Alaska Rule of Civil Procedure 95." BRU: Civil Division
 Sponsor: Representative Porter Component: General Legal Services
 Requester: Representative Porter COMPONENT SERIAL NO. 2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The amended version of CSHB 158 (FIN) amends Title 9, the Alaska Code of Civil Procedure, to provide far-reaching changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to change the distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted sharply away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be significantly reduced, the impact on the department's defense of personal injury claims will be negligible.

Richard I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/3/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/3/96
 Agency: Department of Law

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BILL: HB 158 SHORT TITLE: CIVIL LIABILITY
BILL VERSION: CSHB 158(FIN) AM(CT RLS PFLD)(EFD FLD)
SPONSOR(S): REPRESENTATIVE(S) PORTER, TOOHEY, MULDER, OGAN

CURRENT STATUS: (S) FIN

STATUS DATE: 03/18/96

TITLE: "AN ACT RELATING TO CIVIL ACTIONS; AMENDING ALASKA RULE OF CIVIL PROCEDURE 95."

02/06/95	253	(H)	READ THE FIRST TIME - REFERRAL(S)
02/06/95	253	(H)	JUDICIARY, FINANCE
03/08/95	635	(H)	JUD RPT CS(JUD) 4DP 2DNP
03/08/95	635	(H)	DP: VEZEY, GREEN, TOOHEY, BUNDE
03/08/95	635	(H)	DNP: FINKELSTEIN, B.DAVIS
03/08/95	635	(H)	FISCAL NOTE (COURT)
03/08/95	635	(H)	3 ZERO FISCAL NOTES (LAW, ADM, DCED)
03/09/95	691	(H)	COSPONSOR(S): MULDER
03/20/95	824	(H)	COSPONSOR(S): ROKEBERG
03/22/95	841	(H)	FIN RPT CS(FIN) 2DP 4NR 3AM
03/22/95	842	(H)	DP: MULDER, MARTIN
03/22/95	842	(H)	NR: HANLEY, PARNELL, THERRIAULT, FOSTER
03/22/95	842	(H)	AM: GRUSSENDORF, BROWN, NAVARRE
03/22/95	842	(H)	FISCAL NOTE (COURT)
03/22/95	842	(H)	3 ZERO FNS (LAW, ADM, DCED) 3/8/95
03/27/95	936	(H)	RULES TO CALENDAR 3/27/95
03/27/95	936	(H)	READ THE SECOND TIME
03/27/95	936	(H)	FIN CS ADOPTED UNAN CONSENT
03/27/95	936	(H)	AM NO 1 WITHDRAWN
03/27/95	937	(H)	AM NO 2 ADOPTED UNAN CONSENT
03/27/95	938	(H)	AM NO 3 FAILED Y17 N19 E4
03/27/95	939	(H)	AM NO 4 FAILED Y17 N19 E4
03/27/95	940	(H)	AM NO 5 FAILED Y16 N20 E4
03/27/95	941	(H)	AM NO 6 FAILED Y18 N18 E4
03/27/95	942	(H)	AM NO 7 FAILED Y18 N18 E4
03/27/95	944	(H)	AM NO 8 FAILED Y18 N18 E4
03/27/95	944	(H)	AM NO 9 ADOPTED UNAN CONSENT
03/27/95	945	(H)	AM NO 10 FAILED Y17 N19 E4
03/27/95	946	(H)	HELD IN SECOND READING TO 3/28 CALENDAR
03/28/95	955	(H)	AM NO 11 FAILED Y14 N19 E4 A3
03/28/95	956	(H)	AM NO 12 WITHDRAWN
03/28/95	957	(H)	RETURN TO RLS COMMITTEE
04/24/95	1468	(H)	RULES TO CALENDAR 4/24/95
04/24/95	1468	(H)	IN SECOND READING
04/24/95	1469	(H)	AM NO 13 OFFERED
04/24/95	1469	(H)	AM TO AM 13 ADOPTED UNAN CONSENT
04/24/95	1470	(H)	AM NO 13 AS AMENDED ADOPTED UNAN CONSENT
04/24/95	1470	(H)	AM NOS 14 & 15 NOT OFFERED
04/24/95	1470	(H)	AM NO 16 FAILED Y18 N20 E1 A1
04/24/95	1471	(H)	AM NO 17 FAILED Y18 N21 A1
04/24/95	1472	(H)	AM NO 18 ADOPTED UNAN CONSENT
04/24/95	1473	(H)	AM NO 19 ADOPTED Y21 N19
04/24/95	1473	(H)	AM NO 20 OFFERED
04/24/95	1474	(H)	AM NO 1 TO AM 20 FAILED Y20 N20
04/24/95	1475	(H)	AM NO 2 TO AM 20 FAILED Y20 N20
04/24/95	1475	(H)	AM NO 20 FAILED Y18 N22
04/24/95	1476	(H)	AM NO 21 ADOPTED UNAN CONSENT
04/24/95	1476	(H)	AM NO 22 OFFERED
04/24/95	1477	(H)	DIVISION OF AM 22 ADOPTED UNAN CONSENT

04/24/95	1477	(H)	AM NO 22, PT 1 FAILED Y18 N22
04/24/95	1478	(H)	AM NO 22, PT 2 FAILED Y19 N21
04/24/95	1479	(H)	AM NO 23 FAILED Y20 N20
04/24/95	1480	(H)	AM NO 24 FAILED Y18 N22
04/24/95	1481	(H)	AM NO 25 NOT OFFERED
04/24/95	1481	(H)	AM NO 26 FAILED Y19 N21
04/24/95	1482	(H)	AM NO 27 ADOPTED UNAN CONSENT
04/24/95	1483	(H)	AM NO 28 ADOPTED UNAN CONSENT
04/24/95	1483	(H)	AM NO 29 ADOPTED UNAN CONSENT
04/24/95	1483	(H)	AM NO 30 OFFERED
04/24/95	1485	(H)	HELD IN SECOND READING TO 4/25 CAL.
04/25/95	1502	(H)	IN SECOND READING
04/25/95	1502	(H)	AM NO 30 FAILED Y17 N22 E1
04/25/95	1503	(H)	AM NO 31 WITHDRAWN
04/25/95	1503	(H)	AM NO 32 FAILED Y17 N22 E1
04/25/95	1504	(H)	AM NO 33 FAILED Y17 N22 E1
04/25/95	1505	(H)	AM NO 34 FAILED Y17 N22 E1
04/25/95	1505	(H)	AM NO 35 FAILED Y17 N22 E1
04/25/95	1506	(H)	AM NO 36 FAILED Y17 N22 E1
04/25/95	1507	(H)	AM NO 37 ADOPTED UNAN CONSENT
04/25/95	1508	(H)	AM NO 38 FAILED Y17 N22 E1
04/25/95	1508	(H)	AM NO 39 ADOPTED UNAN CONSENT
04/25/95	1509	(H)	AM NO 40 OFFERED
04/25/95	1509	(H)	AM TO AM 40 ADOPTED UNAN CONSENT
04/25/95	1509	(H)	AM NO 40 ADOPTED UNAN CONSENT
04/25/95	1510	(H)	AM NO 41 FAILED Y15 N24 E1
04/25/95	1510	(H)	AM NO 42 OFFERED
04/25/95	1511	(H)	AM TO AM 42 ADOPTED UNAN CONSENT
04/25/95	1511	(H)	AM NO 42 AS AMENDED FLD Y12 N27 E1
04/25/95	1512	(H)	AM NO 43 FAILED Y16 N23 E1
04/25/95	1512	(H)	AM NO 44 OFFERED
04/25/95	1513	(H)	AM 1 TO AM 44 UNAN CONSENT
04/25/95	1513	(H)	AM 2 TO AM 44 PASSED Y34 N5 E1
04/25/95	1514	(H)	AM NO 44 AS AMENDED ADOPTED UNAN CONSENT
04/25/95	1514	(H)	HELD IN SECOND READING TO 4/26 CALENDAR
04/26/95	1529	(H)	IN SECOND READING
04/26/95	1529	(H)	AM NO 45 FAILED Y16 N22 E1 A1
04/26/95	1530	(H)	AM NO 46, 47, 48 NOT OFFERED
04/26/95	1530	(H)	AM NO 49 FAILED Y17 N21 E1 A1
04/26/95	1531	(H)	AM 50 THRU 56 NOT OFFERED
04/26/95	1531	(H)	AM NO 57 FAILED Y17 N21 E1 A1
04/26/95	1532	(H)	AM NO 58 FAILED Y18 N21 E1
04/26/95	1533	(H)	AM NO 59 FAILED Y16 N22 E1 A1
04/26/95	1534	(H)	AM NO 60 NOT OFFERED
04/26/95	1534	(H)	AM NO 61 FAILED Y16 N22 E1 A1
04/26/95	1536	(H)	AM NO 62 FAILED Y16 N22 E1 A1
04/26/95	1536	(H)	AM NO 63 FAILED Y17 N22 E1
04/26/95	1537	(H)	AM NO 64 FAILED Y19 N20 E1
04/26/95	1538	(H)	AM NO 65 ADOPTED UNAN CONSENT
04/26/95	1539	(H)	ADVANCED TO THIRD READING 4/27 CALENDAR
04/26/95	1559	(H)	COSPONSOR(S): OGAN
04/27/95	1599	(H)	READ THE THIRD TIME CSHB 158(FIN)AM
04/27/95	1599	(H)	RETURN TO SECOND FOR AM 66 UNAN CONSENT
04/27/95	1599	(H)	AM NO 66 ADOPTED UNAN CONSENT
04/27/95	1599	(H)	AUTOMATICALLY IN THIRD READING
04/27/95	1600	(H)	PASSED Y24 N15 E1
04/27/95	1601	(H)	CT RULE/CIV PRO 49 FLD Y23 N16 E1
04/27/95	1601	(H)	CT RULE/CIV PRO 68 FLD Y23 N16 E1
04/27/95	1602	(H)	CT RULE/CIV PRO 95 PASSED Y28 N11 E1
04/27/95	1603	(H)	CT RULE/CIV PRO 702 FLD Y23 N16 E1

04/27/95	1604	(H)	EFFECTIVE DATE FAILED Y23 N16 E1
04/27/95	1604	(H)	NAVARRE NOTICE OF RECONSIDERATION
04/28/95	1640	(H)	HOLD TO 5/1 CAL FLD Y13 N25 E2
04/28/95	1640	(H)	RECON TAKEN UP - IN THIRD READING
04/28/95	1641	(H)	PASSED ON RECONSIDERATION Y23 N15 E2
04/28/95	1642	(H)	CT RULE/CIV PRO 49 FLD Y23 N15 E2
04/28/95	1643	(H)	CT RULE/CIV PRO 68 FLD Y23 N15 E2
04/28/95	1644	(H)	CT RULE/CIV PRO 95 FLD Y26 N12 E2
04/28/95	1644	(H)	CT RULE/CIV PRO 702 FLD Y23 N15 E2
04/28/95	1645	(H)	EFFECTIVE DATE FAILED Y23 N15 E2
04/28/95	1646	(H)	RESCIND PREVIOUS ACTION/FLG CT RULE 95
04/28/95	1647	(H)	PASSED Y31 N7 E2
04/28/95	1647	(H)	CT RULE/CIV PRO 95 PD Y33 N5 E2
04/28/95	1651	(H)	TRANSMITTED TO (S)
04/29/95	1681	(H)	COSPONSOR REMOVED: ROKEBERG
05/01/95	1376	(S)	READ THE FIRST TIME - REFERRAL(S)
05/01/95	1376	(S)	JUD, FIN
05/16/95	1899	(S)	L&C REFERRAL ADDED, L&C PRECEDES FIN
03/08/96	2656	(S)	JUD RPT SCS 2DNP 2AM (TITLE CHG)
03/08/96	2657	(S)	FISCAL NOTE TO SCS (DCED)
03/08/96	2657	(S)	FISCAL NOTE TO SCS FORTHCOMING (COURT)
03/08/96	2657	(S)	ZERO FISCAL NOTES TO SCS (LAW, ADM)
03/18/96	2773	(S)	L&C RPT 1NR 3 AM (JUD)SCS
03/18/96	2773	(S)	PREVIOUS FN (DCED)
03/18/96	2773	(S)	PREVIOUS ZERO FN (LABOR, ADM)
03/18/96	2773	(S)	REFERRED TO FINANCE
03/18/96	2773	(S)	REFERRED TO FINANCE

1995 update of note

Updated for 1996

(5/2/95) by [signature]

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 158 (FIN)am
(ct rls pld) (efd fld)

Revision Date: 5/2/95 Dept. Affected: Department of Law
 Title: "...relating to civil actions; amending Alaska Rule BRU: Legal Services
of Civil Procedure 95." Component: Operations
 Sponsor: Representative Porter
 Requester: Representative Porter COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The amended version of CSHB 158 (FIN) amends Title 9, the Alaska Code of Civil Procedure, to provide far-reaching changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to change the distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted sharply away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays per case might be reduced in large claims. However, because the total number of claims would probably not be significantly reduced, the impact on the department's defense of personal injury claims will be negligible..

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 5/2/95
 Date: 5/2/95

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