

HB

158

(File 1)

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

August 17, 1995

SUBJECT: Sectional Summary of CS HB 158(Fin) am (et. rls pld) (etd fld)
(Work Order No. 9-LS0328K)

TO: Senator Robin Taylor *M. F.*
Attn: Terry

FROM: Michael F. Ford
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Purpose section.

Section 2. Requires that a civil action for personal injury, death, or property damage must be filed within eight years of either substantial completion of construction alleged to be the cause of the injury, death, or property damage, or the last act alleged to be the cause of the injury, death, or property damage. Provides that the exception for a person less than 18 years of age contained in AS 09.10.140(a) does not apply to this section. Provides that the eight year limit does not apply to certain civil actions, including an action in which damages are caused by exposure to a hazardous substance, intentional acts or gross negligence, fraud, breach of a warranty, or to injuries caused by a defective product. Provides that the eight year limit does not apply if certain facts are intentionally concealed, or if a shorter time period imposed under another section of law would apply. Provides that the eight year limit does not run in periods during which an undiscovered foreign body with no therapeutic or diagnostic effect exists in the body of the injured person. Without this section, a person has two years from the time the person knows or should know of their claim, in which to file a civil action.

Section 3. Technical amendment.

Sectional Analysis - LAA

Senator Robin Taylor

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Section 4. Provides that the general limit for bringing a civil action for personal injury, death, or property damage is two years, which is the limit under existing law. Under this section, the two year limit would not apply if another provision of law would result in a shorter period. Also, the two-year period would begin to run when the person discovers or should have discovered their injury. This section also deletes an exception for a person under 18 years of age, which effectively imposes a two-year limit regardless of the age of the person who is injured. Under existing law a person under age 18 has two years after they reach age 18 in which to file a civil action.

Section 5. Limits the damages that may be recovered for noneconomic damages (or pain and suffering injuries) to \$300,000, except that certain injuries described under subsection (c) are limited to \$500,000. Provides for an annual CPI adjustment to the limits imposed under subsections (b) and (c). Also under subsection (c), the limits of \$300,000 or \$500,000 do not apply if the injuries were caused by a person who was committing a felony. Provides that when multiple injuries are sustained in one accident, for purposes of this section they are treated as one injury.

Section 6. Requires that punitive damages may not be awarded unless there is clear and convincing evidence of outrageous conduct. Outrageous conduct includes acts done with malice or bad motives or reckless indifference to the interest of another person. This section specifies what kind of evidence is required in order for a court to award punitive damages.

Section 7. Limits an award of punitive damages to three times the amount of compensatory damages or \$300,000, whichever is greater. Provides an exception for injuries caused by a person committing a felony. Requires that if punitive damages are awarded, that one-half of the amount must be given to the state.

Section 8. Requires that if a judgment is paid under a periodic payment schedule, the court must require security for the payments, unless the state, a self-insured municipality or an insurer agrees to pay the judgment.

Section 9. Requires that a judgment requiring periodic payments, must specify any increases for inflation. Adds a definition of inflation.

Section 10. Limits the damages that can be recovered in a civil action, to amounts in excess of amounts received from collateral sources. Provides that collateral sources that have a right of subrogation, death benefits under life insurance, and workers' compensation benefits may not be used to reduce a damage award. Allows a person defending a claim to introduce evidence of certain collateral benefits. Prohibits a person who provides a collateral benefit used to reduce a damage award from seeking reimbursement for the collateral benefits. Under existing law, a defendant may introduce evidence of collateral benefits that do not have a right of subrogation under law or contract. The court is required to make a reduction in damages awarded, if the claimant would receive a double recovery and value of the

benefits exceeds the cost of obtaining the collateral benefits. The significant difference between existing law and this section appears to be the point at which collateral benefits are considered. Under existing law, collateral benefits are factored in after the claimant receives an award, whereas under this section collateral benefits become a trial issue and the claimant cannot recover damages that exceed certain collateral benefits.

Section 11. Requires the jury to determine the percentage of fault allocated to each person responsible for damages, regardless of whether the person is named as a party or not. Under existing law fault is only allocated among the parties to the lawsuit.

Section 12. Provides that an assessment of fault against a person who is not a party, may only be used as a measure for determining fault of a named party and does not subject a person who is not a party to civil liability.

Section 13. Changes the penalty for failing to accept an offer of judgment that is more favorable than obtained after litigation. Existing law adjusts the interest on a judgment, whereas under this section the penalty consists of costs and reasonable attorney fees.

Section 14. Changes the rate of interest on a judgment from a fixed 10.5 percent, to a floating rate equal to three percent above the federal discount rate.

Section 15. Prohibits an award of prejudgment interest for future economic or noneconomic damages, or punitive damages.

Section 16. Technical amendment.

Section 17. This section enacts a new statute that establishes qualifications in order to provide expert testimony on the issue of the appropriate medical standard of care in medical malpractice claims.

Section 18. Adds definitions of "professional negligence" and "professional services" for purposes of medical malpractice claims.

Section 19. Provides that a hospital is not liable for acts or omissions of a health care provider who is not an employee or actual agent of the hospital. Requires the hospital to post notice of those health care providers who are not employees. This provision is intended to reverse a decision of Alaska Supreme Court in Jackson v. Powers, 743 P.2d 1376 (Alaska 1987). In Jackson the court held that a hospital was liable for acts of a physician, even if the physician was not an employee.

Section 20. Prohibits a person who suffers personal injury or death, or the person's estate, from recovering damages for injury or death if the injury or death occurred while the person was committing a felony and the act substantially contributed to the injury or death.

Section 21. Requires that papers in a civil action must be signed by at least one attorney representing that party, except that in a situation when a party is not represented by an attorney the party must sign. Provides that the signature constitutes certification that the paper is factually based and warranted by existing law, that it is not asserted to harass or delay litigation. Requires the court to impose sanctions for violating this section.

Section 22. Repeals AS 09.55.548, relating to collateral benefits.

Section 23. Court rule change section for Civil Rule 95.

Section 24. Severability clause.

Section 25. Applicability section providing that the Act applies to a cause of actions accruing on or after the effective date of the Act.

MFF:lmb
95-245.lmb

Alaska State Chamber of Commerce
217 2nd Street #201
Juneau, Alaska 99801



ALASKA VOTERS: LAWSUIT ABUSE SURVEY

JANUARY, 1996



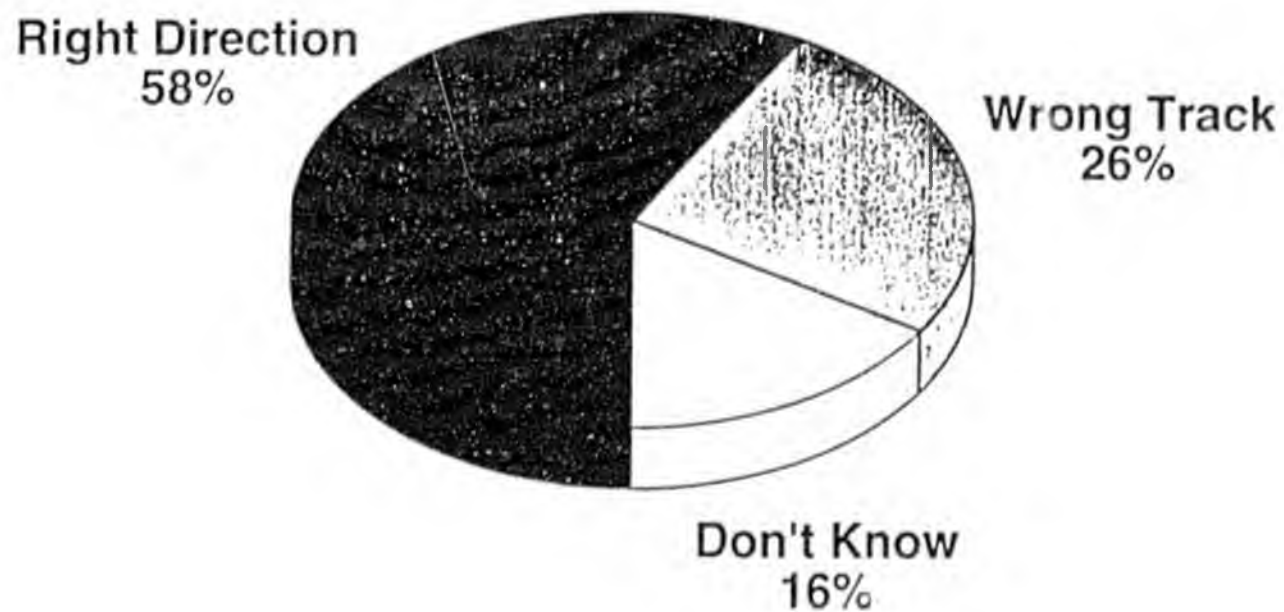
Dist. by Rep. Porter

Methodology

MODE	Telephone Survey
UNIVERSE	Alaska Registered Voters
SAMPLE SIZE	N=500
MARGIN OF ERROR	+/- 4.4%
FIELD DATES	January 12, 13, 14, 16
LENGTH	56 questions; Approximately 15 minutes

Mood of Alaska

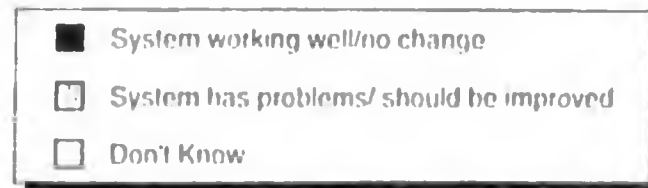
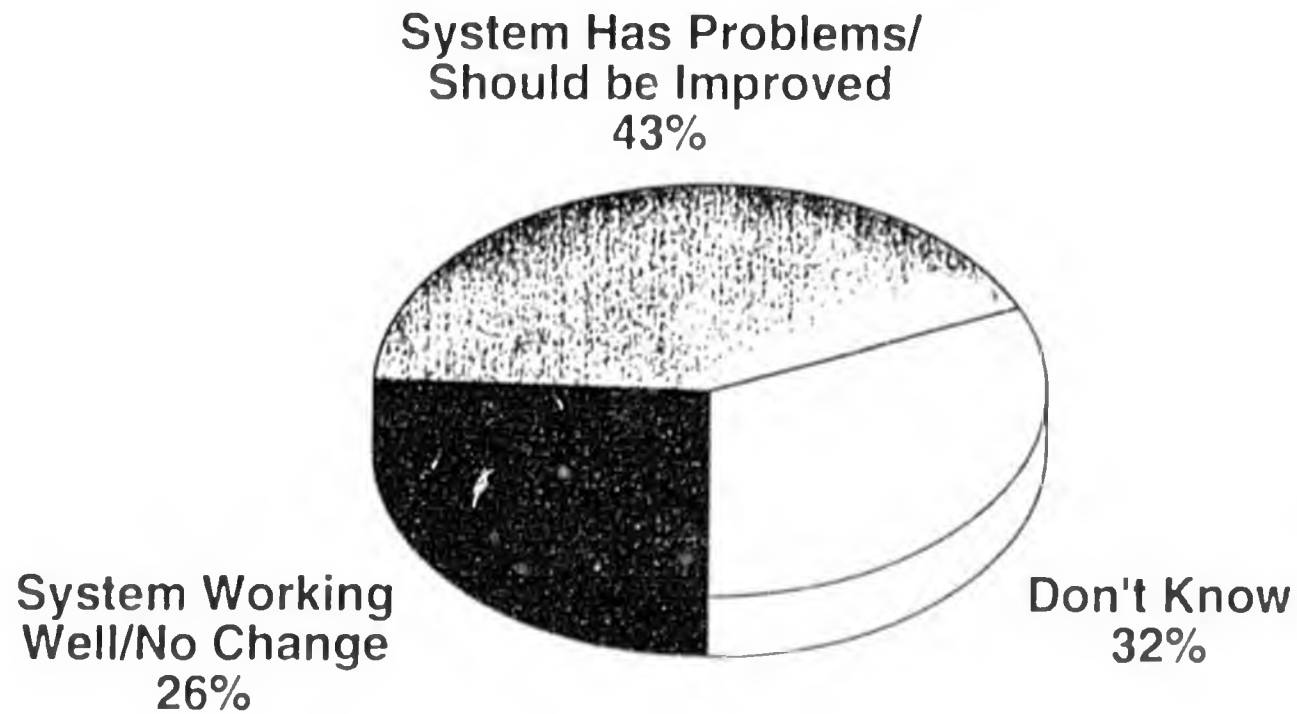
Do you feel things in Alaska are generally going in the right direction or do you feel things have pretty seriously gotten off on the wrong track? (Q1)



- Right Direction
- ▨ Wrong Track
- Don't Know

Liability System Status

Thinking about the legal system here in Alaska, do you feel the present liability system is working well and should not be changed, or do you feel the present liability system has problems and should be improved? (Q2)



Problems with Liability Court System

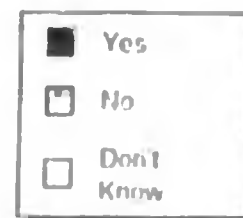
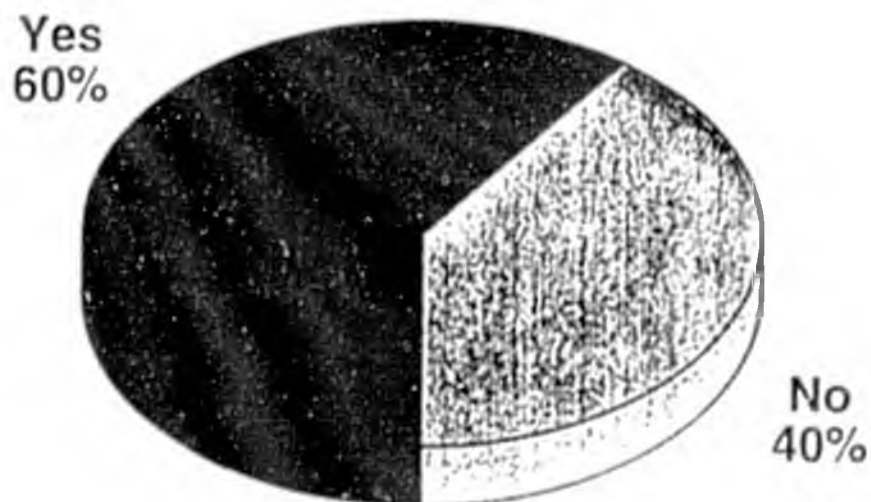
What are some of the problems with Alaska's liability court system that should be changed or improved? (Q3)

n=214

	<u>First</u> <u>Mentions</u> %	<u>Second</u> <u>Mentions</u> %
Too much money rewarded	17	17
Need new laws	14	27
Too easy to file lawsuits	14	22
Too many lawsuits	9	11
Fraud/Personal greed	9	9
Greedy//Unethical lawyers	7	10
Ties up the courts	7	8
Take resources away from real problems	3	4
Hurts innocent people	2	4
Everything	*	*
Other mentions	4	4
Don't know/refused	14	14

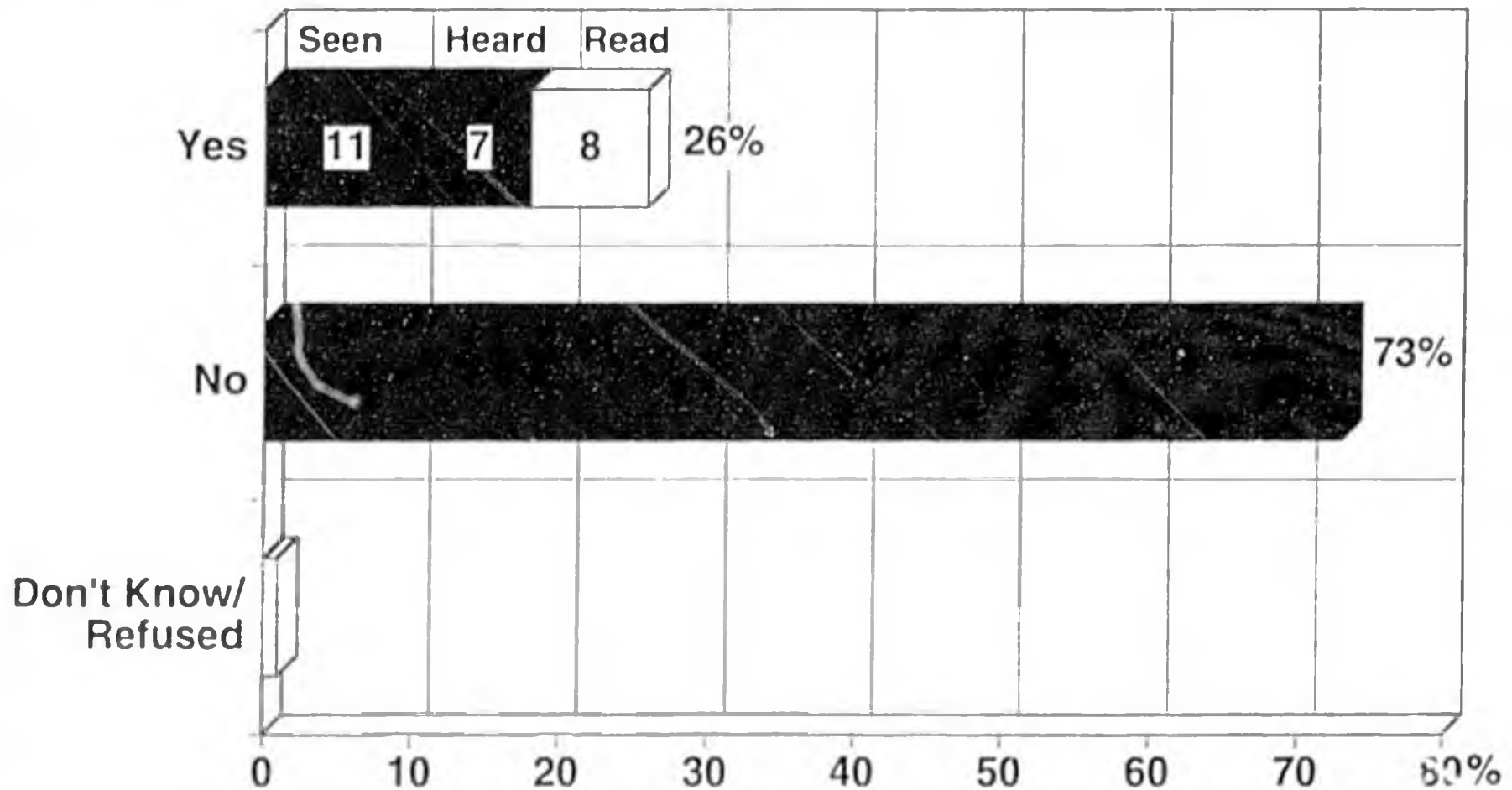
Recall: Lawyer Advertisements

On a related subject, lawyers, like businesses, sometimes try to reach customers through advertising. Have you seen or heard any advertisements for lawyers recently? (Q4)



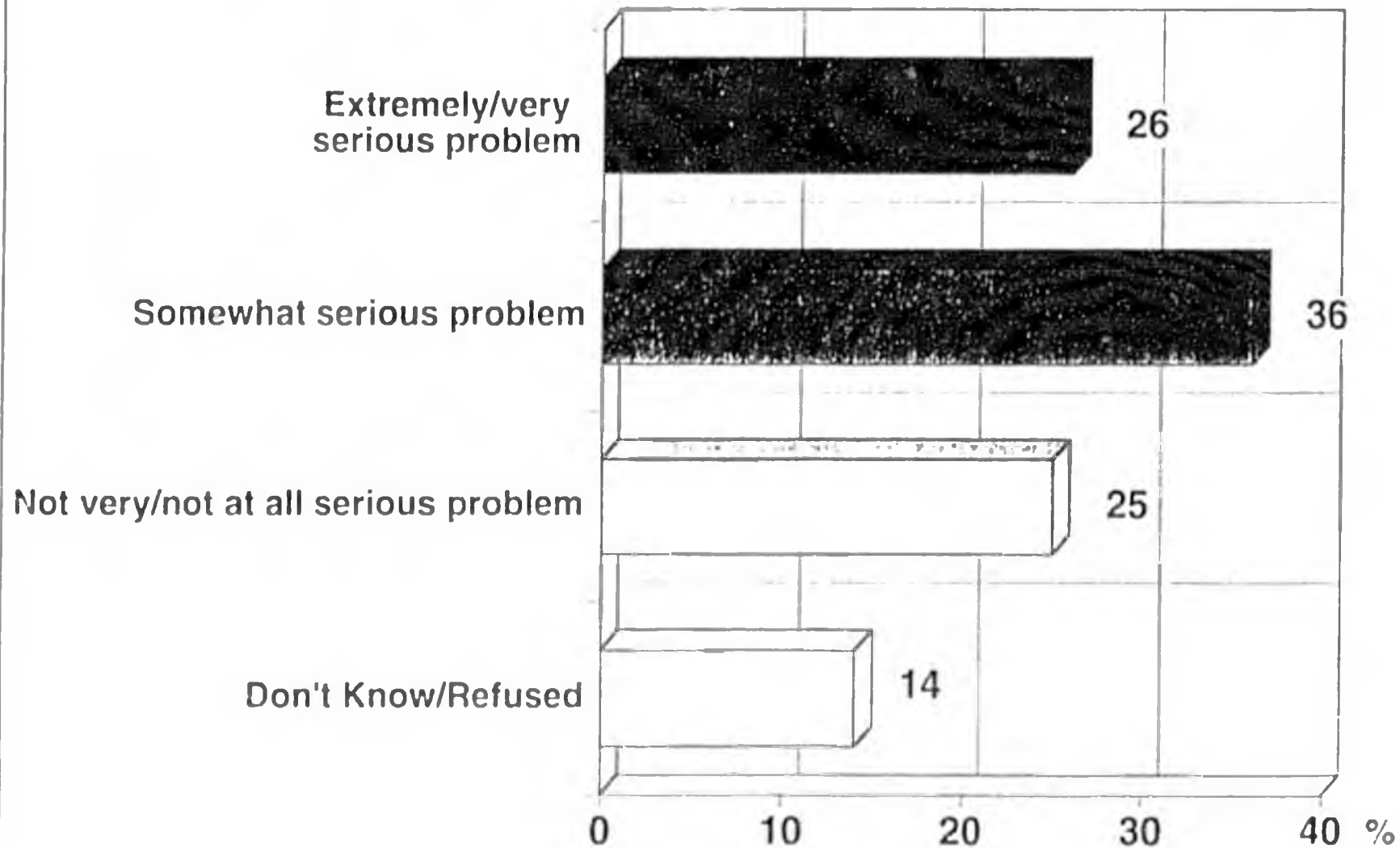
Recall: Legal System Reform

One issue that has come up is reforming the state's legal system to reduce the number of frivolous lawsuits being filed. On this issue, have you seen, heard or read anything in the news lately? (Q5)



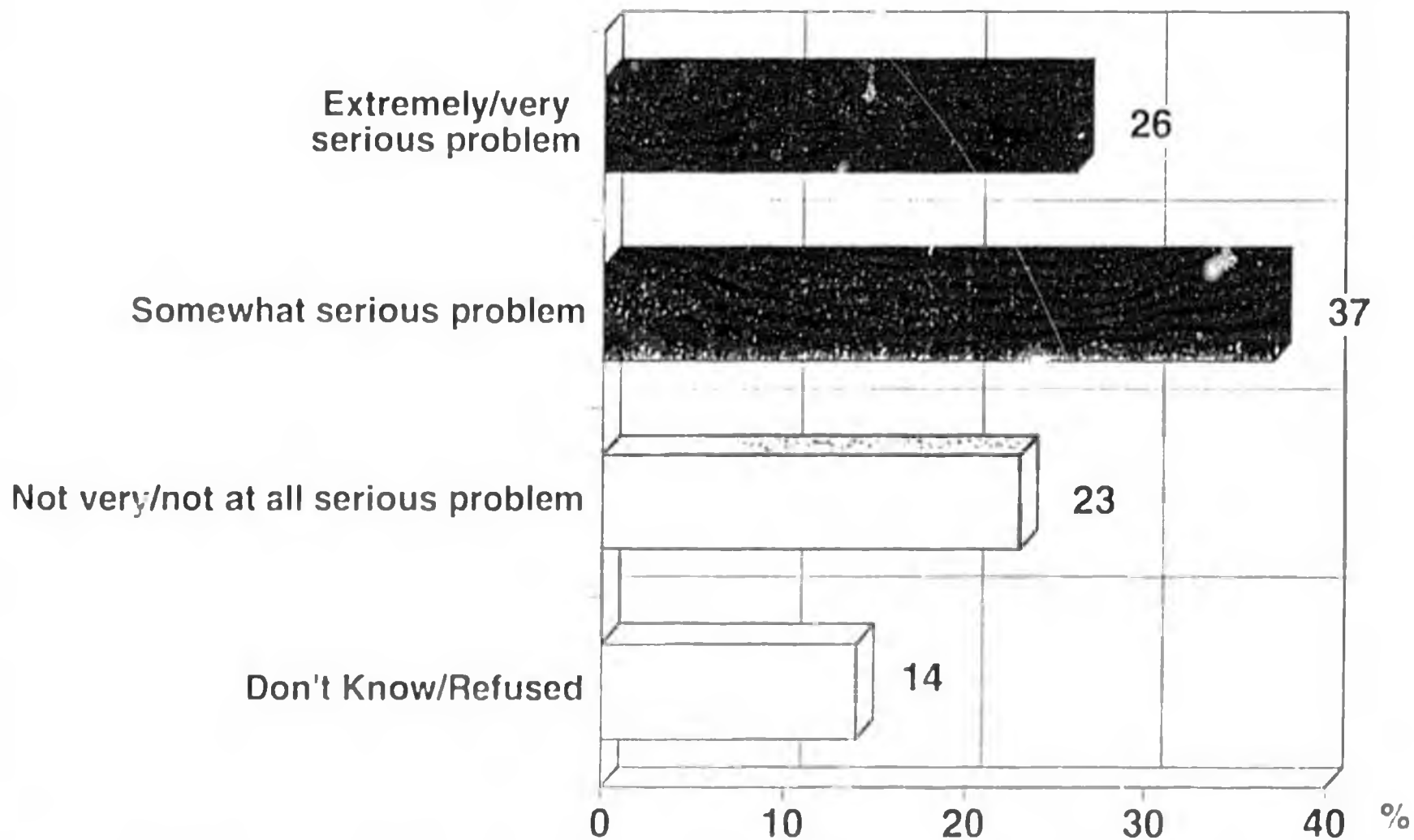
Frivolous Lawsuits Problem in Alaska

From what you have heard about the issue of frivolous lawsuits, how serious a problem would you say they are in Alaska? Are frivolous lawsuits... (Q6)



Negative Impact of Frivolous Lawsuits on Alaska Economy

Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do you think frivolous lawsuits are having on the Alaska economy? Would you say they are having... (Q7)



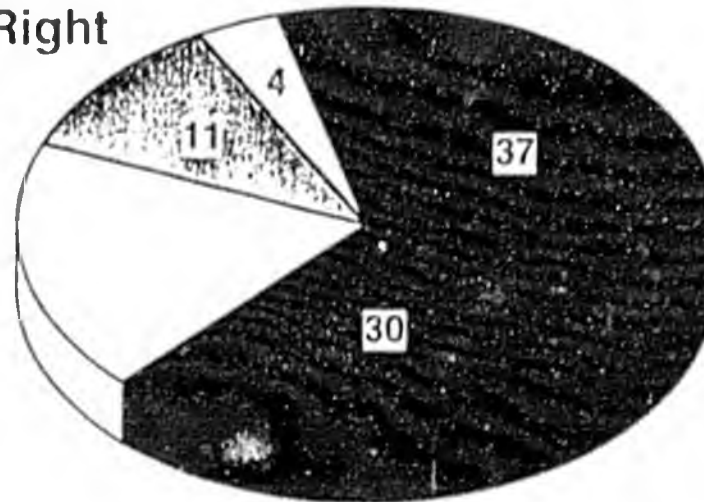
Too Many Lawsuits vs. Not Enough People Exercising Right

Which of the following statements comes closer to your opinion regarding the liability law system? And would that be strongly or somewhat more like your opinion? (Q8)

Some people say: There are too many lawsuits being filed in Alaska these days.
Other people say: Not enough people in Alaska are exercising their right to sue.

Not Enough
Exercising Their Right
15%

Don't
Know
19%



Too Many
Lawsuits
67%

- Too many lawsuits/strongly
- Too many lawsuits/somewhat
- Don't Know
- Not enough exercising their right/somewhat
- Not enough exercising their right/strongly

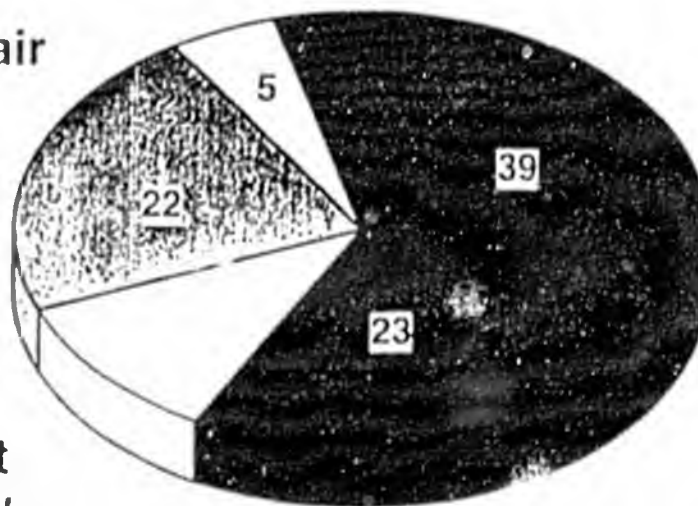
People Taking Advantage vs. System is Fair

Which of the following statements comes closer to your opinion? And would that be strongly or somewhat more like your opinion? (Q9)

Some people say: Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

Other people say: Although it may have some loopholes, the system is fair in nearly all cases.

System is Fair
27%



Too Many People Taking Advantage
62%

Don't Know
11%

- Too many people taking advantage/strongly
- Too many people taking advantage/somewhat
- Don't Know
- System is fair/somewhat
- System is fair/strongly

Agree/Disagree Statements *Ranked by Agree*

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. And would that be a somewhat or strongly (agree/disagree)? (Q10-16)

	Agree %	Disagree %	Don't Know %
Frivolous lawsuits have caused higher insurance premiums for everyone. (Q15)	87 (64)*	8	5
Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs. (Q14)	80 (55)	13	7
The number of frivolous lawsuits delays compensation to legitimate victims. (Q16)	73 (44)	15	12
Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed. (Q10)	68 (37)	19	13

* Strongly Agree

Agree/Disagree Statements (p. 2)

Ranked by Agree

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. And would that be a somewhat or strongly (agree/disagree)? (Q10-16)

	Agree %	Disagree %	Don't Know %
Frivolous lawsuits have increased the cost of medical care in Alaska. (Q11)	66 (40) *	18	16
I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit. (Q12)	61 (28)	31	9
Frivolous lawsuits have increased the cost of consumer products in Alaska. (Q13)	55 (27)	27	18

* Strongly Agree

Proposals to Address Frivolous Lawsuits

Ranked by Favor

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge. (Q24)	86 (68) *	10	5
A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more. (Q27)	84 (59)	9	7
A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation. (Q21)	83 (58)	9	8

* Favor Strongly

Proposals to Address Frivolous Lawsuits

Ranked by Favor (p.2)

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony. (Q28)	80 (61)*	12	8
A proposal to limit medical expert witnesses who can testify in trials to currently licensed doctors who have practiced the medical specialty being questioned sometime within the last ten years. (Q26)	80 (56)	12	8
A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit. (Q22)	80 (53)	14	6
A proposal to limit the percentage a personal injury trial lawyer can receive as a fee from any settlement or award from the client. (Q17)	78 (53)	15	8

* Favor Strongly

Proposals to Address Frivolous Lawsuits

Ranked by Favor (p.3)

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal to limit the ability of convicted felons in prison to bring liability lawsuits. (Q23)	76 (58)*	18	5
A proposal that would reduce to TEN years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past. (Q29B)**	75 (53)	17	8
A proposal that would reduce to SIX years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past. (Q29A)**	73 (49)	20	8

* Favor Strongly

** Split Sample

Proposals to Address Frivolous Lawsuits

Ranked by Favor (p.4)

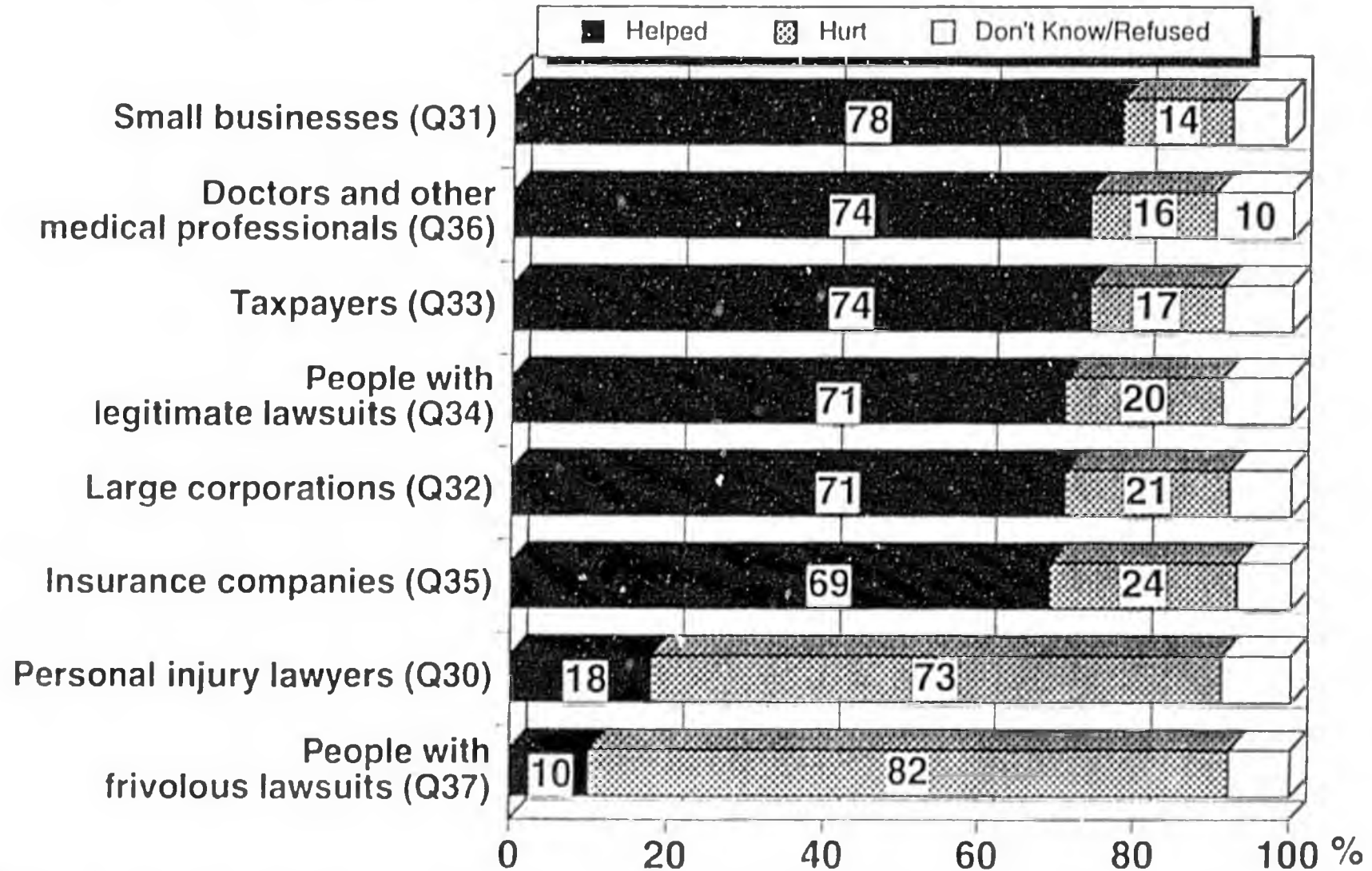
People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. And would that be somewhat or strongly (favor/oppose)? (Q17-29)

	Favor %	Oppose %	Don't Know %
A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial. (Q20)	73 (44)*	17	10
A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages. (Q25)	66 (38)	19	15
A proposal requiring the loser of a lawsuit to pay legal fees for both sides. (Q19)	63 (35)	28	9
Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault. (Q18)	49 (24)	39	13

* Favor Strongly

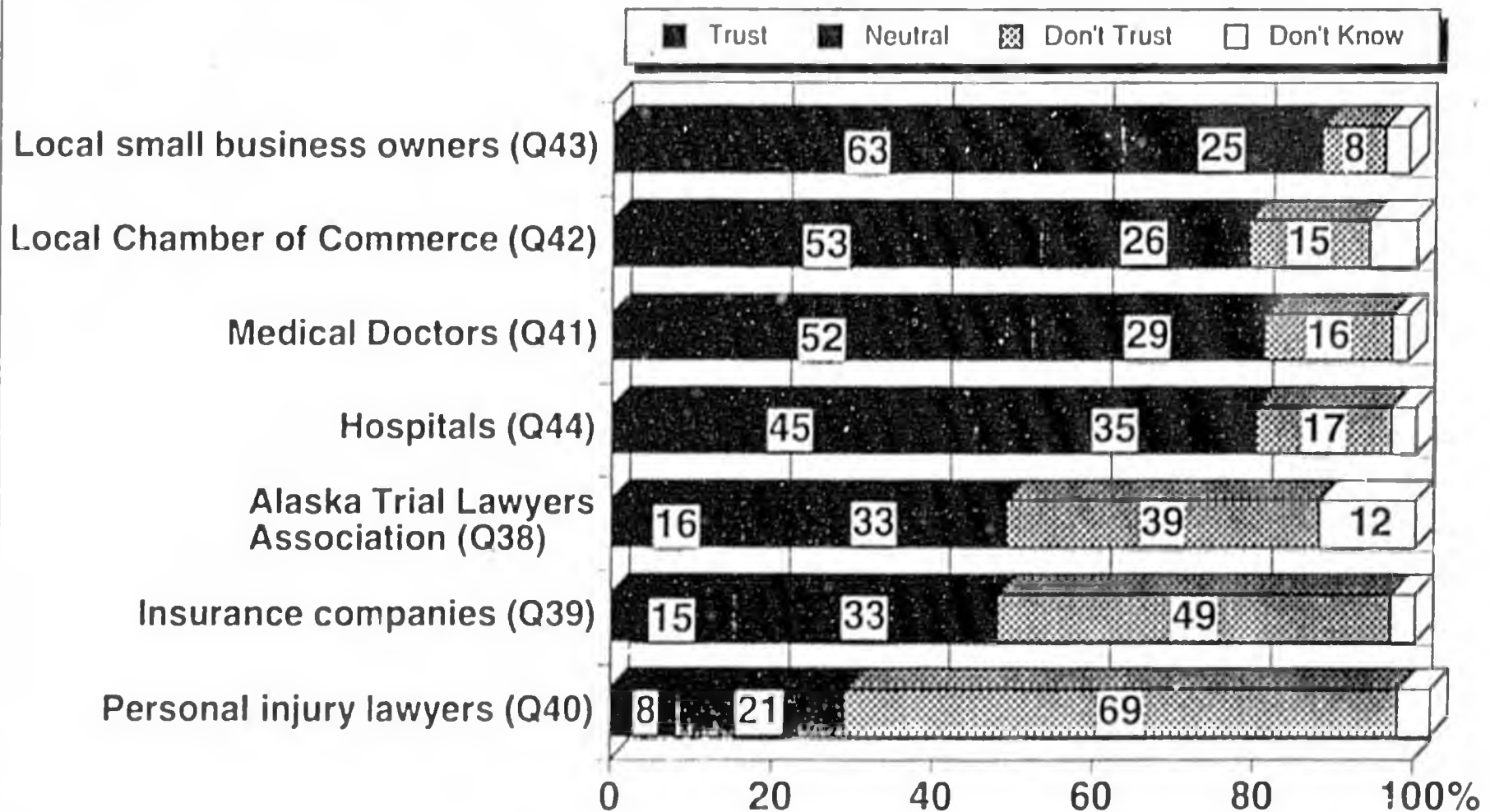
Impact of Lawsuit Reforms

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you. (Q30-37)



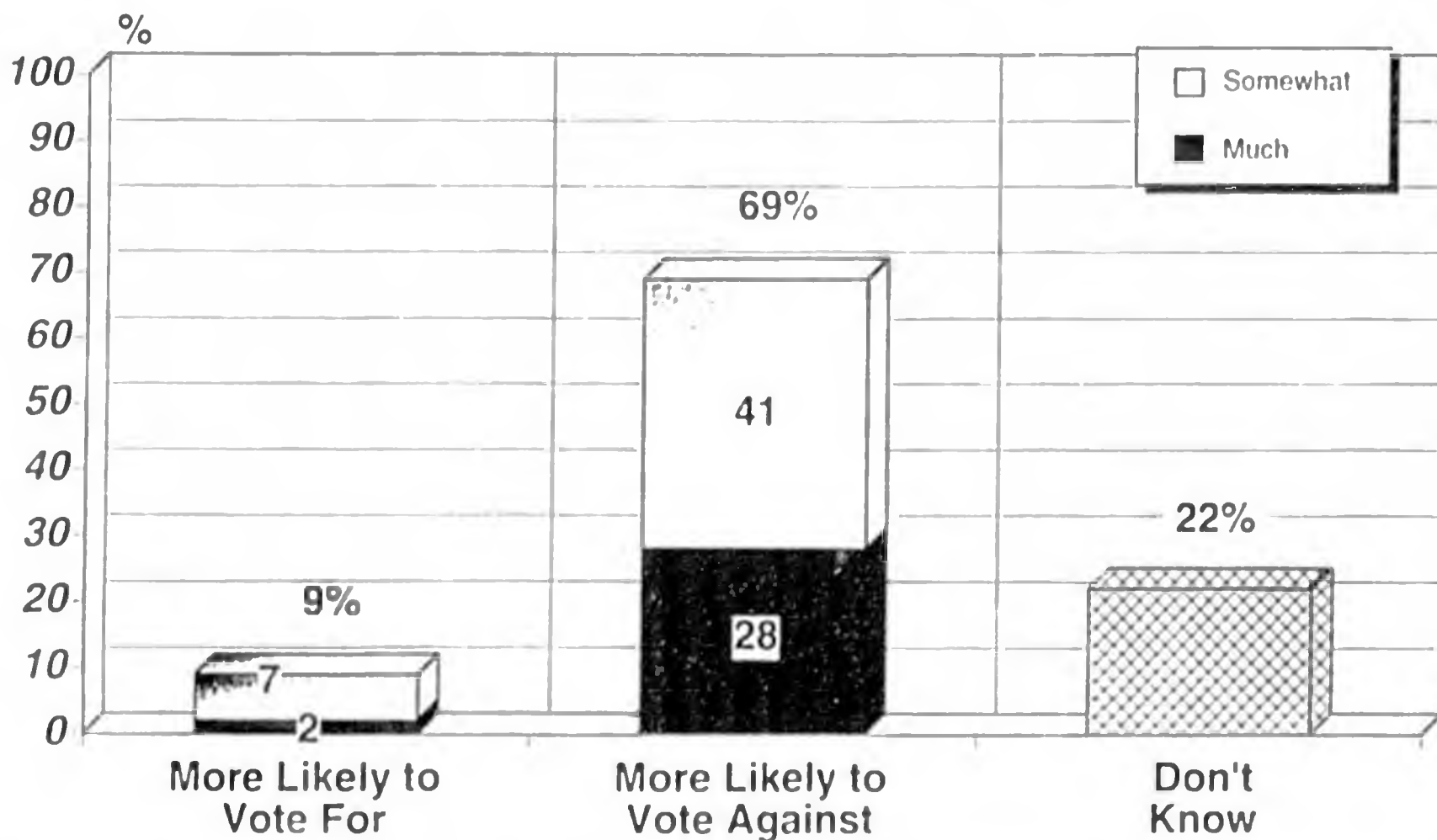
Name I.D. / Favorability

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. (Q38-44)



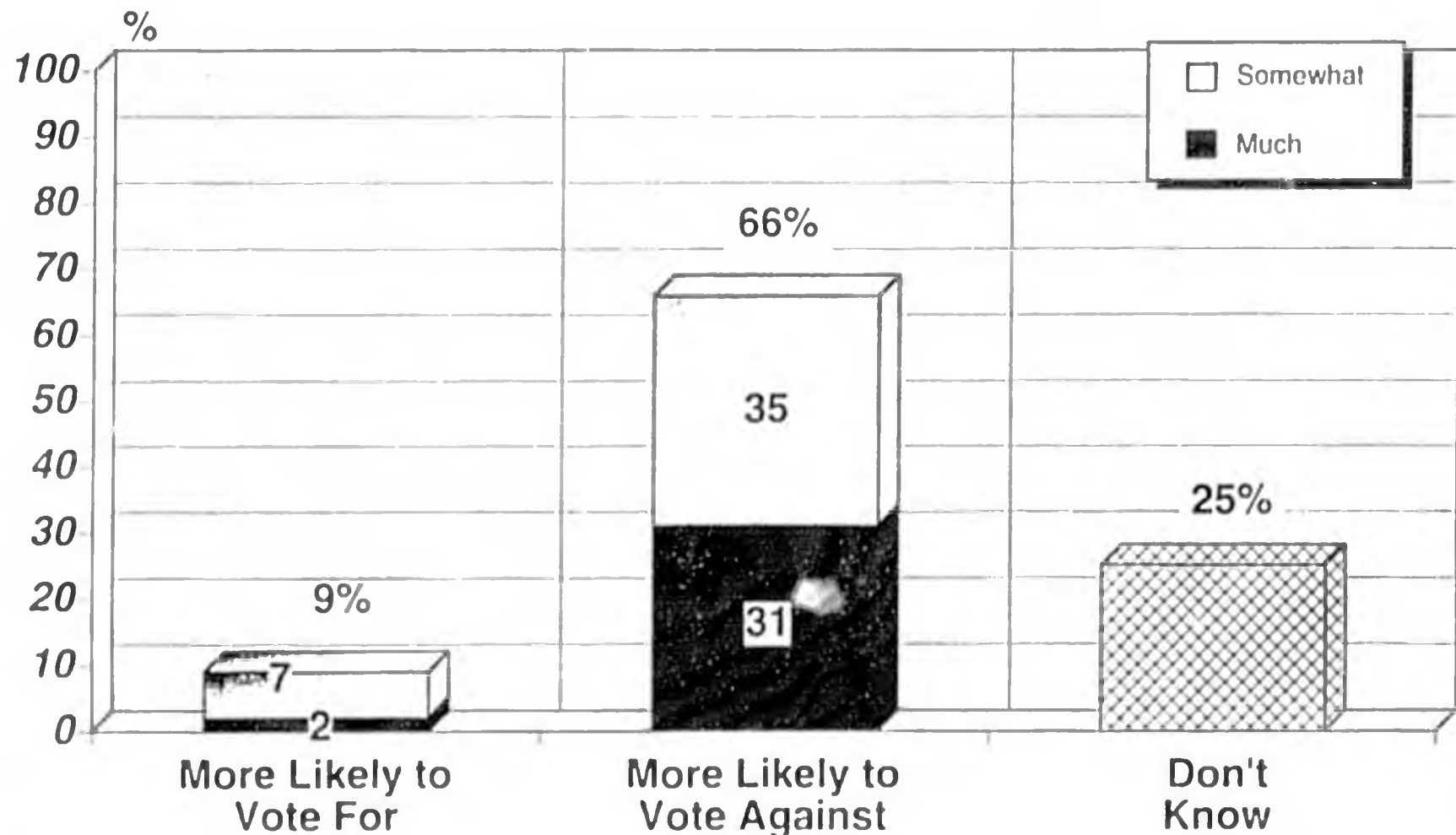
Candidate Endorsed by Personal Injury Trial Lawyers

Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers? And would that be somewhat or much more likely to vote (for/against)? (Q45A)



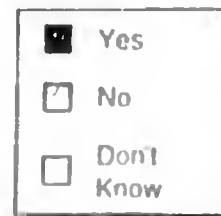
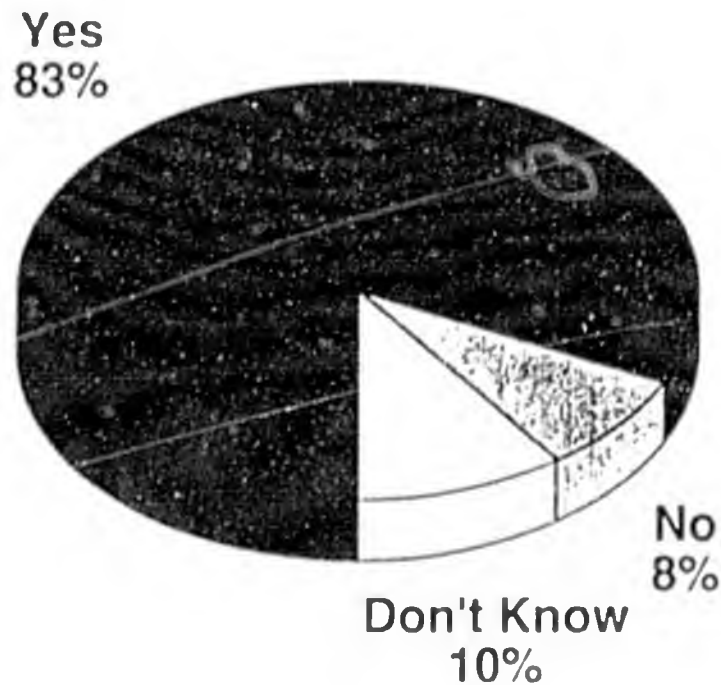
Candidate Accepting Campaign Contributions from Personal Injury Trial Lawyers

Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers? And would that be somewhat or much more likely to vote (for/against)? (Q45B)



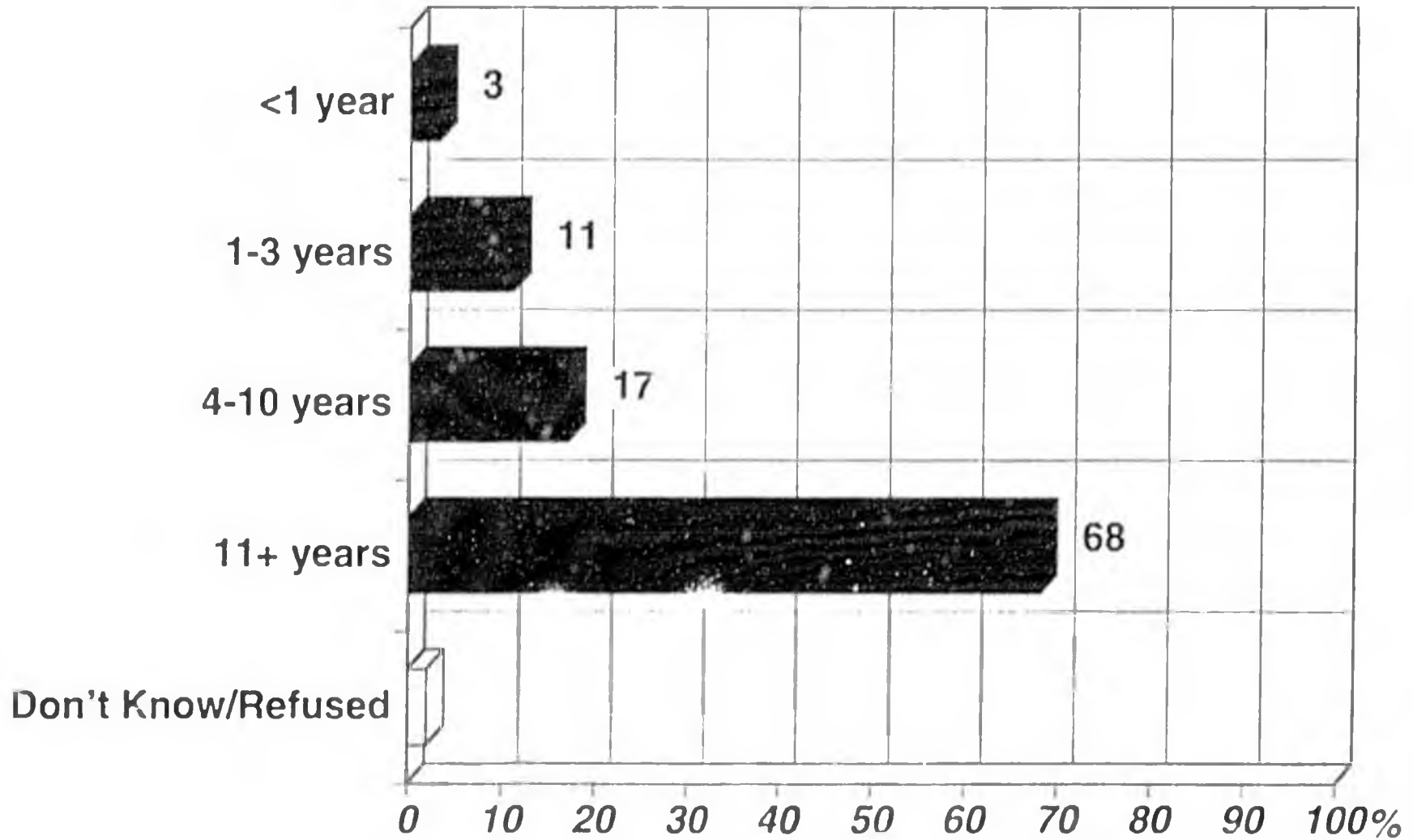
Should Governor Sign Frivolous Lawsuit Reform?

If the State Legislature passes a liability reform measure aimed at reducing frivolous lawsuits, do you think the governor should sign it? (Q46)



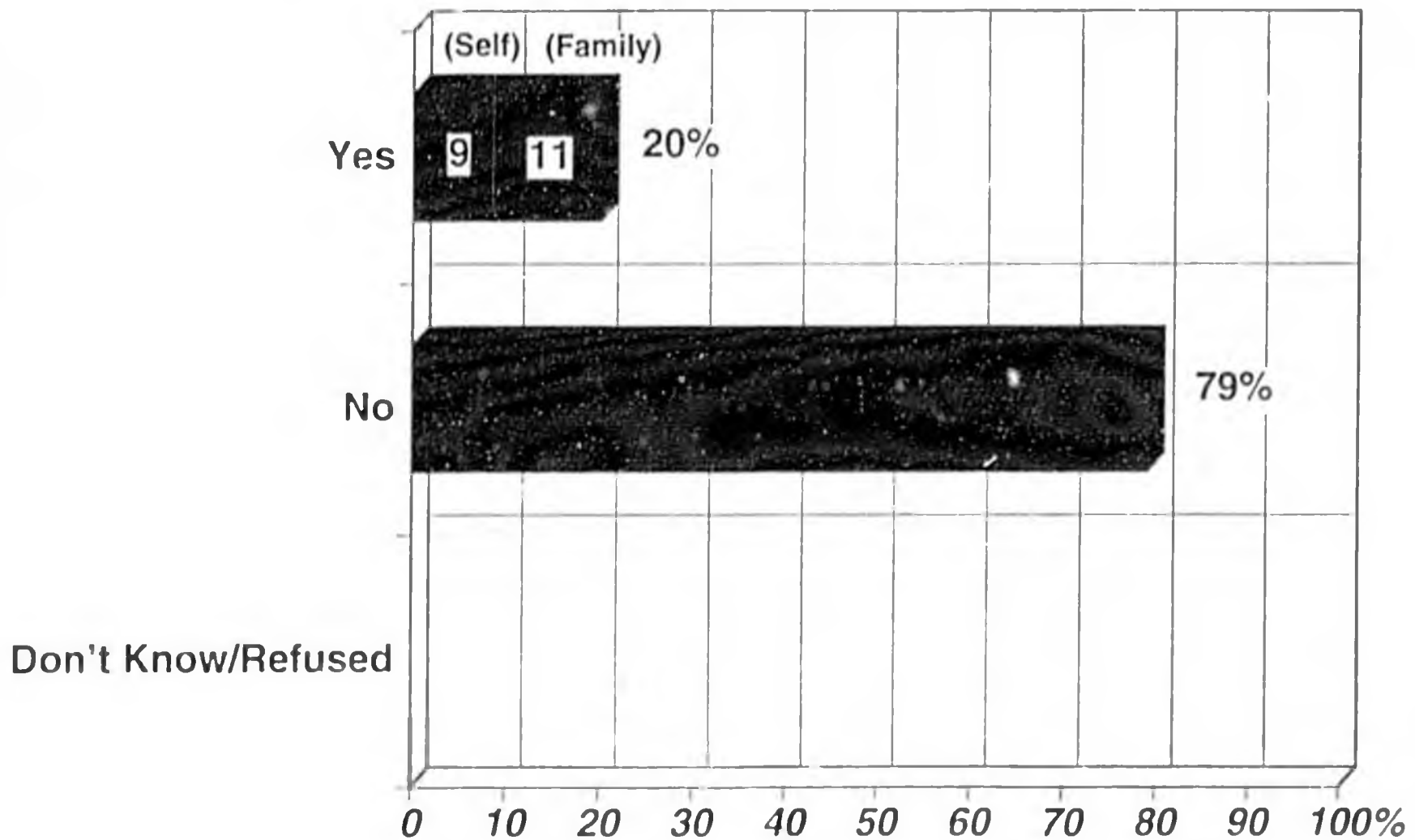
Time Lived in Alaska

How long have you lived in Alaska? (Q47)



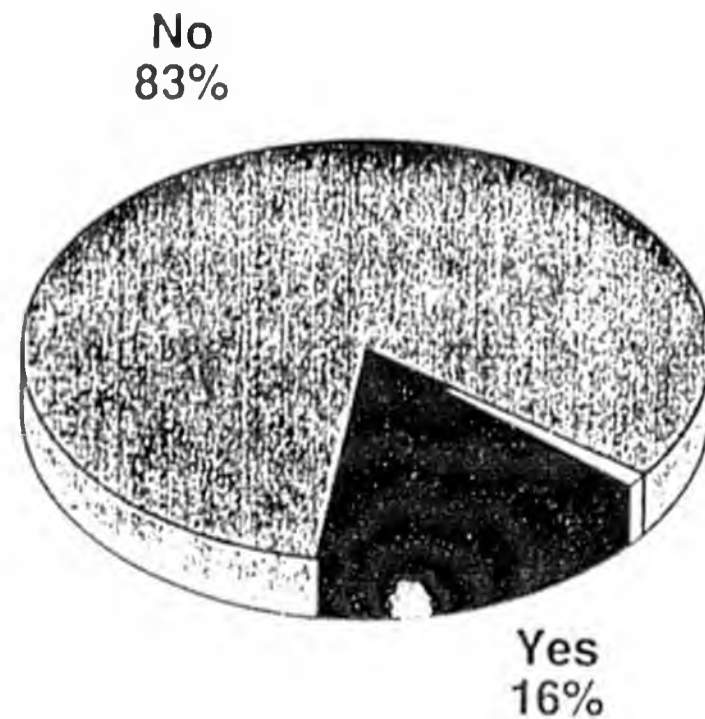
Ever Involved in Personal Injury Lawsuit

Have you or anyone in your household ever been involved in a personal injury lawsuit? (Q48)



Ever Served on a Jury

Have you ever served on a jury in a civil — that is, a non-criminal — court case? (Q49)



■ Yes □ Don't Know/Refused
▣ No

Favorite Radio Station

What type of radio station do you listen to most? (Q50)

Country & western music	26%
Classic rock and roll	21
News talk/sports talk	17
Oldies/easy listening	16
Public radio/NPR	15
Contemporary pop music	9
Classical music	7
Christian radio	7
Modern/new wave/alternative rock	7
Jazz	5
Soul/Rap	1
Other	3
Don't Know/Refused	6

CHARLTON RESEARCH COMPANY

44 Montgomery Street, Suite 1710
San Francisco, California 94104
415/981-2343 • Fax 415/981-4850

PERSONAL AND CONFIDENTIAL

#624
ALASKA: LAWSUIT ABUSE
AGGREGATE
November 1995
(n=500)

Interviewer: _____

Date: _____

Time Start: _____

Time End: _____

Record:

Male - 48%
Female - 52

=====

A. Is [ASK FOR NAME ON LIST] available?

Yes 1 [CONTINUE]
No 2

[ASK WHEN WOULD BE A GOOD TIME TO REACH
HIM/HER]

Hi, I'm _____ from the Charlton Research Company, a national research firm.
We're talking with people in your area today and would like to ask you a few questions.

1. Do you feel things in Alaska are generally going in the right direction or do you feel things
have pretty seriously gotten off on the wrong track?

Right Direction..... 58%
Wrong Track..... 26
Don't Know [DO NOT READ] 16

Now I'd like you to think about the issue of liability lawsuits -- the lawsuits where a person claims
to be injured and sues for money to pay for damages.

2. Thinking about the legal system here in Alaska, do you feel the present liability system is
working well and should not be changed, or do you feel the present liability system has
problems and should be improved?

System working well/no change..... 26% [SKIP TO Q4]
System has problems/should be improved 43
Don't Know [DO NOT READ] 32 [SKIP TO Q4]

[IF HAS PROBLEMS IN Q2, ASK:]

3. What are some of the problems with Alaska's liability court system that should be changed or improved? [PROBE:] Is there anything else? [n=214]

	<u>First Mentions</u>	<u>Total Mentions</u>
Too much money rewarded	17%	17%
Need new laws	14	27
Too easy to file lawsuits	14	22
Too many lawsuits	9	11
Fraud/Personal greed	9	9
Greedy//Unethical lawyers	7	10
Ties up the courts.....	7	8
Take resources away from real problems.....	3	4
Hurts innocent people.....	2	4
Everything.....	*	*
Other mentions.....	4	4
Don't know/refused.....	14	14

4. On a related subject, lawyers, like businesses, sometimes try to reach customers through advertising. Have you seen or heard any advertisements for lawyers recently?

Yes	60%
No.....	40
Don't Know [DO NOT READ]	*

5. One issue that has come up is reforming the state's legal system to reduce the number of frivolous lawsuits being filed. On this issue, have you seen, heard or read anything in the news lately?

Yes/seen	11%
Yes/heard	7
Yes/read	8
No.....	73
Don't Know/Refused [DO NOT READ].....	1

6. From what you have heard about the issue of frivolous lawsuits, how serious a problem would you say they are in Alaska? Are frivolous lawsuits...[READ LIST:]

An extremely serious problem	8%
A very serious problem.....	18
A somewhat serious problem.....	36
Not a very serious problem	19
Not at all a serious problem	6
Don't Know/Refused [DO NOT READ].....	14

7. Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do you think frivolous lawsuits are having on the Alaska economy? Would you say they are having...

An extremely negative impact	8%
A very negative impact	18
A somewhat negative impact	37
Not a very negative impact	15
No negative impact	8
Don't Know/Refused (DO NOT READ).....	14

8. Which of the following statements comes *closer* to your opinion regarding the liability law system? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: There are too many lawsuits being filed in Alaska these days.

Other people say: Not enough people in Alaska are exercising their right to sue.

Too many lawsuits/strongly.....	37%	67%
Too many lawsuits/somewhat	30	
Don't Know (DO NOT READ)	19	
Not enough exercising their right/somewhat.....	11	
Not enough exercising their right/strongly	4	15%

9. Which of the following statements comes *closer* to your opinion? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

Other people say: Although it may have some loopholes, the system is fair in nearly all cases.

Too many people taking advantage/strongly	39%	62%
Too many people taking advantage/somewhat.....	23	
Don't Know (DO NOT READ)	11	
System is fair/somewhat.....	22	
System is fair/strongly	5	27%

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. [WAIT FOR RESPONSE, ASK:] And would that be a somewhat or strongly (agree/disagree)? [ROTATE Q10 - Q16]

10. Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed.

Agree/strongly	37%	68%
Agree/somewhat.....	31	
Don't Know [DO NOT READ]	13	
Disagree/somewhat.....	13	
Disagree/strongly	6	19%

11. Frivolous lawsuits have increased the cost of medical care in Alaska.

Agree/strongly	40%	66%
Agree/somewhat.....	26	
Don't Know [DO NOT READ]	16	
Disagree/somewhat.....	13	
Disagree/strongly	5	18%

12. I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit.

Agree/strongly	28%	61%
Agree/somewhat.....	33	
Don't Know [DO NOT READ]	9	
Disagree/somewhat.....	20	
Disagree/strongly	11	31%

13. Frivolous lawsuits have increased the cost of consumer products in Alaska.

Agree/strongly	27%	55%
Agree/somewhat.....	28	
Don't Know [DO NOT READ]	18	
Disagree/somewhat.....	19	
Disagree/strongly	8	27%

14. Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs

Agree/strongly	55%	80%
Agree/somewhat.....	25	
Don't Know [DO NOT READ]	7	
Disagree/somewhat.....	7	
Disagree/strongly	6	13%

15. Frivolous lawsuits have caused higher insurance premiums for everyone.

Agree/strongly	64%	87%
Agree/somewhat.....	23	
Don't Know [DO NOT READ]	5	
Disagree/somewhat.....	5	
Disagree/strongly	3	8%

16. The number of frivolous lawsuits delays compensation to legitimate victims

Agree/strongly	44%	73%
Agree/somewhat.....	29	
Don't Know [DO NOT READ]	12	
Disagree/somewhat.....	10	
Disagree/strongly	5	15%

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. [WAIT FOR RESPONSE, ASK:] And would that be somewhat or strongly (favor/oppose)? [ROTATE Q17 - Q29]

17. A proposal to limit the percentage that a personal injury trial lawyer can receive as a fee from any settlement or award from his or her client.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 53% | 78% |
| Favor/somewhat | 25 | |
| Don't Know [DO NOT READ] | 6 | |
| Oppose/somewhat | 9 | |
| Oppose/strongly | 6 | 15% |
18. Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 24% | 49% |
| Favor/somewhat | 25 | |
| Don't Know [DO NOT READ] | 13 | |
| Oppose/somewhat | 18 | |
| Oppose/strongly | 21 | 39% |
19. A proposal requiring the loser of a lawsuit to pay legal fees for both sides.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 35% | 63% |
| Favor/somewhat | 28 | |
| Don't Know [DO NOT READ] | 9 | |
| Oppose/somewhat | 16 | |
| Oppose/strongly | 12 | 28% |
20. A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 44% | 73% |
| Favor/somewhat | 29 | |
| Don't Know [DO NOT READ] | 10 | |
| Oppose/somewhat | 9 | |
| Oppose/strongly | 8 | 17% |
21. A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 58% | 83% |
| Favor/somewhat | 25 | |
| Don't Know [DO NOT READ] | 8 | |
| Oppose/somewhat | 5 | |
| Oppose/strongly | 4 | 9% |
22. A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 53% | 80% |
| Favor/somewhat | 27 | |
| Don't Know [DO NOT READ] | 6 | |
| Oppose/somewhat | 9 | |
| Oppose/strongly | 5 | 14% |
23. A proposal to limit the ability of convicted felons in prison to bring liability lawsuits.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 58% | 76% |
| Favor/somewhat | 18 | |
| Don't Know [DO NOT READ] | 5 | |
| Oppose/somewhat | 7 | |
| Oppose/strongly | 11 | 18% |

24. A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 68% | 86% |
| Favor/somewhat | 18 | |
| Don't Know [DO NOT READ] | 5 | |
| Oppose/somewhat | 5 | |
| Oppose/strongly | 5 | 10% |
25. A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 38% | 66% |
| Favor/somewhat | 28 | |
| Don't Know [DO NOT READ] | 15 | |
| Oppose/somewhat | 10 | |
| Oppose/strongly | 9 | 19% |
26. A proposal to limit the kinds of medical expert witnesses who are asked to testify in trials. This proposal will only permit medical expert witnesses to testify who are currently licensed doctors, and who have also practiced the same kind of medical specialty that is being questioned in the trial, and actively practiced that specialty sometime within the last 10 years.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 56% | 80% |
| Favor/somewhat | 24 | |
| Don't Know [DO NOT READ] | 8 | |
| Oppose/somewhat | 6 | |
| Oppose/strongly | 6 | 12% |
27. A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 59% | 84% |
| Favor/somewhat | 25 | |
| Don't Know [DO NOT READ] | 7 | |
| Oppose/somewhat | 4 | |
| Oppose/strongly | 5 | 9% |
28. A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony.
- | | | |
|--------------------------------|-----|-----|
| Favor/strongly | 61% | 80% |
| Favor/somewhat | 19 | |
| Don't Know [DO NOT READ] | 8 | |
| Oppose/somewhat | 5 | |
| Oppose/strongly | 7 | 12% |

[SPLIT SAMPLE Q29]

29A. A proposal that would reduce to SIX years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly	49%	73%
Favor/somewhat	24	
Don't Know [DO NOT READ]	8	
Oppose/somewhat	8	
Oppose/strongly	12	20%

29B. A proposal that would reduce to TEN years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly	53%	75%
Favor/somewhat	22	
Don't Know [DO NOT READ]	8	
Oppose/somewhat	8	
Oppose/strongly	9	17%

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you.
[ROTATE Q30-37]

30. Personal injury lawyers

Helped	18%
Hurt	73
Don't Know [DO NOT READ]	8
Refused [DO NOT READ]	1

31. Small businesses

Helped	78%
Hurt	14
Don't Know [DO NOT READ]	7
Refused [DO NOT READ]	•

32. Large corporations

Helped	71%
Hurt	21
Don't Know [DO NOT READ]	8
Refused [DO NOT READ]	•

33. Taxpayers

Helped	74%
Hurt	17
Don't Know [DO NOT READ]	8
Refused [DO NOT READ]	1

34. People with legitimate lawsuits

Helped	71%
Hurt	20
Don't Know [DO NOT READ]	9
Refused [DO NOT READ]	•

35. Insurance companies

Helped	69%
Hurt	24
Don't Know [DO NOT READ]	7
Refused [DO NOT READ]	•

36. Doctors and other medical professionals		
Helped	74%	
Hurt	16	
Don't Know [DO NOT READ]	10	
Refused [DO NOT READ]	*	
37. People with frivolous lawsuits		
Helped	10%	
Hurt	82	
Don't Know [DO NOT READ]	7	
Refused [DO NOT READ]	1	

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. [READ LIST:] [ROTATE]

	Don't Trust At All			Trust Completely		Don't Know
38. Alaska Trial Lawyers Association.....	20%	19%	33%	10%	6%	12%
39. Insurance companies.....	24	25	33	11	4	3
40. Personal injury lawyers	44	23	21	6	2	4
41. Medical Doctors	6	10	29	36	16	2
42. Your local Chamber of Commerce.....	6	9	26	34	19	6
43. Local small business owners	3	5	25	42	21	3
44. Hospitals	7	10	35	32	13	3

[SPLIT SAMPLE Q45]

45A. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers [WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much	2%	9%
More likely to vote for/somewhat	7	
Don't Know [DO NOT READ]	22	
More likely to vote against/somewhat.....	41	
More likely to vote against/much	28	69%

45B. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers [WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much	2%	9%
More likely to vote for/somewhat	7	
Don't Know [DO NOT READ]	25	
More likely to vote against/somewhat.....	35	
More likely to vote against/much	31	66%

46. If the State Legislature passes a liability reform measure aimed at reducing frivolous lawsuits, do you think the governor should sign it?	
Yes	83%
No.....	8
Don't Know [DO NOT READ]	10

Now we have a few questions for statistical purposes...

47. How long have you lived in Alaska?	
Less than one year.....	3%
One to three years	11
Four to ten years.....	17
Eleven or more years.....	68
Don't Know [DO NOT READ]	1
Refused [DO NOT READ].....	1
48. Have you or anyone in your household ever been involved in a personal injury lawsuit?	
Yes/self.....	9%
Yes/family member.....	11
No.....	79
Don't Know [DO NOT READ]
Refused [DO NOT READ].....	.
49. Have you ever served on a jury in a civil -- that is a non-criminal -- court case?	
Yes	16%
No.....	83
Don't Know/Refused [DO NOT READ].....	1
50. What type of radio station do you listen to most? [ACCEPT UP TO 3 RESPONSES]	
Country/Western music.....	26%
Classic Rock and Roll	21
News talk/sports talk.....	17
Oldies/Easy listening.....	16
Public radio/NPR.....	15
Contemporary Pop music	9
Classical music	7
Christian radio	7
Modern/New Wave/alternative Rock.....	7
Jazz.....	5
Soul/Rap.....	1
Other	3
Don't Know/Refused [DO NOT READ].....	6
51. Would you generally describe yourself as <u>conservative</u> or <u>liberal</u> ? [IF SAY MODERATE OR NEITHER:] Well which way do you lean?	
Conservative	48%
Lean Conservative.....	13
Moderate/Neither [DO NOT READ].....	14
Lean Liberal.....	9
Liberal	14
Don't Know [DO NOT READ]	2

52. What is the highest level of education you have completed? [READ IF NECESSARY]

Less than High School.....	5%
High School Graduate	25
Some College/Vocational.....	35
College Graduate	24
Post-Graduate.....	11
Refused/Don't Know [DO NOT READ].....	0

53. Which of the following groups includes your estimated total family income for 1995?
[READ LIST]

Less than \$20,000.....	10%
\$20,000 to \$39,999.....	27
\$40,000 to \$59,999.....	25
\$60,000 to \$99,999.....	20
\$100,000 or more	7
Refused [DO NOT READ].....	10

54. What do you consider to be your racial or ethnic background? [READ, IF NECESSARY]

White/Caucasian	82%
Black.....	3
Hispanic/Spanish/Latino	2
Asian	2
Native Alaskan.....	7
Other [DO NOT READ].....	2
Refused [DO NOT READ].....	2

[RECORD DEMOGRAPHIC INFO FROM SAMPLE]

55. Party Affiliation

Republican	34%
Democrat	17
Independent/Other.....	44
Don't Know [DO NOT READ]	5

56. Age

18 - 24.....	10%
25 - 34.....	21
35 - 44.....	28
45 - 54.....	23
55 - 64.....	10
65 or older.....	7
No Age Data on Sample	1

57. City: _____ Code _____

58. Zip Code: _____

+++++

RESPONDENT'S NAME: _____

TELEPHONE NUMBER: _____

I HAVE RE-READ THIS COMPLETED QUESTIONNAIRE AND CERTIFY THAT ALL QUESTIONS REQUIRING ANSWERS HAVE BEEN APPROPRIATELY FILLED AND THAT THIS INTERVIEW HAS BEEN OBTAINED FROM THE INDIVIDUAL DESIGNATED.

INTERVIEWER: _____ DATE: _____

NOTE THIS INTERVIEW IS THE SOLE PROPERTY OF CHARLTON RESEARCH COMPANY ANY ATTEMPT TO DUPLICATE OR SELL THE CONTENTS CONSTITUTES AN ILLEGAL ACT AND IS SUBJECT TO PROSECUTION.



Official Business

COMMITTEE:

SENATE JUDICIARY

DATE: February 9, 1996

Subject of meeting:

CSHB 158 (FIN) Am (Ct Rls Pfd) (EFD Fld)

CIVIL LIABILITY

SIGN-IN

PLEASE PRINT!

NAME ADDRESS (MAILING) & (ZIP) PHONE REPRESENTING DO YOU WANT TO TESTIFY?

Terisa Williams	ABO 1031 W. 4th St 201 Anch 99501	209-5100	ABO	yes
Jeff Busch	DCED	465-2500		NO
Edith Collins	414 1st St #101 Anchorage AK 99501	271-1221	1st Vice President of Anchorage YC	yes
Brian Porter	House - sponsor			
Pam LaBette	287 Second St #201 Juneau	586-2323	ASCC	Yes
Dr. Dale Johnson	Ketchikan Medical Clinic Ketchikan, AK 99901	225-5144	AK State Medical Assoc.	Yes

SENATE COMMITTEE REPORT

DATE: 5/1/95

FURTHER: L&C
Finance

DATE TURNED INTO OFFICE: _____

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.

and recommends:

- be replaced with CS CS HB 158 (500)
- 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 <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>Lesley Green</i>			<input checked="" type="checkbox"/>
		<i>Make title</i>			<input checked="" type="checkbox"/>
		<i>Al Adams</i>		<input checked="" type="checkbox"/>	<input type="checkbox"/>
CHAIR:		<i>John Taylor</i>		<input checked="" type="checkbox"/>	

UNCONSTITUTIONAL
-97
Draft
Prob

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

CS	Dept. Law (Civil)	3/1/96	<input checked="" type="checkbox"/>	
CS	Finance (Discussion)	3/1/96		.8

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

Alaskans for Liability Reform

RECEIVED

JAN 22 1996

Ans'd.....

Memo

To: Alaska State Legislators
From: Alaskans for Liability Reform
Date: Friday, January 19, 1996
Subject: Attached Article

Attached you will find an article we found in FW Magazine regarding Plaintiff Lawyers in the State of California.

We thought that you would probably be interested in this article, as the Plaintiff Attorney Lobby in Juneau is probably quite busy this time of year in Juneau.

Thank you

Alaska State Legislature

Representative Brian S. Porter



CHAIRMAN
HOUSE JUDICIARY COMMITTEE

MEMBER
HOUSE LABOR & COMMERCE COMMITTEE
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER
FINANCE SUBCOMMITTEES
DEPARTMENT OF LAW
DEPARTMENT OF PUBLIC SAFETY
COURTS

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STATE CAPITOL ROOM 118
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FAX: (907) 465-3434

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ANCHORAGE, AK 99501-2133
PHONE: (907) 259-8197
FAX: (907) 258-5610

DISTRICT 20

Sectional Summary

of

HB 158 CIVIL LIABILITY

Section 1

FINDINGS AND PURPOSES

Section 2

GENERAL STATUTE OF REPOSE

Statute of Repose: A law that prevents suits from being brought after a certain period of time, regardless of whether or not the statute of limitations has expired. Statutes of repose begin running when a product is sold or a procedure is performed, instead of at the time an injury is discovered.

The purpose of this section is to make it clear that legal actions involving personal injury, death, or property damage be brought within fair and reasonable time. All crimes have a statute of limitations in our legal code. The same standard of fairness should also apply to civil lawsuits.

This section is considered a statute of repose, prescribing an eight year period within which any civil action involving injury, death, or property damage must be filed with the courts. The time period is measured from the date the construction was completed or the last act that allegedly caused the harm.

The eight year period would not apply if the injury, death, property damage was caused by an intentional act or if there was intentional concealment of facts that resulted in a delay of over eight years before the basis for legal action was known. This section does apply if a shorter period of time for bringing a particular legal action imposed under another provision of law.

The terms for completed construction are defined and clarified so as not to be misinterpreted by litigants or courts.

Section 3

LIMITATION ON ACTIONS AGAINST HEALTH CARE PROVIDERS

Statute Of limitations: A law that requires lawsuits to begin within a specified time period from when the plaintiff knew they were injured. When the statute of limitations has expired, the lawsuit can no longer be brought.

Current law, in medical malpractice claims one may file a claim within two years upon discovering the injury. This section states that the two-year limitation does not apply to minors under the age of six. Minors must bring legal actions within two years or before their eight birthday - which is longer. Tolling of the time limitation provides additional protection for minors. The clock stops, if fraud by a parent, guardian, insure health provider is the reason action was not taken. Time is also extended for minors if there was an intentional concealment of facts to intentional concealment or undiscovered presence of a foreign body with no therapeutic or diagnostic purpose, provided this specification applies to the legal action being brought.

The third part of this amendment defines terms to ensure that the statute is understood and applied fairly.

Section 4

CERTAIN STATUTORY LIABILITIES TO BE BROUGHT INTO YEARS

This section removes unclear and conflicting language from the statute. The existing two year limit for actions involving libel, slander, assault, battery, seduction, or false imprisonment remains the same.

Section 5

GENERAL STATUTE OF LIMITATIONS

This section places a two-year limit on actions involving injury, death, or property damage after the date claimants could reasonably believe they had a claim.

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. Provides that this section does not apply if a shorter period of time is required under another provision of law.

Section 6

NONECONOMIC DAMAGES

Noneconomic damages: Money awarded that does not compensate the injured person for monetary loss, but rather, for example, for pain and suffering.

Economic damages: Money awarded to an injured person to compensate for his or her actual monetary loss. For example, economic damages compensate for medical costs and lost wages.

This section extends the definition for noneconomic losses to include claims for wrongful death as well as personal injury. The definition clarified by removing "negligence", which is difficult to establish or disprove. The change further defines noneconomic losses to include loss of consortium (i.e., the right to a husband's or wife's fellowship).

This section provides that damages for noneconomic losses are limited to certain types of injuries, such as pain and suffering. Limits damages for noneconomic losses to \$350,000, except that damages are limited to \$500,00 for certain specified injuries. Provides an exception for damages awarded against a person committing or attempting to commit a felony. Provides that multiple injuries sustained as a result of a single incident shall be treated as a single injury for the purpose of this section.

Section 7

PUNITIVE DAMAGES

Punitive damages: Sometimes called exemplary damages, punitive damages are awarded in to punish a defendant for malicious, intentional act rather than one that is merely negligent.

The current statute allows punitive damages to be awarded when there is "clear and convincing evidence," but, does not explain evidence in what actions. This section requires that punitive damages may not be awarded unless malice or conscious acts showing deliberate disregard of another person by the person from whom the punitive damages are sought is shown.

Section 8

LIMIT OF PUNITIVE DAMAGE AWARD

Any awards for punitive damages will be at least \$300,000 or up to three times the amount of compensatory damages awarded. Further, one-half of the award will be deposited into the general fund of the state.

Section 9

DAMAGE CALCULATION

The term "death" is added so that the statute applies to damages awarded for legal actions involving both personal injury and death.

The added text states that after past and future economic and noneconomic losses have been calculated by the court, the amount of state and federal taxes that would have been paid is subtracted from the award. The amount of tax should be calculated using the state and federal tax rate at the time of the injury or death.

IRS code 104(A)(2) allows income from awards involving personal injury or death to be exempt. Under current statutes, awards are calculated as the gross loss to the claimant. Therefore, the prevailing party is awarded their actual past and projected loss, plus the amount they would have paid in taxes under normal circumstances. Claimants are being compensated as if future earnings were tax exempt.

This section ensures that the prevailing party is fairly compensated for actual after-tax losses. Specifying how the tax rate should be calculated removes the need to speculate how much future taxes will be and prevents future litigation for award adjustments.

Section 10

PERIODIC PAYMENTS

Periodic payments: Under a periodic payment system, lawsuit awards are paid to the plaintiff throughout his or her lifetime, for the period of disability or for any other set period, instead of a lump sum.

This section changes the phrase "an injured party" to "a party." This allows anyone involved in the suit, rather than just the claimant, to request periodic payments for amounts awarded for future damages.

Requires that future economic and noneconomic damages that exceed \$100,000 be paid periodically whether or not it is requested by a party. Provides that a portion of a judgment owed to an attorney under a contingent fee agreement, must be reduced to present value and paid in a lump sum.

Section 11

SECURITY FOR PERIODIC PAYMENTS

Require that the court require security be posted for periodic payments, except when the obligation is recognized by the state or an insurer. Requires that the judgment include increases for future anticipated inflation. Provides to the judgment creditor damages caused by the failure to make periodic payments, including costs and attorney fees.

Section 12

INFLATION ADJUSTMENTS FOR PERIODIC PAYMENTS

The words "for personal injury or death" are added to the statute. This section clarifies what types of damage awards are being regulated by this statute.

Courts must specify the percentage or the method for increases by future periodic payments will increase to cover inflation.

By specifying the amount or method allowed for inflation, the amendment prevents future litigation for an adjustment of the original award.

Section 13

COLLATERAL BENEFITS

Collateral Source Rule: A trial rule where the jury is not told that the injured person has received money for their injury from other sources, such as an insurance policy or another defendant.

This prevents unjust enrichment from claimants who collect multiple awards for the same loss.

Prohibits a claimant from recovering damages that duplicate amounts received from collateral sources. Provides exceptions for certain collateral sources that are subrogated to the claimant, and for death benefits and workers' compensation benefits. Allows a person defending a claim to introduce evidence of amounts received from certain collateral sources. Prohibits a person who provides a collateral benefit that is introduced into evidence from recovering that amount from the claimant or being subrogated the rights of the claimant.

Section 14

APPORTIONMENT OF FAULT

Provides that the court shall determine each party's equitable share of the obligation to each claimant. Provides that assessment may only be used to measure percentages of fault and not to subject a person to civil liability.

The word "party" creates a loophole that restricts apportionment fault to those

named in the legal action. By considering all persons or entities which contributed to a loss, each is fairly apportioned a degree of fault based on their own actions.

Thus, this section provides that the court shall determine each party's equitable share of the obligation to each claimant. Provides that an assessment may only be used to measure percentages of fault and not to subject a person to civil liability.

Section 15

APPORTIONMENT OF FAULT

Changes the statute number to conform with revised law and clarifies the rules so that while all parties that contributed to injury or death are fairly considered when assessing the percentage of fault.

Section 16

EFFECT OF RELEASE

Provides that a release given in good faith does not discharge another person from liability, but does reduce the total amount awarded by the jury or court by the amount stipulated in the release or the consideration paid for it, whichever is greater.

Section 17

OFFERS OF JUDGMENT

The existing statute says that prior to 10 days before trial begins, either party can make an offer to settle a claim, plus accrued cost. This must be accepted within 10 days and correctly recorded by the clerk.

If the court's judgment is less favorable to the recipient of the offer, the person who refused the offer must pay the offerer's costs and attorney fees incurred since the date when the higher offer to settle was made.

Section 18

PREJUDGMENT INTEREST

The section changes the interest rates on judgments and decrees from a set 10.5% a year to a floating rate of 3% above the federal discount rate in effect January 2nd of the year of the judgment. This rate is not used if a different rate has previously been agreed to by contract.

Federal discount rates have been as low as 1%(1942) and as high as 14%(1981). Allowing annual adjustments for prejudgment interest brings charges in line with the current market and prevents unfairly high or low rates.

Provides that the rate of interest on judgments and decrees, including prejudgment interest, is equal to prejudgment interest for certain future damages or punitive damages.

Section 19

PREJUDGMENT INTEREST

The purpose for the prejudgment interest is to allow claimants reimbursement of funds that would normally have been in their possession plus any interest that amount could have earned prior to the trial. This is not the case in damages awarded for future losses and these sums can be invested and interest earned on the funds.

Prejudgment interest is subject to federal income tax and attorney fees commission.

Section 20

UNIFORM ARBITRATION ACT

Amends the section on application of the Uniform Arbitration Act so that it applies to the statutes as listed after adoption of House Bill 158.

Section 21

MEDICAL EXPERT WITNESS QUALIFICATION

This section establishes qualifications for an expert witness to testify on issues relating to appropriate medical standard of care unless the witness is a health care provider.

MEDICAL BOARD OVERSIGHT OF MEDICAL EXPERT WITNESSES

MEDICAL EXPERT WITNESSES

Establishes guidelines for the court as to when to allow a medical expert witness to testify in cross-examination.

Section 22

DEFINITIONS

Provides definitions for professional negligence and professional services.

Section 23

CONTINGENT ATTORNEY FEE AGREEMENTS

Provides that if an attorney collects a contingency fee in connection with an award of punitive damages, the contingent fee due the attorney shall be calculated after that portion of punitive damages due the state has been deducted from the total award of damages.

Section 24

CIVIL LIABILITY OF HOSPITALS FOR NON EMPLOYEES

The purpose of this section is to clarify the circumstances in which hospitals are held directly liable for the actions of health care providers not employed by the hospital. Current law permits claimant to sue only the hospital rather than the independent contractor who may have less ability to pay.

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. However, the hospital must provide notice that the health care provider is an independent contractor and a notice of limited liability must be posted in all admissions areas and published in area newspapers annually.

The hospital must also use caution and prudence in granting privileges to independent health care providers, have a review proceeding to monitor independent contractors, and be prepared to revoke or restrict privileges when needed.

Hospitals are liable for civil damages if the hospital or its employees were negligent or acted with intentional misconduct.

The final section defines health care providers and hospital as the terms are used in this statute.

Section 25

DAMAGES RESULTING FROM COMMISSION OF A CRIME

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 for personal injury or death.

Section 26

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS

Sanctions for failure to sign a pleading or filing a frivolous lawsuit is a matter in the discretion of the trial court. This section imposes monetary sanctions against any attorney in civil cases for filing frivolous, unnecessary and legally deficient pleadings.

If it is alleged or appears that a pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, may set the matter for hearing. If the court determines that the motion is in violation, monetary sanctions will be implemented.

Section 27

Repealing AS 09.55.548

Section 28 through 33

Technical sections relating to amending Alaska Rule of Civil Procedure 49,68,702 and 95.

Section 34

Severability

Section 35

This Act applies to all causes of action accruing on or after the effective date of this Act.

Section 36

This Act takes effect July 1, 1995

THE LAWSUIT CRISIS IS A MYTH

1. Argument: Tort cases are clogging the court system.

Response: There were 21,378 cases filed statewide last year in superior court. (p. S-18). Only 993 personal injury cases were filed statewide last year. (p. S-32). Personal injury cases comprise only 4.6% of the cases filed in state superior courts.

Compare: There were 2,778 felony indictments in state superior court last year. (p. S-20). There were 8,692 domestic relation cases filed last year. (p. S-27). Of the domestic relation cases filed 3,984 involved divorce or dissolution. (p. S-28). The average Alaskan is three times more likely to be indicted for a felony and four times more likely to end their marriage than they are to be involved in a personal injury lawsuit.

According to a recent survey, only 9% of Alaskans polled had ever been involved in a personal injury lawsuit as either a plaintiff or a defendant.

Source: Alaska Court System 1995 Annual Report: Charlton Research Company Survey (Jan. 1996).

2. Argument: Runaway juries regularly award large sums of money to injured people at the expense of Alaskan businesses.

Response: There were 43 civil jury trials in statewide in superior court last year. (p. S-34). These trials encompassed such matters as the review of administrative orders, debt collection cases, personal injury claims, contract disputes, and property damage cases. (p. S-32). There is no separate statistic on how many of the 43 civil jury trials involved a personal injury

claim.

Compare: There were 171 felony jury trials statewide in superior court last year. (p. S-23). There were also 199 domestic relation trials statewide in superior court last year. (p. S-30). The average superior court judge is four times more likely to hear a felony jury trial than a civil jury trial. The average trial judge is almost five times more likely to hear a domestic relations trial than a civil jury trial.

Source: Alaska Court System 1995 Annual Report; Charlton Research Company Survey (Jan. 1996).

3. Argument: Most civil lawsuits are frivolous.

Response: There were 4,685 civil cases filed statewide in superior court last year. (p. S-31). These cases involved such matters as the review of administrative orders, debt collection cases, personal injury claims, contract disputes, and property damage cases. (p. S-32). Last year only 193 of these cases were disposed of on summary judgment, either in favor of the plaintiff or the defendant. (p. S-34).

Compare: 527 of these cases were disposed of by default judgment. (p. S-34). The remainder were resolved by settlement, dismissal or trial. (p. S-34). Most civil cases are meritorious as evidenced by the number of times a defendant does not bother to respond.

Source: Alaska Court System 1995 Annual Report; Charlton Research Company Survey (Jan. 1996).

CONCLUSION

Alaska has an estimated population of 615,000 people. (p. S-9). Last year, Alaskans were charged with 28,370 misdemeanors, came to court 68,761 times for traffic offenses, and filed 9,717 small claims cases (amounts less than \$5,000). (p. S-38). Tort cases are only a small percentage of the total civil cases filed and civil cases comprise only a small percentage of the cases that are filed in our state courts.



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

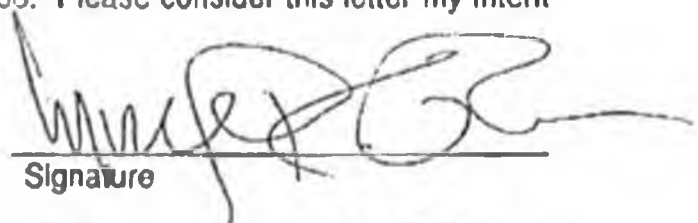
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 Chair, Credentials
 Joan Thomas, M.D.
 Chair, CAAR

TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.



Signature

MICHAEL K. POWERS

Printed name and title

1243 VIEW POINT

Address

FAIRBANKS, AK



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

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 Chair, OADR

TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Tina Martin
 Signature

Tina Martin MD
 Printed name and title

1919 Lathrop St. Suite 100
 Address

Fairbanks, AK 99701



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

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 Radiology/Pharmacy
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 Chair, Surgery
 Joseph Warral, M.D.
 Chair, Credentials
 Josh Thomas, M.D.
 Chair, QAUR

TO: Senator Robln Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Clarice Dukeminier

Signature

Clarice Dukeminier MD

Printed name and title

1905 Cowles

Address

Fairbanks Alaska 99701



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

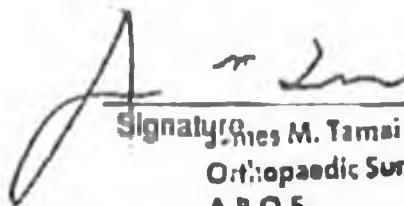
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 Richard Hutchinson, M.D.
 Chair, Surgery
 Joseph Warrall, M.D.
 Chair, Credentials
 Joan Thomas, M.D.
 Chair, QA/QR

TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.



Signature: James M. Tamai M.D.
 Orthopaedic Surgery
 A.B.O.S.

Printed name and title

4001 GEIST RD. SUITE 8
 Address

FBKS, AK 99709



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

EXECUTIVE COMMITTEE:

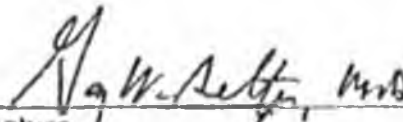
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Psychology/Pathology
- Richard Hultsien, M.D.
Chair, Surgery
- Joseph Warrall, M.D.
Chair, Credentials
- Jean Thomas, M.D.
Chair, QAUR

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.



Signature

Gary W. SELTZER, MD

Printed name and title

1919 Lotberg, Suite 103

Address

Fairbanks, Alaska 99701



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545

February 27, 1996

The Honorable Robin A. Taylor
Room 30, State Capitol
Juneau, AK 99801-1182

Reference: House Bill 158, Tort Reform / Sent Via Facsimile to (907) 465-3922

Dear Senator Taylor:

I am pleased to write to you on behalf of United Fishermen of Alaska (UFA). Through its member organizations, UFA represents permit holders and crew participating in commercial fisheries throughout the State of Alaska. As you know, many Alaskan fishermen suffer in the aftermath of the Exxon Valdez oil spill disaster. It is the Exxon experience in particular that requires a response from UFA concerning House Bill 158. Specifically, our comments concern the cap on noneconomic damages and the cap on punitive damages.

- *Cap on noneconomic damages*

Judge Holland allowed no noneconomic damages in the Exxon case. The compensatory damages award in this case was based only on past provable receipts (and only through the 1993 fishing season). Fishermen continue to suffer ongoing damages which are depressing our fishing resources. In short, it isn't over just because the trial ended. On the contrary, 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.

In our experience, noneconomic losses can be as great or greater, in terms of real loss, than simple monetary damages might be. The subjective nature of noneconomic loss is precisely the reason why these types of damages should be left to juries of Alaskans to decide. Just as a \$10,000 loss that can be easily absorbed by one family might well lead to the economic devastation of another, the differences should be determined and accounted for on a case-by-case basis.

UFA 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 the 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.

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Area K Seiners Association
British Bay Driftnetters Association • Concerned Area "M" Fishermen • Cook Inlet Aquaculture Association
Condemned Fishermen United • Kodiak Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Peterson Vessel Owners Association • Prince William Sound Aquaculture Corporation • Puffin Bluff Vessel Owners Association
Sealot Producers Cooperative • Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet Fish Association

The Honorable Robin A. Taylor
February 27, 1996
page 2

- *Cap on punitive damages*
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 goes without saying that, to be effective, the punishment has to be felt by the wrongdoer. 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 less than 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 Exxon was granted a license to despoil Alaska with relative impunity.

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 the reasons above, we strongly urge the legislature to join us in opposition to House Bill 159. Thank you for your consideration.

Sincerely,

UNITED FISHERMEN OF ALASKA

Jerry McCune

Jerry McCune, President



**WESTERN
MECHANICAL, INC.**

Shop: 2225 Van Horn Road
Telephone: 452-1031
Fax: 456-3493
Contractor License #
AA333

P.O. BOX 0007

FAIRBANKS, ALASKA 99706-0007

February 8, 1996

Sent Via Facsimile

Senator Robin Taylor
State Capitol, Room 30
Juneau, AK 99801-1182

Subject: HB 158

Dear Senator Taylor:

Western Mechanical, Inc. is a small business working in the construction industry. We support HB 158 tort reform bill, because it puts a common sense, reasonable cap on awards for non-economic and punitive damages. The caps will help contain litigation and liability insurance. This year we will pay more than \$31,000. for general liability insurance.

Yours truly,
WESTERN MECHANICAL, INC.

A handwritten signature in cursive script that reads "Mike Desmond".

Michael C. Desmond
President

CP Accounting

Post Office Box 872508
Wasilla, AK 99687
376-5376

February 8, 1996

Dear Sir/Madam:

I understand HB 158 is scheduled for hearing on February 9, 1996. I have been a long supporter of the Tort Reform Bill. I favor the recommendations in the one presented by Rep. Brian Porter. I have been self employed as an accountant and tax preparer since mid 1982 in the Mat-Su Valley. I have witnessed the closing of businesses because of the high rising costs of insurance. One of my clients told me four years ago that he was re-directing his business because "the insurance companies were getting worse than the IRS".

The outrageous amounts of settlement for law suits have exceeded what any normal human being could make in a life time. Small businesses are forced to carry insurance and have to pay higher rates based on having less employees and paying for these claims and settlements. I have a small family worked practice, partly because I decided long ago that I could not afford the benefits to pay good help based on the rising costs of insurance.

Please support HB 158.

Sincerely,


Carrol A Palmer,
Accountant

**Nenana Heating Services, Inc.
P O Box 9
Nenana, AK 99760
February 7, 1996**

TO: Members of the Senate Judiciary Committee

Senator Robin Taylor

RE HB 158 Tort Reform Bill

We are a small business in fuel delivery and furnace sales and repair located in the interior of Alaska. At present we are in the midst of a litigation that could be done with if HB 158 were in effect right now. It has cost us much lost time and increased our liability insurance by \$7,000 per year.

We think that it is important to limit non-economic damages. In our opinion non-economic damages should be done away with all together as they are included in nuisance type suits anyway.

Limiting and prohibiting punitive damages would help businesses be able to afford to litigate without fear of losing all that they have. In most cases evidently there has been no malice or conscious effort to injure anyone, as in product liability cases.

It is imperative that juries be told what has been given to a person in other suits that deal with the same litigation. It certainly can show that the person has received some monetary awards and it might point out that all people possible have been sued and make it look like a frivolous suit. Also if it is proved that a certain amount of a loss sustained is for example, \$800,000 and the plaintiff has already received \$500,000, that awarding more than \$300,000 in any further litigation is lining his and his lawyer's pockets for more than is deserved.

We don't think that any of us in the business community feels that the ability to sue should be stopped. Suits have to have monetary limits and a way to control frivolous suits.

We support the contents of HB 158 and would urge your support of the bill.

Feel free to call if you would like to know more about our stand on this particular piece of legislation.

David Shaw, President

STUTZMANN ENGINEERING ASSOC., INC.

P.O. BOX 1429
FAIRBANKS, ALASKA 99707
(907) 452-4094

February 7, 1996

Senate Judiciary Committee
Juneau, Alaska 99801

Gentlemen:

I am writing regarding HB 158, the tort reform bill. Business is very much in need of the passage of this bill.

We are a small engineering firm and litigation and liability insurance has a big impact on business which most people do not realize. This is especially true today when many people are bringing suit against everyone, hoping to find a "deep pocket."

The courts are overcrowded and justice has become a mockery. Attorneys and the bar association do and will vigorously lobby against this bill. Small business is the backbone of the country; where would Alaska be today without small business. WE NEED THE PASSAGE OF THIS BILL.

Sincerely,



Paul E. Stutzmann
President

February 7, 1996

To: Sen. Robin Taylor, Chair
Fax Number: 907-465-3922

Re: Tort Reform Bill, HB 158

We are in support of the above Bill HB 158. We have been in the Plumbing and Heating business since 1963 and at this time, employ 12 Journeyman plumbers and helpers. Liability insurance has a huge impact on small businesses such as ours. Worker's Compensation is also a very large financial burden to us, as we have paid over \$30,000.00 in Liability and Worker's Compensation insurance in the past year.

As subcontractors, we must pay out large sums of money to ensure the safety of all of our employees. We need to control these costs while assuring appropriate compensation for any persons injured through the fault of others.

The Tort Reform Bill is important to small businesses of all sizes and to help support a healthy independent business community.

Sincerely,



Bitner Plumbing & Heating, Inc.
Paul Bittner, President



WARNING LITES OF ALASKA, INC.

MAIN OFFICE

591 W 67TH AVE. ANCHORAGE, ALASKA 99510-1555

PHONE (907) 562-2124



February 7, 1996

Senate Judiciary Committee
Juneau, Alaska 99801

Attn.: Senator Robin Taylor, Chair

Dear Senator Taylor,

I am writing in regards to HB 158, Rep. Brian Porter's tort reform bill. I would strongly encourage you to consider and pass this piece of legislation.

Liability insurance has always been a costly expense in our business and at times has been all but impossible to obtain. We are in the traffic control rental business. It was our main source of income until four or five years ago. Because of contractual provisions and the exposure our Company had doing Traffic Control it became impossible to obtain the necessary liability insurance. There was only one carrier that offered to furnish insurance to us. Even then, they imposed restrictions on us that were not acceptable to the General Contractor and we were unable to bid on State Contracts.

Fortunately for our Company and our Employees we were able to diversify and continue to remain in business. We would like to be able to do Traffic Control work. We do a good job and have employed as high as thirty-three people when we were bidding without the restrictions we now have.

I believe that everyone should take responsibility for what they do, however I don't feel that people or businesses should be penalized by frivolous law suites when they are not at fault.

As a small business owner I urge you to consider and pass HB 158.

Yours truly

Marie Wilson
President

Abused due to reasons above.

KENAI

BRANCH LOCATIONS

FAIRBANKS

MI 18 1/2 KENAI SPUR RD. P.O. BOX 4173
KENAI, ALASKA 99611
(907) 783-8220

2135 DONALD AVE.
FAIRBANKS, ALASKA 99701
(907) 451-2100



THE SURVEYOR'S EXCHANGE



3695 SPRINGER STREET
 ANCHORAGE, AK 99503
 (907) 561-6301
 FAX (907) 561-6228

3323 DEARMOUN ROAD
 ANCHORAGE, AK 99516
 (907) 345-6500
 FAX (907) 345-7836

124 AURORA DRIVE
 FAIRBANKS, AK 99709
 (907) 452-6079
 FAX (907) 452-6298

FAX COVER SHEET

TO: <u>Senate Judiciary Comm</u>	FROM: <u>Larry Wilmarth</u>
ATTN: <u>Sen Robin Taylor - chair</u>	DATE: <u>Feb. 7, 1996</u>
FAX #: _____	PHONE #: _____ PAGES, INCL. COVER: <u>1</u>

Please support H.B. 158. Brain Porters tort reform bill. It will be a great help to both my personal mental stress load and to the financial health of my company. I have been in business for 27 years employ + 20 people, and operate with the knowledge that only one accident could end it all, and put me back to working for someone else.

I have been in enough court rooms to know that the legal system seldom yields the expected results. We must set some parameters and those in H.B. 158 seem reasonable.

Thank you
 L. Wilmarth

ALARMS -- BURGLAR, FIRE
INTERCOM - TELEPHONE
283-4012

Your Full Line Electrical Supplier
283-4276

LIGHTING FIXTURES - SHOWROOM
RESIDENTIAL - COMMERCIAL
283-4036

KENAI ELECTRIC CO.
11807 Kenai Spur Highway
KENAI, ALASKA
99611

2-7-96

Senator Robin Taylor, Chair.

RE: Tort Reform
HB 158

Please Support HB 158 - Rep. Brian Porter

This has been badly needed for many, many years! The costs to businesses and to our residents is horrendous!

This year marks 40 years in business in Kenai. I've seen the costs of operating a business during U.S. Territorial days when good insurance was one of our lesser costs to today where it is almost prohibitive!

Again, please start with HB 158, support it.

Glenn J. Kipp

Glenn J. Kipp

**RIVER ADVENTURES
VIA FAX**

TO: Senate Judiciary Committee
ATTN: Senator Robin Taylor, chair

FAX#: (907) 465-3922
FROM: KAREN HESS
PHONE: (907) 766-2050
FAX: (907) 766-2051
DATE: Feb. 8, 1996

TOTAL NUMBER OF PAGES 1 **INCLUDING COVER PAGE.**

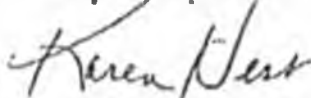
RE: HB 158, tort reform bill

Senator Taylor,

I am writing this letter in support of House Bill 158. My husband and I own and operate jet boat tours in Haines and employ 2 people not counting ourselves. We are contracted to the cruise ships and provide a service for tourists in our area to show them the wilderness and beauty in the Chilkat Valley. I am very concerned with the present liability laws because I feel that they do not protect the small business owner. We carry the \$1,000,000.00 policy required by the cruise ship companies for our tours but I fear that this would not be adequate should we encounter even a small injury. We do everything that we can to protect our passengers but I am not so naive to think that someone couldn't fall getting out of our bus or in or out of the boat.

We fully support this bill and encourage you to do everything you can to see that it passes. Our future and the future of our families will be in jeopardy if there isn't a ceiling put on the money awarded in lawsuits. We also feel that this might help curb the bogus lawsuits that occur daily.

Respectfully Yours



Karen M. Hess



HORSE-DRAWN CARRIAGE CO , INC
P.O. Box 671316, 22012 Blair Ave. Chuglak, Alaska, 99567
(907) 688-6005, Fax 688-1218
Internet: <http://www.goworldnet.com/carriage.htm>

FEBRUARY 6, 1996

Senate Judiciary Committee
Senator Robin Taylor, Chair

Dear Senator Taylor.

This is in regard to HB 158, Rep. Brian Porter's tort reform bill.

Our business is a year-round operation in which we offer hay, sleigh and carriage rides to Anchorage residents and tourists. We use seven draft horses and have five carriages, three sleighs, two wagons and a hitch wagon for parades and shows. Our operation is labor intensive and monetary awards are minimal. It has been said that one doesn't need to be crazy to be in this sort of operation, but it helps. One needs to love horses, like the out of doors and enjoy to make people happy.

We started giving carriage rides in downtown Anchorage in 1983 and have been trying to make it pay ever since.

When I started this operation I had planned to have something to do after I retired from the Federal Government. Well I retired a little more than a year ago and my cost are still the same. We generate about \$100,000 for rides, of which 70% are carriage rides, and spend about \$120,000. I had hoped for the business to at least break even. One of the major expenses is insurance including workman con.p, liability property, which represent 13% of our expenses.

It would be helpful if tort reform could some how reduce this major expense.

Thank you for your time and consideration.

Jon Nauman, President

**UNITED
INSURANCE**

P.O. Box 33510
JUNEAU, ALASKA 99803
(907) 789-5208
FAX (907) 789-1838

February 6, 1996

Senator Robin Taylor
Chairman
Senate Judiciary Committee
Juneau, Alaska

Re: Tort Reform Bill HB 158

Dear Senator Taylor:

I am a small business person and an independent insurance agent and I encourage you to support HB 158.

Liability insurance and litigation has a huge impact on small business in Alaska. As I understand it, the purpose of this legislation is to help control these costs while assuring appropriate compensation for persons injured through the fault of others. These costs are controlled primarily by putting a cap on awards such as pain and suffering.

The vast array of product liability laws that manufacturers, businesses and consumers currently encounter have suppressed their creativity due to fear of frivolous lawsuits. As a consequence, business innovation has suffered and job creation has lagged. While prompt and fair compensation is an absolute right, astronomical punitive damage awards have encouraged a multitude of "get-rich-quick" lawsuits. Without any uniformity of laws and judgements, it has become impossible for insurers to offer a predictable and marketable liability policy.

I urge you to support HB 158.

Sincerely,

Dave Koe

MILLS CONSTRUCTION & SUPPLY

P.O. BOX 142
GUSTAVUS, AK 99826
FAX (907) 697-2365

(907) 697-2324

Honorable Senators, Taylor, Green, Millor, Adams, and Ellis

With regard to HB 158, I offer this for your consideration;

As a small independent business owner and operator, I fully support tort reform to the greatest extent possible. In fact, I believe this bill is still much too liberal.

- 1) I would eliminate all claims for "pain and suffering". This is certainly an area that is rife with exaggerated, if not fraudulent claims. By what yardstick is one to measure such a subjective claim. Further, there is no end to which one can claim cause here. Should I be remunerated (REWARDED) if for example, I claim to get a headache every time I am reminded of the job performance of President Clinton? Life can be cruel.
- 2) Punitive damages should be rewarded only when malicious intent is proven. Willful or deliberate disregard is too vague. This verbiage is lawyers heaven.
- 3) Punitive damages should not have a minimum amount and perhaps not a maximum amount either. A case could be made for not having them at all. Such should be the charge of the jury.
- 4) I support informing juries as to previous claims.

The single most disheartening aspect of owning and operating a small construction business for me is the thought of knowing all that my wife and I have worked for over the years could be instantly wiped out. We work on average 50-70 hours per week each and enjoy one of the best reputations in this business. We do what we can to comply with regulations, codes, safety precautions etc. but I know that no matter how hard we try, some overzealous regulator could come in at any time and find "violations" of this or that. The same is true for any money hungry attorney but the results are potentially much more devastating. We do not wish to harm anyone and try our best not to do so. However, we are not infallible in the walk of life nor is anyone else. I just wish we could proceed without this dark cloud over our shoulders perceivably waiting to wipe out all that we have worked for.

It seems a terrible burden to bare for the average hard working, law abiding, taxpaying and productive citizen. It is for this reason alone, that I favor retiring from this business even though I am not yet 40 years old. Therefore, to the supposedly safety minded & righteous bureaucrats and lawyers I ask; What have you gained by compelling me to cease to do business? I would argue that the people will have lost one of the most contentious, talented and value oriented builders around. I will leave my business to others in this area, not one of which is even a legal contractor. Again I ask, who wins?

On a separate note, please tell Senator Duncan to take his universal health care and shove it. The only people that I would less likely wish to have in charge of my health than the state government is the national government! Keep your hands in your own pockets.

Sincerely,

Dan Mills-MCS

SUNRISE AVIATION, INC
P O Box 432
Wrangell, AK 99929
(907)874-2319

February 7, 1906

Attn: Sen. Robin Taylor

Dear Senator Taylor,

We understand that you will be hearing a tort reform bill shortly and wanted to let you know our feelings on this matter.

You may remember being in our office not too long ago when the subject of insurance came up-we in how we are about to be "insured" out of business if something isn't done.

Being a five person air taxi with two aircraft, we kind of got hit from both sides. First, product liability has driven up the cost of the aircraft and subsequent aircraft parts to an unbelievably high rate and then business/seat liability escalation at an outrageous rate every year. We are accident, incident and violation free and have NEVER made a claim, yet our premiums now take just over 10% of our gross revenue each year. It went up 85% last year and we are lucky (?) - we heard that anyone with an accident saw their premiums rise as much as 300%.

As you know, we operate all year and do many of the non-life threatening medevacs so people do not have to take a \$12,000 jet ride. If the insurance keeps rising, I foresee a time when we simply could not afford it. That would close us down and we are the only on demand air taxi here. Any help in halting this out of control escalation would be appreciated.

Respectfully,

Barbara Conine

Barbara Conine

Tyler Robinson

Valley Towing

P.O. Box 2432 • Palmer, Alaska 99645 • (907) 746-5513

Dear Sirs,

We at Valley Towing feel that HB 158 tort reform is very important to all small business. Liability insurance has a major impact on a company of one size. (less than ten employees)

We operate a Towing company and deal with insurance quite often.

Thank you for your time and hope to see your support.

A handwritten signature in cursive script, appearing to read "C. S. H." followed by "(Purs)" in parentheses.



Capitol Fax Alert

Your Involvement Is Needed
Please Contact Your Legislators

TO: NFIB/Alaska Fax Network Members
FROM: Thyea Shaub, State Director
DATE: February 6, 1996

Action Needed on Tort Reform

The Senate Judiciary Committee has scheduled HR 158, Rep. Brian Porter's tort reform bill, to be heard on Friday, February 9 at 1:30 pm. Please send statements of support for HR 158 to the Senate Judiciary Committee members now. Use your company letterhead and describe the size and nature of your business in your letter. Emphasize that tort reform is important to the small and independent business community. Try to keep your letters to one page.

Point out the fact that litigation and liability insurance has a huge impact on small business. The purpose of this legislation is to help control these costs while assuring appropriate compensation for persons injured through the fault of others. This bill does not limit economic damages such as medical costs and lost wages. It does put a reasonable cap on additional awards for damages such as pain and suffering.

Key provisions of the bill are:

- Limits non-economic damages such as pain and suffering to \$300,000 and for specified injuries to \$600,000. This does not limit money awarded for economic damages such as lost wages and medical costs.
- Prohibits punitive damages unless malice or conscious acts show deliberate disregard for another person.
- Provides for punitive damages of at least \$300,000 or three times the amount of compensatory damages awarded, whichever is greater.
- Allows juries to be told of awards already collected by a claimant for the same injury and allows the deduction of these awards from any subsequent judgement.

Please fax your letter of support to the committee members listed below. Also, please fax a copy of your letter to the NFIB/Alaska office at 907-465-5128. Your comments will be used in our testimony.

Sen. Robin Taylor, chair	907-465-3922	Sen. Al Adams	907-465-3821
Sen. Lyda Green, vice chair	907-465-3805	Sen. Johnny Ellis	907-465-2529
Sen. Mike Miller	907-465-3883		

PLEASE

51M



Company: SENATE JUDICIARY COMMITTEE Date: 2-7-96

Attention: SEN. ROBIN TAYLOR Ref: HB158

Fax No: 907-465-3922 From: David A. Bridges
President

We are transmitting 01 pages. If you do not receive all pages, please call (907) 452-8680. Thank you.

Message:

I AM A SMALL BUSINESS OWNER HERE IN FAIRBANKS.
PAST LITIGATION & CONTINUED LIABILITY INSURANCE
COSTS REALLY EFFECT BY BUSINESS IN A BAD WAY.
I'M TIRED OF STUPID LAWSUITS, WHICH COST ME
PLENTY, FILED BY UNSCRUPULOUS INDIVIDUALS JUST
BECAUSE THEY KNOW YOU'RE A BUSINESS & HAVE
INSURANCE. I WHOLEHEARTEDLY SUPPORT HB158
& ITS ATTEMPT TO CURTAIL THESE TYPES OF LAWSUITS.
DON'T LET THE LOBBYING BY ATTORNEYS CAKE YOU TO
NOT DO THE RIGHT THING. MOST OF THE WORKFORCE IN ALASKA
WORK FOR SMALL BUSINESSES, NOT ATTORNEYS. I SIN-
CERELY URGE YOU TO SUPPORT THIS BILL, ITS THE RIGHT
THING TO DO.

David A. Bridges, PRESIDENT

City Cargo

P.O. Box 1526 • Petersburg, Alaska 99833
907-772-3010 • FAX 907-772-3717

2/7/96

SENATOR TAYLOR,

RE: H.B. 158

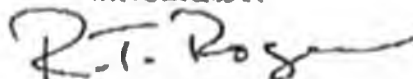
SENATOR,

THIS APPEARS TO BE A VERY GOOD BILL AND I URGE YOU TO SUPPORT IT. AS YOU KNOW WELL, THE COSTS OF LITIGATION AND LIABILITY INSURANCE ARE A MAJOR CONCERN OF SMALL BUSINESS MEN.

THE PAYROLL OF CITY CARGO PROVIDES SUPPORT TO FOUR ADULTS AND FIVE CHILDREN. WE WOULD MUCH RATHER APPLY ADDITIONAL SUPPORT TO THESE PEOPLE IN THE FORM OF HIGHER WAGES THAN TO PROTECTING OURSELVES AGAINST A LAWSUIT.

AGAIN, I STRONGLY URGE YOU TO SUPPORT THIS BILL.

SINCERELY,



ROBERT T. ROGERS
OWNER

NORTH STAR
HOSPITAL & COUNSELING
CENTERS

Via Facsimile (907) 465-3922

February 6, 1996

Senator Robin Taylor
Chair, Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Re: House Bill 158 - Comprehensive Tort Reform

Dear Senator Taylor:

As the Chief Executive Officer/Administrator of North Star Hospital, I wish to express my strong support of House Bill 158, Comprehensive Tort Reform. The passage of this legislation will enhance efforts to contain health care costs while also improving the provision of health care to rural Alaska.

Very truly yours,

NORTH STAR HOSPITAL.



Robert E. Marshall
Chief Executive Officer / Administrator

MILLER INCORPORATED
P.O. BOX 9602
KETCHIKAN, ALASKA 99901
(907) 225-9280
FAX (907) 225-1989

9 February 96

To: Senator Robin Taylor
Fax- (907) 465-3922

Re: HB 158 - Tort Reform Bill

From: Kathy Miller/ Miller Incorporated

Senator Robin Taylor:

I am writing in support of HB 158.

My husband and I own and operate a logging and road construction business in Southeast Alaska. Our yearly employment includes between 15 to 25 employees.

We started our business in 1989 - a time when the logging industry was already facing many environmental and economic problems. Only with hard work and wise business decision have we been able to continue in this industry.

I speak with personal experience when I say that the cost of litigation and liability insurance has a huge impact on the small businesses. These expenses combined with the high cost of workers compensation makes it almost impossible for the small businessman to operate.

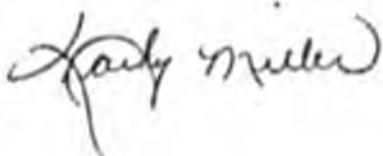
There needs to be a limit for non-economic damages, and allow juries to be told of awards already collected by a claimant for the same injury.

Having worked for other logging and road construction companies prior to starting our own business I am well aware of the "claimants" who want to find an easy way to make a buck at someone else's expense.

We are the backbone of this state and I am tired of those who want to ride on our shoulders.

Its time that something be done. I feel that HB 158 - Tort Reform Bill - is a good starting place.

I strongly support this bill.



Allied Construction Services

Welding • Structural Fabrication

EST. 1974

6218 Nielson Way, Anchorage, AK 99518-1711

Phone: (907) 562-4088

FAX: (907) 562-7322

Sen. Robin Taylor
Juneau, Alaska

February 9, 1996

Sen. Robin Taylor,

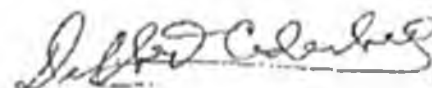
I am a small business owner and I employ 7 people year round.

This last year we fabricated the steel for projects such as Computer City in Anchorage, Safeway store in Soldotna, Ursa Major Elementary School on Ft. Richardson, Alaska Zoo Siberian Tiger Cages, just to name a few.

Liability insurance is out of reach of many, many businesses. There has to be a change and that is why I am supporting HB158.

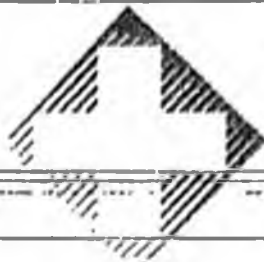
I URGE YOU TO SUPPORT IT!

SINCERELY,



DELBERT CEDERBERG

(OWNER)



Fairbanks
Clinic

Quality Care Since 1932

FACSIMILE TRANSMITTAL SHEET

Date: 2/9/98 Time: 9:40

To: Senator Robin Lytle Fax Number: 907-465-3922

From: Dr. Walker & Dr. J. Thomas Pages to Follow: 2

Patient: _____ Date of Birth: _____

Notice: The information contained in this fax is confidential and/or privileged. This fax is intended to be reviewed only by the above-named recipient. If you have received this fax by mistake, you should not read, copy, discuss, or share it with any other person. If you have received this fax in error, or have any questions as to whether you are the intended recipient, please call us immediately at (907) 452-1761.

X-232

fax 451-3353

Message:

**Chevron**

Turnagain Chevron
11460 Old Seward Hwy
Anchorage, AK 99515
Phone 907 344 2153
Phone 907 349 2024
Fax 907 349 3135

February 8, 1996

Senate Judiciary Committee
Honorable Senator Robin Taylor, Chair
Juneau, AK

Dear Senator Taylor:

Re: HB158 - Tort Reform

I am the sole proprietor of Turnagain Chevron, and have been in the auto repair/service station business for 29+ years.

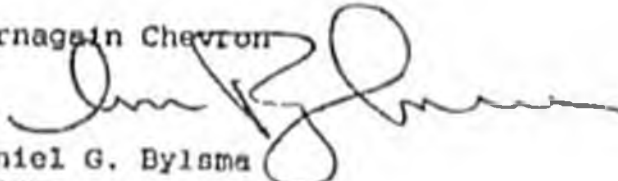
During these many years I have been fortunate not to have had any damage incidents of lawsuit proportion.

Serving 500 to 1000 customers daily, I am paying ever increasing insurance rates for such vulnerable problems which could occur fueling and repairing automobiles.

I urge your support for House Bill 158 regarding tort reform. It is a step in the direction of balance in these legal matters.

Sincerely,

Turnagain Chevron



Daniel G. Bylsma
Owner

cc: Senator Lyda Green
Senator Mike Miller
Senator Al Adams
Senator Johnny Ellis

CRUZ CONSTRUCTION, INC.

HEAVY CONSTRUCTION CONTRACTOR

HIC 04 BOX 9323
PALMER, ALASKA 99645
(907) 746-3144 FAX (907) 746-5557

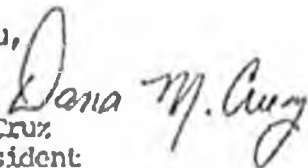
TO: *Sen. Robin Taylor 465-3922*

FROM: Dana & Dave Cruz of Cruz Construction, Inc.

We are in complete agreement with HB158 Tort Reform Bill,

We are a small construction company and are finding our liability insurance premiums to be a real liability to our financial situation. (in other words a hardship) I think it is about time a tort reform was presented and the lawyers and insurance companies can stop making huge financial gains on the backs of small business??.

Thank you,



Dana M. Cruz
Vice President

cc NFIB
file



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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Ralph A. Wells

 Signature

Printed ^{RALPH WELLS, M.D.}
 name ~~WELLS~~ ^{1001 NOBLE ST.}
 FAIRBANKS, ALASKA 99701

Address **RALPH WELLS, M.D.**
 1001 NOBLE ST.
 FAIRBANKS, ALASKA 99701



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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 Stato Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Richard C Hess MD
 Signature

RICHARD C HESS MD
 Printed name and title

1001 MOBLE ST.
 Address

FAIRBANKS, ALASKA 99701



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

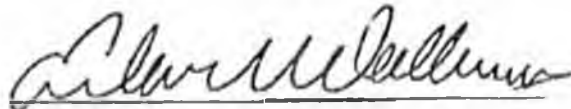
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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
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 Juneau, AK 99801-1182

FAX: 907-465-³⁹²²3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.


 Signature

Enlow Walker, MD
 1919 Lathrop St., Suite 100
 Fairbanks, AK 99701
 Printed name and phone number

Address



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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
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 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Signature

Printed name and title

Joan Thomas, MD
 1010 Lathrop St., Suite 100
 Fairbanks, AK 99701
 (907) 452-1761

Address



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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3882 465-3922

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

J.R. Suther, MD

Signature

J.R. SUTHER, MD

Printed name and title

1001 Noble St

Address

FAIRBANKS, AK 99701



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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HE 158. Please consider this letter my intent to do so.


 Signature

Dr. Glen Straatsma, MD
 Printed Name and Title
 Fairbanks, AK 99701

Address

Dr. Glen Straatsma, MD
 1919 Lathrop St., Suite 100
 Fairbanks, AK 99701



Sitka Community Hospital

209 Moller Avenue, Sitka, Alaska 99835 Phone (907) 747-3241 Fax (907) 747-1760

RECEIVED

FEB 14 1996

Ans'd.....

February 12, 1996

Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182
via FAX: (907) 465-3992

Dear Senator Taylor:

I urge you to support HB 158, the comprehensive tort reform bill. This bill if enacted will help control costs of health care and improve access to health care in rural areas of our state.

In addition this bill will remove hospitals, when not at fault and have committed no errors, as "deep pocket" in lawsuits against non-employed physicians and other health care professionals.

Among all the rapid changes we are undergoing in the health care industry, tort reform is vitally important. Our commitment to providing the best possible care to every patient remains a priority, but the cost of practicing "defensive medicine" has an impact on all of us. Please help make tort reform a reality in Alaska.

Sincerely,


J. Kay Hawks
Administrator



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

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Chair, Credentials
Don Thomas, M.D.
Chair, QA/UT

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.



Signature

Richard P. August, M.D.

Printed name and title

1414 Lathrop Suite 207

Address

Fairbanks, AK 99701



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of Fairbanks Memorial Hospital

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TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Leanne Converse

Signature

Leanne Converse M.D.

Printed name and title

1905 Cowles

Address

Fairbanks, Ak 99701



MEDICAL, DENTAL & AFFILIATE STAFF
of Fairbanks Memorial Hospital

EXECUTIVE COMMITTEE:
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Chair, Orthopedics
Nicholas Deery, M.D.
Chair, Pediatrics
Douglas Hutchinson, M.D.
Pathology/Pathology
Richard Hutchison, M.D.
Chair, Surgery
Joseph Ward, M.D.
Chair, Credentials
Joan Thomas, M.D.
Chair, QA/QI

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

RECEIVED

FEB 14 1996

Ans'd.....

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Signature

Owen Q. Hanley, M.D., FACCP

~~Internal Medicine & Pulmonary Disease~~
Printed name and title
1701 Gilman Way
Fairbanks, Alaska 99701
907-456-3750

Address



**Denali Center
Fairbanks Memorial Hospital**

Denali Center
1510 19th Avenue
Fairbanks, AK 99701
(907) 458-5100

Fairbanks Memorial Hospital
1650 Cowles Street
Fairbanks, AK 99701-5998
(907) 452-8181
Fax (907) 458-5324

RECEIVED
FEB 16 1996
Ans'd.....

February 13, 1996

The Honorable Senator Robin Taylor
Chair of the Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

My name is Jackie Ortelli and I am writing this letter to ask for your support for HB 158. This bill will:

- help control costs of health care
- improve access to health care, particularly obstetrical care in rural Alaska
- remove hospitals, when not at fault and have committed no errors, as deep pocket in lawsuits against non-employed physicians or other health professionals
- reduce cost defensive medicine

Thank you for supporting HB 158.

Respectfully,

Jackie Ortelli
Assistant Administrator
Denali Center

JO:jr



MEDICAL, DENTAL & AFFILIATE STAFF of Fairbanks Memorial Hospital

EXECUTIVE COMMITTEE:

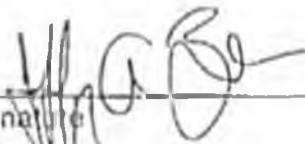
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- Danny Robbette, M.D.
Vice Chair
- Daniel Schoonover, M.D.
Secretary/Treasurer
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Chair, Medicine
- Rolain A. Wells, M.D.
Chair, OB/GYN
- Foy Nenon, M.D.
Chair, Orthopedics
- Nicholas Deely, M.D.
Chair, Pediatrics
- Douglas Hutchinson, M.D.
Radiology/Pathology
- Richard Hutchinson, M.D.
Chair, Surgery
- Joseph Worral, M.D.
Chair, Otolaryngology
- Alan Thomas, M.D.
Chair, O/A/R

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

FAX: 907-465-3972

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.



Signature

JEFF ZUCKERMAN, MD

Printed name and title

1919 Lathrop St. 120

Address

Fairbanks, AK 99701



MEDICAL, DENTAL & AFFILIATE STAFF

of Fairbanks Memorial Hospital

- EXECUTIVE COMMITTEE**
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 Dawn W. Fairbanks, M.D.
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 Secretary/Treasurer
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 Club President
 Judy Pearson, M.D.
 Club, Anesthesiologist
 Eric Smith, M.D.
 Club, Emergency Medicine
 Steve Goodblatt, M.D.
 Chief, Family Practice
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 Club, Member
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 Club, Neurology
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 Radiology/Pathology
 Robert H. Johnson, M.D.
 Club, Surgery
 Joseph Wynn, M.D.
 Club, Cardiology
 John Purson, M.D.
 Club, Q.A.M.

TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3922

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Signature

2/11/96

Printed name and title
 Dr. Jim Galloway, MD
 1919 Lathrop St., Suite 100
 Fairbanks, AK 99701

Address



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of Fairbanks Memorial Hospital

EXECUTIVE COMMITTEE:
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Richard Hutchinson, M.D.
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Joan Thomas, M.D.
Chair, QA/QI

RECEIVED

FEB 12 1996

Ans'd.....

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Joseph A Worrall MD RDMS
Signature

Joseph A Worrall Jr
Printed name and title

The FAIRBANKS CLINIC
Address

1919 LATHROP ST. Suite 100

FAIRBANKS, AK 99701



MEDICAL, DENTAL & AFFILIATE STAFF
of Fairbanks Memorial Hospital

EXECUTIVE COMMITTEE:
Richard J. Burger, M.D.
Chief of Staff
Danny Robinette, M.D.
Vice Chief
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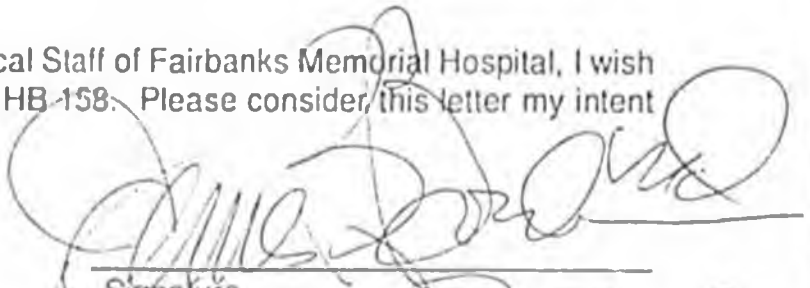
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Juneau, AK 99801-1182

FAX: 907-465-3992

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Signature

JAMES B. BORDEN

Printed name and title

1919 Lathrap
Address Suite 204

Fairbanks AK
99701



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of Fairbanks Memorial Hospital

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 Chair, QA/UR

RECEIVED

FEB 12 1996

Ans'd.....

TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

W. Lee Payne MD
 Signature

W. Lee Payne MD
 Printed name and title

1919 LATHROP ST. #11
 Address

FAIRBANKS, AK 99701



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of Fairbanks Memorial Hospital

EXECUTIVE COMMITTEE:
Richard J. Burger, M.D.
Chief of Staff
Darryl Robinette, M.D.
Vice Chief
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Chair, Surgery
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Chair, Credentials
Joan Thomas, M.D.
Chair, QA/UR

RECEIVED
FEB 12 1996
Ans'd.....

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee
State Capitol
Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Signature

Roy S. Pierson, M.D.
Orthopaedic Surgeon
Printed name and title
2111 Cowles Street
Fairbanks, Alaska 99701

Address
907-456-1266



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 Nicholas Donly, M.D.
 Chair, Pediatrics
 Douglas Hutchinson, M.D.
 Physiology/Pathology
 Richard Hutchinson, M.D.
 Chair, Surgery
 Joseph Warrall, M.D.
 Chair, Credentials
 Joan Thomas, M.D.
 Chair, QA/QIP

RECEIVED
 FEB 12 1996
 Ans'd.....

TO: Senator Robin Taylor, Chair
 Senate Judiciary Committee
 State Capitol
 Juneau, AK 99801-1182

FAX: 907-465-3992

RE: HB 158 (Comprehensive Tort Reform)

As a member of the Medical Staff of Fairbanks Memorial Hospital, I wish to express my support of HB 158. Please consider this letter my intent to do so.

Signature

Printed name and title

ROBERT D. DINGEMAN, M.D.

Address 751 Old Richardson Hwy., Ste. 101
 Fairbanks, AK 99701

2/8/96



THE 1 GREATER 1 SITKA
chamber
OF COMMERCE
Box 638 · Sitka, Alaska 99835
(907) 747-8604

RECEIVED OCT 16 1995

*Important
save for Tort
Reform*

October 12, 1995

Senator Robin Taylor, Chairman
Senate Judiciary Committee
State Capital
Juneau, AK 99801-1182

Dear Senator Taylor,

Thank you for your letter concerning Sitka's response to Tort Reform. I have enclosed my letter of testimony and a copy of the FAX that went out to membership. As you can see the FAX did not ask any definitive questions as on a questionnaire but at least we received the one response from Harold Thompson.

If I can be of assistance in the future please let me know. Once again thank you for coming to Sitka to hear our opinions face to face.

Sincerely,

Donna S. Robbins
Executive Director



THE GREATER SITKA
Chamber
OF COMMERCE
601 638 Sitka Alaska 99835
(907) 747-8604

August 21, 1995

Senator Robin Taylor, Chairman
Senate Judiciary Committee
State Capital
Juneau, AK 99801-1182

RE: Tort Reform Needed.

Honorable Senator Robin Taylor and the Senate Judiciary Committee.

I represent the 170 businesses that belong to the Greater Sitka Chamber of Commerce. Ninety-eight percent of these businesses would be classified as small business owners with less than 100 employees. As members of the business community we believe the equity and the fairness which has been the basis and great strength of our nation's Judicial system. However, in recent years there has been a growth of lawsuits which endanger not only small and large business enterprise but the Judicial system itself. Tort reform has become a necessity.

Without tort reform businesses are forced to pay skyrocketing insurance costs. High premium insurance is now required to protect every business from damage awards that are outrageous and unfair. As good citizens we believe that if someone suffers in an accident then the normal costs should be paid, but the costs must be within the range of true expenses, plus pain and suffering. If malicious neglect by the business is not proven then punitive damages are unfair and justice is not equitable.

Without tort reform there will be even greater disenchantment with our Judicial system. Each branch of our government: The Legislative, the Executive and the Judicial must represent the people with justice and equity or we have no effective government. Tort reform is an idea whose time has come and we urge you to support it.

Sincerely yours,

Donna S. Robbins
Executive Director

GREATER SITKA CHAMBER OF COMMERCE FAX BULLETIN

FAX #907-747-7413

PHONE #747-8604

Donna Robbins, Executive Director

August 26, 1995

=====

NO CHAMBER MEETING ON WEDNESDAY AUGUST 30, 1995

Next meeting will be Wednesday September 6, 1995 with Pam Neal of Alaska State Chamber of Commerce who will give us an up-day on legislative plans for next year. She will also discuss the upcoming 1996 State Convention in Sitka.

TORT REFORM

Senator Robin Taylor asked the Chamber to query the membership concerning tort reform. If your business has been impacted by a lawsuit with a judgment against you that you believe is unfair or if you have some thoughts about excessive judgments and how they impact your insurance premiums, please fax your comments to the Chamber office. We will compile them and submit a comprehensive document to Senator Taylor.

*one response
Harold Thompson
who wanted actual atty
fees and costs "loser pay"
instead of current rule
82*

SOUTH PENINSULA HOSPITAL

4300 BARTLETT • HOMER, ALASKA 99603 • (907) 235-8101

February 7, 1996

RECEIVED

FEB 9 1996

Ans'd.....

Senator Robin Taylor
Room 30, State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor,

I join many of my colleagues and others throughout the State in support of HB158,
Comprehensive Tort Reform.

We think it will accomplish several things, not the least of which is to help control costs of health care. Malpractice premiums are a huge burden on many hospitals and physicians with obstetrical services at the high end of the spectrum. Many physicians have simply chosen not to do O.B. any longer, reducing access to quality care in rural Alaska. Those who continue to provide services must charge higher rates to recoup their costs.

We know the bill sponsors have worked hard to get the bill to the Judiciary Committee. We ask that you join them in support of this important legislation.

Sincerely,



Tom Davis
Acting Chief Financial Officer

TD:dl

cc: Charles Franz, CEO

Tort Reform Comparison

Produced by House Judiciary, March 11, 1996

Section	Senate CSCSHB-158(JUD)	CSHB-158(FIN) am (ct rls pfl'd)(afd fld)
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.
<div style="position: absolute; top: -20px; left: 20px; font-family: cursive; font-size: 1.2em;">Page 3 L 27</div> Definition of Punitive Damages.	<div style="position: absolute; top: -20px; left: 20px; font-family: cursive; font-size: 1.2em;">understand No therapeutic or diagnostic value</div> 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. <i>Page 10 Section 17 has not been deleted</i>	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.

FEB 09 1996



Legislative roundup

Group lobbies for liability reform passage

By DIRK MILLER
Associated Press Writer

JUNEAU — A group representing hospitals, contractors and businesses went to work Thursday to keep a bill that would change the state's civil liability laws moving through the Legislature.

The House passed a bill last session that limits to eight years the period in which people are able to sue doctors, contractors and others for damages. It also limits the amount of punitive damages and compensation that can be awarded.

After it passed the House, the bill was sent to the Senate Judiciary Committee, which is run by Sen. Robin Taylor, a former judge and an attorney from Wrangell. Taylor said last year he was no fan of the measure.

The group, put together by the Alaska State Chamber of Commerce, met separately Thursday with Taylor, legislative leaders and Gov. Tony Knowles.

The goal is to get Taylor to move the liability bill out of his committee and onto a vote in the Senate, said Pam LaBolle, chamber president.

"We knew we were really up against it in the Senate getting it through Sen. Taylor's committee," LaBolle said. LaBolle said the group made some progress in its talks with Taylor.

Knowles also was concerned with the bill last year.

The chamber sponsored a survey that found 83 percent of those polled in favor of a change in liability laws.

The poll was conducted by a San Francisco polling firm in January. Callers phoned a random sample of 500 Alaskans taken from state voting lists and interviewed them for about 15 minutes.

In the poll, people were asked to comment on statements such as, "Frivolous lawsuits are the main reason the civil courts are so clogged and cases are delayed." The poll had a margin of error of plus or minus 4.4 percent.

The Judiciary Committee is holding a hearing on the bill Friday, Taylor said the legislation will emerge from his committee this session, but it will look different. One thing the Wrangell Republican wants to change is to force cases under \$100,000 to be handled under an arbitration system rather than the courts.

Taylor said he had confidence in the state's judges and juries and that reform advocates could not come up with Alaska cases that showed something was wrong with the system.

"If in fact the courts in Alaska are handing down outrageous judgments I want to know it," Taylor said.

Among other things, the bill also would allow juries to be told of other awards collected for the same injury, bars suits from people who were injured while committing a felony and provides for sanctions against attorneys who file frivolous lawsuits.

Group Lobbies in Juneau For Liability Reform Bill

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Backers push bill to reform liability

The Associated Press

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Associated Press Writer

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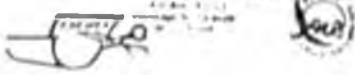
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FEB 09 1996

Alaska Clipping Service



ANCHORAGE DAILY NEWS

Businesses push for liability limits

By DIRK MILLER
The Associated Press

JUNEAU — A group representing hospitals, contractors and businesses went to work Thursday to keep a bill that would change the state's civil liability laws moving through the Legislature.

The House passed a bill last session that limits to eight years the period in which people are able to sue doctors, contractors and others for damages. It also limits the amount of punitive damages and compensation that can be awarded.

After it passed the House, the bill was sent to the Senate Judiciary Committee, which is run by Sen. Robin Taylor, a former judge and an attorney from Wrangell. Taylor said last year he was no fan of the measure.

The group, put together by the Alaska State Chamber of Commerce, met separately Thursday with Taylor, legislative leaders and Gov. Tony Knowles.

The goal is to get Taylor to move the liability bill out of his committee and on to a vote in the Senate, said Pam LaBolle, chamber president.

"We knew we were really up against it in the Senate getting it through Sen. Taylor's committee," LaBolle said. LaBolle said the group made some progress in its talks with Taylor.

Knowles also was con-

cerned with the bill last year.

The chamber sponsored a survey that found 83 percent of those polled in favor of a change in liability laws.

The poll was conducted by a San Francisco polling firm in January. Callers phoned a random sample of 500 Alaskans taken from state voting lists and interviewed them for about 15 minutes.

In the poll, people were asked to comment on statements such as, "Frivolous lawsuits are the main reason the civil courts are so clogged and cases are delayed." The poll had a margin of error of plus or minus 4.4 percent.

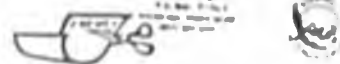
The Senate Judiciary Committee is holding a hearing on the bill today. Taylor said the legislation will emerge from his committee this session, but it will look different. One thing the Wrangell Republican wants to change is to force cases under \$100,000 to be handled under an arbitration system, rather than the courts.

Taylor said he has confidence in the state's judges and juries and that reform advocates could not come up with Alaska cases that showed something was wrong with the system.

"If in fact the courts in Alaska are handing down outrageous judgments, I want to know it," Taylor said.

FEB 09 1996

Alaska Clipping Service



JUNEAU EMPIRE



Around the Capitol

Group lobbies for liability reform

JUNEAU — A group representing hospitals, contractors and businesses is pushing to keep a bill changing the state's civil liability laws moving through the Legislature.

The House passed a bill last session that limits the period when people can sue doctors, contractors and others for damages to eight years. The bill also limits the amount of punitive damages and compensation that can be awarded.

Since then, the bill has been stuck in the Senate Judiciary Committee, chaired by Sen. Robin Taylor, a Wrangell Republican and an attorney critical of the measure.

The group, put together by the Alaska State Chamber of Commerce, met separately Thursday with Taylor, legislative leader and Gov. Tony Knowles. The goal is to get Taylor to move the liability bill out of his committee and onto a vote in the Senate, said Pam LaBolle, chamber president.

The lobbying effort includes distribution of a January survey showing 83 percent of those polled favor changing liability laws.

Taylor said the legislation will emerge from his committee this session, but it will look different. He wants to force cases under \$100,000 to be handled under an arbitration system, rather than the courts, and make other changes.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TAYLOR

TO: CSHB 158(FIN) am(ct rls pfld)(efd fld)

1 Page 1, line 1:

2 Delete "Alaska Rule of Civil Procedure 95"

3 Insert "Rules 68, 82(b), and 95, Alaska Rules of Civil Procedure, repealing Rule
4 72.1, Alaska Pules of Civil Procedure, and amending Rule 601, Alaska Rules of
5 Evidence"

6 Page 10, lines 2 - 8:

7 Delete all material.

8 Insert "* Sec. 16. AS 09.55.535 is repealed and reenacted to read:

9 Sec. 09.55.535. MANDATORY ARBITRATION. (a) A person who files an
10 action for personal injury, death, or property damage shall also submit the claim to
11 the cou t for arbitration unless the action is excluded under (b) of this section.

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

13 (1) amount in controversy, excluding interest, costs, and attorney fees,
14 exceeds \$100,000; this paragraph does not apply if, for purposes of arbitration only,
15 the person bringing the claim waives the amount in controversy that exceeds
16 \$100,000;

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

19 (3) action

20 (A) is a class action;

21 (B) seeks equitable or declaratory relief;

22 (C) concerns the title to real property;

23 (D) is a probate action;

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

1 (F) involves divorce or domestic relations;

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

3 (c) The court shall maintain a list of attorneys with at least five years of civil
4 practice experience, or retired judges, who have consented to serve as arbitrators.
5 From the list of attorneys or retired judges the court shall appoint an arbitrator to
6 review the claim and conduct the hearing. Each party may exercise a peremptory
7 challenge of an arbitrator appointed by the court.

8 (d) A party to arbitration shall comply with the Alaska Rules of Civil
9 Procedure regarding mandatory discovery and may also take the deposition of an
10 opposing party or conduct a mental or physical examination as allowed under the
11 Alaska Rules of Civil Procedure. A party may not conduct further discovery except
12 as allowed by the arbitrator or as allowed by agreement between the parties.
13 Discovery shall be completed within 30 days after the arbitrator is selected, except as
14 otherwise allowed by the arbitrator.

15 (e) The arbitrator shall set a date for a hearing on the claim. The hearing date
16 shall be as soon as feasible, but not more than 60 days after the selection of the
17 arbitrator, except as allowed by the arbitrator.

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

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

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

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

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

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

11 Page 12, line 30:

12 Delete "AS 09.55.548 is"

13 Insert "AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.548,
14 09.55.560(2), and 09.55.560(3) are"

15 Page 12, after line 30:

16 Insert new bill sections to read:

17 "* Sec. 23. Rule 68, Alaska Rules of Civil Procedure, is amended by adding a new
18 subsection to read:

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

21 • Sec. 24. Rule 72.1, Alaska Rules of Civil Procedure, is repealed.

22 • Sec. 25. AS 09.55.535(i), enacted in sec. 16 of this Act, has the effect of amending Rule
23 601, Alaska Rules of Evidence, by prohibiting the use of an arbitrator as a witness in a
24 subsequent trial.

25 • Sec. 26. AS 09.55.535(i), enacted in sec. 16 of this Act, has the effect of amending Rule
26 82(b), Alaska Rules of Civil Procedure, by allowing the award of reasonable attorney fees
27 in certain actions."

28 Renumber the following bill sections accordingly.

MANDATORY ARBITRATION
JULY 1994

State	Citation	Statutory Language	Threshold
CA	West's Ann.Cal.C.C.P. sec. 1141.11	All at-issue civil actions in superior court with 10 or more judges & not exceeding \$50,000. At-issue civil actions in superior court with less than 10 judges & not exceeding \$50,000, the court may provide by local rule when it is in the best interest of justice to submit to arbitration.	\$50,000
CO	C.R.S.A. sec. 13-22-402	Repealed: effective July 1, 1991 Former statutory language: Provided for pilot project to assign certain civil cases seeking money actions of \$50,000 or less.	\$50,000
HI	H.R.S sec. 601-20	All civil actions in court, having a probable jury award value, not reduced by the issue of liability, exclusive of interest and costs, of \$150,000 or less, shall be submitted.	\$150,000

State	Citation	Statutory Language	Threshold
IL	735 ILCS 5/2-1001A	Mandatory arbitration of such civil actions as the court deems appropriate in order to expedite in less costly manner any litigation wherein a party asserts a claim not exceeding \$50,000 or any lesser amount.	\$50,000
ME	26 M.R.S.A. sec. 931	<p>Mandatory submission to State Board of Arbitration and Conciliation regarding employee/employer disputes, upon agreement between the parties.</p> <p>Mandatory submission to a "pre-litigation screening & mediation panel" except where all parties have agreed to bypass the panel hearing. (24 secs. 2851 - 2859)</p> <p>Written agreements to submit to arbitration between parties are enforceable and irrevocable. (14 sec. 5927)</p>	
MA	M.G.L.A. ch. 150C sec. 1	<p>Mandatory submission to arbitration upon a written agreement between a labor organization(s) and an employer(s) of any existing controversy and conditions of employment of any employee(s).</p> <p>Any written agreement to submit to any existing controversy to arbitration shall be valid, enforceable and irrevocable. (M.G.L.A. ch. 251 sec. 1)</p>	

State	Citation	Statutory Language	Threshold
MI	H.C.L.A. 600.5001	All written agreement submitting civil actions to arbitration shall be valid and enforceable.	
MI	M.S.A. sec. 404.73	Provides that a majority of the judges of a judicial district may authorize the establishment of a system of mandatory, nonbinding arbitration within the district to assist the court in disposing of any controversy existing between two parties which is the subject of a civil action.	
NE	Neb. Rev. St. sec. 49-1548	All written agreement submitting civil actions to arbitration shall be valid and enforceable.	

State	Citation	Statutory Language	Threshold
NV	N.R.S. 38.025	All civil actions filed in district court for damages, if the cause of action arises in the State of Nevada and the amount in issue does not exceed \$25,000 must be submitted to nonbinding arbitration.	\$25,000
NJ	NJ. Stat. Ann. sec. 4:21A-1	<p>Automobile Negligence Actions: All tort actions arising out of the operation, ownership, maintenance or used of an automobile in which the amount in controversy does not exceed \$15,000 shall be submitted to arbitration.</p> <p>Other Personal Injury Actions: All other personal injury action in which the amount in controversy does not exceed \$20,000 shall be submitted to arbitration.</p>	\$15,000 / \$20,000
NY	McKinney's CPLR Rule 3405	The chief judge of the court of appeals may promulgate rules for the arbitration of claims for the recovery of a sum of money not exceeding \$6,000, exclusive of interest, pending in any court or courts except the civil court of the city of New York, and not exceeding \$10,000 exclusive of interest, pending in the civil court of the city of New York.	\$6,000

State	Citation	Statutory language	Threshold
VA	Code 1950, sec. 8.01-577	<p>Persons desiring to end any controversy, whether there is a suit pending or not may submit the same to arbitration.</p> <p>Neither party shall have the right to revoke an agreement to arbitrate except on a ground which would be good for revoking or annulling other agreements.</p>	
WV	West's RCWA sec. 7.06.020	All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of \$15,000, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to \$35,000, exclusive of interest and costs, are subject to mandatory arbitration.	\$15,000 / \$35,000

A M E N D M E N T

Section 12. Allocation of Fault

Page 8, following line 29

Insert a new subsection to read

"() If the court or jury allocates fault to a party who is immune as a matter of law, that fault shall be allocated proportionately to the other liable parties."

allocation.2

A M E N D M E N T

Section 1.. Allocation of Fault

Page 8, line 28

Delete "and"

Insert "but"

Page 8, line 28, after may

Delete "not"

allocation.3

A M E N D M E N T

Section 2. Statute of Repose

Page 3, line 27

Add a new subsection to read:

"(5) the collapse, structural failure or unsafe conditions in a church, synagogue or other place of worship."

repose.1

A M E N D M E N T

Section 2. Statute of Repose

Page 3, line 27

Add a new subsection to read:

"(5) the collapse, structural failure, or unsafe conditions in any hospital or medical facility."

repose.2

A M E N D M E N T

Section 2. Statute of Repose

Page 3, line 27

Add a new subsection to read:

"(5) the collapse, structural failure, or unsafe conditions in
a child care facility."

repose.3

A M E N D M E N T

Section 2. Statute of Repose

Page 3, line 24 after "law":

Delete "."

Insert ";"

Page 3, following line 27:

Insert a new subsection to read:

"(5) the collapse, structural failure or unsafe condition is in a home for the elderly, convalescent center or nursing home."

repose.4

A M E N D M E N T

Section 2. Statute of Repose

Page 4, line 3 after "intended":

Insert "unless otherwise provided by contract"

repose.5

A M E N D M E N T

Section 4. Statute of Limitations

Page 4, after line 20:

Add a new subsection:

"(c) With respect to actions for personal injury suffered by a child, this statute shall be tolled during the period of minority described in AS 09.10.140(a)."

statute.1

A M E N D M E N T

Section 4. Statute of Limitations

Page 4, line 20:

Following "law"

Insert "or to a claim against a third-party defendant to
assess a percentage of fault."

statute.2

A M E N D M E N T

Section 4. Statute of Limitations

Page 4, line 19:

Delete "shorter"

Insert "longer"

statute.3

A M E N D M E N T

Section 4. Statute of Limitations

Page 4, lines 19 through 20:

Delete all material.

statute.4

A M E N D M E N T

Section 5. Noneconomic Damages

page 5, line 25 following "section":

Insert ",unless as a result of one or more of the multiple injuries the claimant, over time, is injured to the extent described in (c), (A), (B), (C), (D), or (E)."

noneconomic.1

A M E N D M E N T

Section 5. Noneconomic Damages

Page 4, line 30:

Delete \$300,000

Insert \$1,000,000

Page 5, line 1:

Delete \$500,000

Insert \$5,000,000

noneconomic.2

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, line 12 after "damages":

Insert "It is the intention of the legislature that revenue received by the state under this section be appropriated for the purpose of consumer protection."

punitive.1

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, after line 8

Insert a new subsection to read:

"(d) The limit under (b) of this section does not apply to punitive damages awarded by a court or jury against a corporation which, when the outrageous conduct occurred, paid the chief executive officer more than one million dollars per year in salary."

punitive.2

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, line 9:

Delete all of subsection (d).

punitive.3

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, after line 12

Add a new subsection:

"(e) The limit under (b) of this section does not apply to punitive damages awarded against a person who profited financially from the bad acts described in AS 09.17.020; in which case, punitive damages shall not exceed three times the amount of the profit made or reasonably estimated to be made from the bad acts, or \$300,000 whichever is greater."

punitive.4

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, after line 12

Insert a new subsection to read:

"(e) The limit under (b) of this section does not apply to punitive damages awarded by a court or jury against a defendant if the court or jury determines that the outrageous conduct involved an obviously high risk of serious bodily injury to a person."

punitive.5

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, lines 9 through 12

Delete all material.

Insert: "In a civil action in which punitive damages are plead, the claimant shall file with the court and serve on the Attorney General, within 60 days, a Notice of Claim of Punitive Damages. The Attorney General shall file a notice of election or rejection to join the punitive damage claim within 120 days. If the State joins the claim the court shall require that one-half of any punitive damages award be deposited into the general fund of the State. If the State joins the punitive damages claim, and the claimant is not the prevailing party, then the State shall pay one-half of the costs and attorney fees awarded against the claimant."

punitive.6

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, line 6

Delete "felony"

Insert "crime"

punitive.7

A M E N D M E N T

Sections 6 and 7. Punitive Damages

Page 6, lines 1 through 3

Delete all of subsection (b).

Insert a new subsection to read:

"(b) The amount of punitive damages awarded by a court or jury under (a) of this section shall be based on the individual facts and evidence presented to the court and shall be sufficient to deter wrongdoing and to protect the public interest."

punitive.8

A M E N D M E N T

Section 13. Offers of Judgment

Page 8, line 31 after "JUDGMENT":

Insert "(a)"

Page 9, following line 20:

Insert a new subsection to read:

"(b) This section does not apply if the offeree or the real party in interest is a minor."

offer.1

A M E N D M E N T

Section 13. Offers of Judgment

Page 8, line 31 after "JUDGMENT"

Insert "(a)"

Page 9, line 13, insert a new subsection to read:

"(b) This section does not apply if the offeree is sixty five or over, and application of the offer of judgment rule would bankrupt the offeree."

offer.2

A M E N D M E N T

Section 13. Offers of Judgment

Page 9, following line 20

Insert a new subsection to read:

"() This section does not apply if the attorney fees of the offeror are being paid by an insurance company."

offer.3

A M E N D M E N T

Section 13. Offers of Judgment

Page 8, following "JUDGMENT":

Insert a new subsection:

"(a)"

Page 9, following line 20:

Insert a new subsection:

"(b) A party's principal residence is exempt from execution under a judgment for costs and attorney's fees issued under this section."

offer.4

A M E N D M E N T

Section 13. Offers of Judgment

Page 9, line 13

Insert "This provision shall not apply in the event that the court rules that the rejection of the offer was reasonable, given the information available to the rejecting party at the time of the rejection."

offer.5

A M E N D M E N T

Section 13. Offers of Judgment

Page 9, line 10

delete "at least five percent less"

insert "not substantially more"

offer.6

A M E N D M E N T

Section 13. Offers of Judgment

Page 9, line 10

delete "at least five percent less"

insert "not substantially more"

Page 9, line 13, after "made"

insert "In this section "substantially" means an amount not less than 20% of the offer not accepted."

offer.7

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 158 (FIN) AM

Revision Date: 02/05/96
Title: Tort Reform

Dept. Affected: Alaska Court System
BRU: Trial Courts

Sponsor: Rep. Porter
Requestor: _____

Component: _____
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

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

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

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
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

Alaskans for Liability Reform

RECEIVED

APR 15 1996

Ans'd.....

Memo

To: Legislators
From: Alaskans for Liability Reform
Date: April 9, 1996

Enclosed is a copy of a report we received on Punitive Damages.

BRIEFING



755 Sansome Street, #450
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The Role of Punitive Damages in Civil Litigation: New Evidence from Lawsuit Filings

By Steven Hayward[†]

HIGHLIGHTS:

- This study offers new data on the frequency and the effects of punitive damages, based on a detailed review of more than 1000 lawsuits filed and concluded in San Francisco County Superior Court.
- Punitive damages are demanded in 27 percent of all cases where they are conceivably recoverable.
- Lawsuit filing data show that business and government defendants are four times as likely as an individual defendant to face a lawsuit that demands punitive damages.
- Lawsuits that include punitive damage demands take one-third longer to resolve than suits without these demands. The average lawsuit in our 1000 case sample took 15 months to resolve; cases with punitive damage demands took an average of 21 months to resolve.

[†] Steven Hayward is vice president, research for the Pacific Research Institute. William S. Loughman, an attorney and senior fellow in legal studies for the Pacific Research Institute, conducted the research into lawsuit filings.

- Punitive damage demands play a significant role in the out-of-court settlement process, where the vast majority of lawsuits are settled. Punitive damage demands tilt the playing field in favor of demanding parties, and increase out-of-court settlement amounts.
- Studies of punitive damage jury verdicts have been interpreted to suggest that the risk of receiving an adverse punitive damage judgment is remote. Closer scrutiny of the data, we argue, will show that the probability of punitive damage awards is vastly understated by these studies, in part because the data have been improperly qualified.

Introduction

The controversy over punitive damages in civil litigation has centered around the number of punitive damage awards, and the dollar amounts of such awards. Comprehensive data on this issue are scarce because there is no complete statistical database of trial verdicts. However, we believe that the focus of research on the number of punitive damage verdicts is misplaced to some extent. Focusing only on trial verdicts understates the scope and nature of the problem because the overwhelming majority of all lawsuits are resolved out of court. According to surveys of lawsuits, less than 2 percent of all cases go to trial. Looking only at the 2 percent of cases that reach a jury is like looking only at the visible tip of a large iceberg: it ignores the larger unseen part below the water line that may do more harm. Thus, to argue that punitive damage awards are rare is to miss an obvious point: *jury verdicts of any kind are rare*. No one would say, however, that because jury verdicts are rare, lawsuits themselves are insignificant or costless. Yet this is the inference that has been drawn from various punitive damage studies that focus only on trial verdicts.¹

The right question to ask about the civil litigation process is: *what is occurring in the other 98 percent of cases that are resolved out-of-court?* Because 98 percent of cases are resolved out of court, it is important for researchers and for public policy makers to understand what is going on in these cases, and how the legal rules, including the relative probability of punitive damages, affect the outcomes of the negotiation process for out-of-court settlements.

A large proportion of lawsuits today include punitive damage demands. Because 98 percent of lawsuits are resolved out-of-court, an important threshold question to answer is: *Do punitive damage demands in lawsuit filings have a significant effect on the out-of-court settlement process?*

¹ For example, the recent federal Department of Justice estimates of civil suit verdicts in state courts, discussed below, generated numerous newspaper headlines to the effect that "punitive damages are rarely awarded."

In an attempt to shed light on this question, the Pacific Research Institute conducted a detailed examination of more than 1000 lawsuit filings in San Francisco County Superior Court. We conclude that punitive damages are used as a weapon to generate more favorable out-of-court settlements, especially against business and government defendants.

What Lawsuit Filings Data Tell Us

Most punitive damage studies focus on verdicts in the handful of cases that proceed to trial. There are no empirical studies that examine how often, and against whom, punitive damage demands are employed.

In an attempt to shed light on these issues, we have scrutinized a month's worth of lawsuits filed between January 2, 1991 and February 1, 1991 in the Civil Division of the California Superior Court for the County of San Francisco. There were 1,024 lawsuits filed in this venue during this time period. Our analysis seeks to determine what patterns exist with respect to the distribution of claims for punitive damages and statutorily mandated multiple damages. We reviewed each case to determine the type of case, the principal cause of action claimed, whether punitive damages were demanded, how the case was resolved, and how long it took to resolve. We picked cases from 1991 because over 98 percent of cases from this time period had been resolved, either by trial, settlement, or dismissal, so most could be traced out to their conclusion. (A complete description of the methodology used in surveying and classifying these cases is available upon request.)

The highlights of the analysis of these cases include:

- 78 percent of all punitive damage demands were filed against a business defendant. (See Figure 1 below.)
- Government defendants face punitive demands in more than one-third of lawsuits filed against government agencies. (See Table 1 below.)
- Lawsuits that include punitive damage demands take about six months longer to resolve than lawsuits that do not include punitive damage demands.
- The probability of a punitive damage award if a case proceeds to trial is 14 percent or higher. For business defendants, the probability is more than 20 percent.