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Tort Reform Bill
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CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN) am**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY THE HOUSE FINANCE COMMITTEE****Amended: 3/18/97****Offered: 3/17/97****Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

6 * **Section 1. LEGISLATIVE INTENT.** In enacting this bill, it is the intent of this
7 legislature as a matter of public policy to

8 (1) encourage the efficiency of the civil justice system by discouraging
9 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
10 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
11 compensation for tortious injuries caused by others;

12 (2) provide for reasonable, but not excessive, punitive damage awards against
13 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
14 hampering a positive business environment by allowing excessive penalties;

(3) encourage individual savings and economic growth by fostering an environment likely to control the increase of liability insurance rates to individuals and businesses resulting in a savings to the state, municipalities, and private businesses that are self-insured;

(4) encourage the traditionally recognized Alaska values of self-reliance and independence by underscoring the need for personal responsibility in making choices and personal accountability for the consequences of those choices;

(5) alleviate the high cost of malpractice insurance premiums that discourage physicians, architects, engineers, attorneys, and other professionals from rendering needed services to the public;

(6) ensure that hospitals that comply with the disclosure requirements set out in this Act are not liable for the negligence of independent contractors; to this extent, this Act is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

(7) ensure that one of several tortfeasors is not held responsible for the negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

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

(9) ensure that in actions involving the fault of more than one person, the fault of each claimant, defendant, third-party defendant, person who has been released from liability, or other person responsible for the damages be determined and awards be allocated in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949 (Alaska 1994); and

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

* Sec. 2. AS 06.05.473(h) is amended to read:

(h) After the payment of all other claims, including interest at the rate of 10.5 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay claims that are otherwise valid but that were not filed within the time prescribed.

* Sec. 3. AS 09.10.050 is repealed and reenacted to read:

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

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

Sec. 09.10.053. Contract actions to be brought in three years. Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040, the provisions of this section may be waived by contract, or as otherwise provided by law.

* **Sec. 5.** AS 09.10.055 is repealed and reenacted to read:

Sec. 09.10.055. Statute of repose of eight years. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within eight years of the earlier of the date of

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; in this paragraph, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended; or

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

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

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

(4) the provisions of this section are waived by contract.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

* Sec. 6. AS 09.10.070(a) is amended to read:

(a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

* Sec. 7. AS 09.10.140(a) is amended to read:

(a) Except as provided under (c) of this section, if [IF] a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

* Sec. 8. AS 09.10.140 is amended by adding a new subsection to read:

(c) In an action for personal injury or death of a person who was under the age of six years at the time of the injury or death, the time period before the person's sixth birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing the civil action.

* Sec. 9. AS 09.17.010 is repealed and reenacted to read:

Sec. 09.17.010. Noneconomic damages. (a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims of a person, including a loss of consortium claim, arising out of a single injury or death may not exceed \$300,000.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$500,000 when the claimant, as a result of the injury,

(1) is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord;

(2) has permanently impaired cognitive capacity and is incapable of making independent, responsible decisions;

(3) has third degree burns over one half or more of the claimant's body;
or

(4) is totally blind.

(d) Multiple injuries sustained by one person as a result of a single incident shall be treated as a single injury for purposes of this section.

* Sec. 10. AS 09.17.020 is amended to read:

Sec. 09.17.020. Punitive damages. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence of malice or conscious acts showing deliberate disregard of another person's rights by the person from whom the punitive damages are sought.

* Sec. 11. AS 09.17.020 is amended by adding new subsections to read:

(b) Except as provided under (c) of this section, the amount of punitive damages awarded by a court or jury under (a) of this section may not exceed three times the amount of compensatory damages awarded or \$300,000, whichever amount

1 is greater.

2 (c) The amount of punitive damages awarded by a court or jury under (a) of
3 this section may not exceed four times the amount of compensatory damages awarded
4 or \$600,000, whichever amount is greater, if

5 (1) the wrongful conduct or omission arose in connection with a
6 commercial activity motivated by financial gain; and

7 (2) the likelihood of death or serious bodily injury from the commercial
8 activity was previously known by the person responsible for making policy decisions
9 relating to the commercial activity and the knowledge was gained from previous
10 instances of death or serious bodily injury arising from the same wrongful conduct or
11 omission, regardless of where the previous wrongful conduct or omission occurred.

12 (d) If a person receives an award of punitive damages, the court shall require
13 that 50 percent of the award be deposited into the general fund of the state. This
14 subsection does not grant the state the right to file or join a civil action to recover
15 punitive damages.

16 * Sec. 12. AS 09.17.040(a) is amended to read:

17 (a) In every case where damages for personal injury or death are awarded by
18 the court or jury,

19 (1) the verdict shall be itemized between economic loss and
20 noneconomic loss, if any, as follows:

21 (A) [(1)] past economic loss;

22 (B) [(2)] past noneconomic loss;

23 (C) [(3)] future economic loss;

24 (D) [(4)] future noneconomic loss; [AND]

25 (E) [(5)] punitive damages; and

26 (2) the amount of damages awarded shall be reduced by the
27 amount of federal and state income tax that would have been paid on damages
28 contained in the verdict under tax rates in effect on the date of the injury or
29 death; this paragraph does not apply to an award of damages if the damages are
30 taxable under federal or state law.

31 * Sec. 13. AS 09.17.040(d) is amended to read:

(d) In an action to recover damages, the court shall, at the request of a [AN INJURED] party, enter judgment ordering that amounts awarded a judgment creditor for future damages that exceed \$100,000 be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment. If a portion of the judgment awarded is owed to an attorney under a contingent fee agreement, that portion of the judgment shall be reduced to present value, if necessary, and paid in a lump sum, and the remaining portion of the judgment shall be paid as provided under this subsection.

* Sec. 14. AS 09.17.040(e) is amended to read:

(e) Except as provided in this subsection, if a judgment is paid by structured settlement type periodic payments, the [THE] court shall [MAY] require security be posted in the form of United States government obligations [,] in order to ensure that funds are available as periodic payments become due. The court may not require security to be posted if the state, a self-insured municipality, or an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment, provided that an authorized insurer must be rated by two nationally recognized independent rating agencies to be in the two highest categories of quality and financial soundness. If a judgment is paid by annuity type period payments, the court shall require the annuity be purchased from an authorized insurer that is rated by two nationally recognized independent rating agencies to be in the two highest categories of quality and financial soundness. The injured party shall determine whether a structured settlement or an annuity is the source of the periodic payments. The injured party may not be required to accept a structured settlement or annuity from the defendant's or other party's insurer or from any affiliated companies of the insurer.

* Sec. 15. AS 09.17.040(f) is amended to read:

(f) A judgment ordering payment of future damages for personal injury or death by periodic payment shall specify the recipient, the dollar amount of the payments, including any increases in future payments for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the

1 death of the judgment creditor, in which case payments may not be reduced or
 2 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 3 of support, as provided by law, immediately before death. In the event the judgment
 4 creditor owed no duty of support to dependents at the time of the judgment creditor's
 5 death, the money remaining shall be distributed in accordance with a will of the
 6 deceased judgment creditor accepted into probate or under the intestate laws of the
 7 state if the deceased had no will. In this subsection, "inflation" means the change
 8 in the consumer price index for United States city average, all urban consumers,
 9 all items indices, compiled by the Bureau of Labor Statistics, United States
 10 Department of Labor.

11 * Sec. 16. AS 09.17.070 is repealed and reenacted to read:

12 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 13 injury or death may only recover damages that exceed amounts received by the
 14 claimant, or that with reasonable probability will be received in the future by the
 15 claimant, as compensation for the injuries from collateral sources, whether private,
 16 group, or governmental, and whether contributory or noncontributory, except when

17 (1) the collateral source is a federally funded program that by law must
 18 seek subrogation;

19 (2) the collateral source has a right of subrogation under federal law;

20 (3) the collateral source is the payment of a dependent child's medical
 21 bills by the injured child's parent that does not result from insurance coverage;

22 (4) the benefit consists of death benefits paid under life insurance; or

23 (5) the benefit consists of workers' compensation benefits received
 24 under AS 23.30.

25 (b) A person defending a claim may introduce into evidence at trial an amount
 26 paid or payable as a benefit to the claimant as a result of the personal injury or death
 27 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 28 sickness, disability, accident, or income-disability insurance; insurance that provides
 29 health benefits or income-disability coverage; and a contract or agreement of a group,
 30 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 31 or reimburse the cost of medical, hospital, dental, or other health care services,

1 disability, or lost wages. However, evidence of a collateral source described under
 2 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 3 defending a claim elects to introduce evidence described in this subsection, the
 4 claimant may introduce evidence of the amount that the claimant has paid or
 5 contributed to secure the claimant's right to the collateral benefit, including the cost
 6 to the claimant resulting from depleted or exhausted coverage.

7 (c) A person who provides a collateral benefit admissible under (b) of this
 8 section may not recover an amount against the claimant as reimbursement for those
 9 benefits and may not be subrogated to the rights of a claimant against a person
 10 defending a claim.

11 * Sec. 17. AS 09.17.080(a) is amended to read:

12 (a) In all actions involving fault of more than one person [PARTY TO THE
 13 ACTION], including third-party defendants and persons who have been released
 14 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
 15 the jury to answer special interrogatories or, if there is no jury, shall make findings,
 16 indicating

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

19 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 20 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 21 [AND] person who has been released from liability, or other person responsible for
 22 the damages to each claimant regardless of whether the other person, including
 23 an employer, is or could have been named as a party to the action; in this
 24 paragraph, "other persons responsible" does not include a person protected from
 25 a civil action under AS 09.10.055 [UNDER AS 09.16.040].

26 * Sec. 18. AS 09.17.080(b) is amended to read:

27 (b) In determining the percentages of fault, the trier of fact shall consider both
 28 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 29 causal relation between the conduct and the damages claimed. [THE TRIER OF
 30 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
 31 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE

1 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
2 PERSON CANNOT BE DISTINGUISHED.]

3 * Sec. 19. AS 09.17.080(c) is amended to read:

4 (c) The court shall determine the award of damages to each claimant in
5 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
6 AS 09.16.040,] and enter judgment against each party liable. The court also shall
7 determine and state in the judgment each party's equitable share of the obligation to
8 each claimant in accordance with the respective percentages of fault as determined
9 under (a) of this section. Except as provided under AS 23.30.015(g), an
10 assessment of a percentage of fault against a person who is not a party may only
11 be used as a measure for accurately determining the percentages of fault of a
12 named party. Assessment of a percentage of fault against a person who is not a
13 party does not subject that person to civil liability in that action and may not be
14 used as evidence of civil liability in another action.

15 * Sec. 20. AS 09.17.900 is amended to read:

16 Sec. 09.17.900. **Definition.** In this chapter, "fault" includes acts or omissions
17 that are in any measure negligent, [OR] reckless, or intentional toward the person or
18 property of the actor or others, or that subject a person to strict tort liability. The term
19 also includes breach of warranty, unreasonable assumption of risk not constituting an
20 enforceable express consent, misuse of a product for which the defendant otherwise
21 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
22 Legal requirements of causal relation apply both to fault as the basis for liability and
23 to contributory fault.

24 * Sec. 21. AS 09.20 is amended by adding a new section to read:

25 Sec. 09.20.185. **Expert witness qualification.** (a) In an action based on
26 professional negligence, a person may not testify as an expert witness on the issue of
27 the appropriate standard of care unless the witness is

28 (1) a professional who is licensed in this state or in another state or
29 country;

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

(3) certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue; however, this paragraph does not apply if a board does not exist that could certify the witness in the particular field or matter at issue.

* Sec. 22. AS 09.30.065 is amended to read:

Sec. 09.30.065. Offers of judgment. At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn, and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is at least five percent, less [NOT MORE] favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made, [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

(1) if the offer was served no later than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure the offeree shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR];

(2) if the offer was served more than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure but more than 90 days before the trial began, the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A YEAR].

* Sec. 23. AS 09.30.065 is amended by adding new subsections to read:

(b) If an offeror receives costs and reasonable actual attorney fees under (a) of this section, that offeror shall be considered the prevailing party for purposes of an award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska Rules of Civil Procedure is greater than a party would receive under (a) of this section, the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of this section. A party who receives attorney fees under this section may not also receive attorney fees under the Alaska Rules of Civil Procedure.

(c) If an offeror makes more than one offer of judgment, the last offer served on the adverse party shall be considered to be a revocation of any prior offer of judgment.

* Sec. 24. AS 09.30.070(a) is amended to read:

(a) **Notwithstanding AS 45.45.010, the** [THE] rate of interest on judgments and decrees for the payment of money, **including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered** [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 25. AS 09.30.070 is amended by adding a new subsection to read:

(c) Prejudgment interest may not be awarded for future economic damages, future noneconomic damages, or punitive damages.

* Sec. 26. AS 09.50.280 is amended to read:

1 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
 2 rendered for the plaintiff, it shall be for the legal amount found due from the state with
 3 [LEGAL] interest **as provided under AS 09.30.070** [FROM THE DATE IT BECAME
 4 DUE] and without punitive damages.

5 * **Sec. 27.** AS 09.55.440(a) is amended to read:

6 (a) Upon the filing of the declaration of taking and the deposit with the court
 7 of the amount of the estimated compensation stated in the declaration, title to the estate
 8 as specified in the declaration vests in the plaintiff, and that property is condemned
 9 and taken for the use of the plaintiff, and the right to just compensation for it vests in
 10 the persons entitled to it. The compensation shall be ascertained and awarded in the
 11 proceeding and established by judgment. The judgment must include interest at the
 12 rate **of 10.5 percent a year** [SET OUT IN AS 09.30.070] on the amount finally
 13 awarded **that** [WHICH] exceeds the amount paid into court under the declaration of
 14 taking. The interest runs from the date title vests to the date of payment of the
 15 judgment.

16 * **Sec. 28.** AS 09.55.535(k) is amended to read:

17 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
 18 apply to arbitrations under this section if they do not conflict with the provisions of
 19 this section; arbitrations under this section shall be conducted in accordance with
 20 procedures established by any rules of court which may be adopted and according to
 21 provisions of **AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560** [AS 09.55.540 -
 22 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

23 * **Sec. 29.** AS 09.55.536(a) is amended to read:

24 (a) In an action for damages due to personal injury or death based upon
 25 the provision of professional services by a health care provider, **including a person**
 26 **providing services on behalf of a governmental entity**, when the parties have not
 27 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
 28 20 days after filing of answer to a summons and complaint a three-person expert
 29 advisory panel unless the court decides that an expert advisory opinion is not necessary
 30 for a decision in the case. When the action is filed, the court shall, by order,
 31 determine the professions or specialties to be represented on the expert advisory panel,

1 giving the parties the opportunity to object or make suggestions.

2 * Sec. 30. AS 09.55.536(c) is amended to read:

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

7 (1) Why did the claimant seek [WHAT WAS THE DISORDER FOR
8 WHICH THE PLAINTIFF CAME TO] medical care?

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

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

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

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

20 (6) What specifically caused the medical injury?

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

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

25 * Sec. 31. AS 09.55.536(f) is amended to read:

26 (f) Discovery may not be undertaken in a case until the report of the expert
27 advisory panel is received or 60 days after selection of the panel, whichever occurs
28 first. However, the court may relax this prohibition upon a showing of good cause by
29 any party. If the panel has not completed its report within the 30-day period
30 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
31 an additional 30 days.

1 * **Sec. 32.** AS 09.55.536 is amended by adding a new subsection to read:

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

5 * **Sec. 33.** AS 09.55.560(1) is amended to read:

6 (1) "health care provider" means an acupuncturist licensed under
7 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
8 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
9 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
10 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
11 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
12 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
13 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
14 hospital as defined in AS 18.20.130, including a governmentally owned or operated
15 hospital; [AND] an employee of a health care provider acting within the course and
16 scope of employment; an ambulatory surgical facility and other organizations
17 whose primary purpose is the delivery of health care, including a health
18 maintenance organization, individual practice association, integrated delivery
19 system, preferred provider organization or arrangement, and a physical hospital
20 organization.

21 * **Sec. 34.** AS 09.55.560 is amended by adding new paragraphs to read:

22 (4) "professional negligence" means a negligent act or omission by a
23 health care provider in rendering professional services;

24 (5) "professional services" means service provided by a health care
25 provider that is within the scope of services for which the health care provider is
26 licensed and that is not prohibited under the health care provider's license or by a
27 facility in which the health care provider practices.

28 * **Sec. 35.** AS 09.60 is amended by adding a new section to read:

29 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
30 collects a contingency fee in connection with an action for personal injury, death, or
31 property damage and the damages awarded by a court or jury include an award of

1 punitive damages, the contingent fee due the attorney shall be calculated after that
 2 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
 3 from the total award of damages.

4 * **Sec. 36.** AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
 6 electrical service to the public for compensation under a certificate of public
 7 convenience and necessity issued by the Alaska Public Utilities Commission under
 8 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
 9 injury resulting from an act or omission of the utility relating to the production,
 10 delivery, or sale of electricity.

11 (b) This section does not preclude liability for civil damages that are the result
 12 of an intentional, reckless, or negligent act or omission.

13 * **Sec. 37.** AS 09.65 is amended by adding a new section to read:

14 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 15 hospital is not liable for civil damages as a result of an act or omission by an
 16 emergency room physician who is not an employee or actual agent of the hospital if
 17 the hospital provides notice that the emergency room physician is an independent
 18 contractor and the emergency room physician is insured as described under (c) of this
 19 section. The hospital is responsible for exercising reasonable care in granting
 20 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 21 and for taking appropriate steps to revoke or restrict privileges in appropriate
 22 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 23 emergency room physician who is an independent contractor. The notice required by
 24 this subsection must be posted conspicuously in all admitting areas of the hospital,
 25 published at least annually in a newspaper of general circulation in the area, and must
 26 be in substantially the following form:

27 **Notice of Limited Liability**

28 The following emergency room physicians are independent
 29 contractors and are not employees of the hospital:

30 (List specific emergency room physicians)

31 (b) This section does not preclude liability for civil damages that are the

proximate result of the hospital's negligence or intentional misconduct.

(c) A hospital is not immune from liability under (a) of this section for an act or omission of an emergency room physician who is an independent contractor unless the emergency room physician has liability insurance coverage in the amount of at least \$500,000 for each incident and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

(d) In this section,

(1) "emergency room physician" means a physician who provides health care services in a hospital emergency room;

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

(3) "independent contractor" means an emergency room physician who is not an employee or actual agent of the hospital in connection with the rendition of the health care services.

* Sec. 38. AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs. A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the felony substantially contributed to the personal injury or death;

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

(A) substantially contributed to the personal injury or death; and

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

(3) fleeing after the commission, by that person, of conduct that would

1 constitute an unclassified felony, a class A felony, or a class B felony or being
 2 apprehended for conduct that would constitute an unclassified felony, a class A felony,
 3 or a class B felony if the conduct

4 (A) during the flight or apprehension substantially contributed
 5 to the injury or death; and

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

8 (4) operating a vehicle, aircraft, or watercraft while under the influence
 9 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
 10 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
 11 the conduct substantially contributed to the personal injury or death; or

12 (5) engaged in conduct that would constitute a violation of
 13 AS 28.35.030 for which the person was not convicted if the conduct substantially
 14 contributed to the personal injury or death and the conduct is proven by the defendant
 15 in the civil trial by clear and convincing evidence.

16 * **Sec. 39.** AS 09.68 is amended by adding a new section to read:

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

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

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

30 (1) divorce and dissolution;

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

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

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

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

(6) small claims under AS 22.15.040.

* **Sec. 40.** AS 21.06 is amended by adding a new section to read:

Sec. 21.06.087. Insurance report. (a) The director shall require reporting of and shall compile information necessary to evaluate the effect of the measures enacted in this Act on the availability and cost of insurance in the state.

(b) Information described in (a) of this section shall be provided by all insurers doing business in this state in the format specified by the director and must include factual information stating premiums, claims, losses, expenses, and solvency of the company as a whole. Information shall be compiled by the division in a way that protects the identity of individual insureds.

(c) The director shall adopt regulations to implement and interpret this section, including requiring insurers doing business in the state to provide information necessary for the division to carry out its responsibilities under (a) and (b) of this section. If there are indications of market disruption, the director may waive all or part of the reporting requirements in this section.

(d) Beginning June 1, 2000, the information compiled under (a) of this section shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

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

* **Sec. 41.** AS 21.89.100(d) is amended to read:

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance

1 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 2 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 3 course of business in the defense of a similar civil action in the community in which
 4 the claim arose or is being defended. In providing independent counsel, the insurer
 5 is not responsible for the fees and costs of defending an allegation for which
 6 coverage is properly denied and shall be responsible only for the fees and costs
 7 to defend those allegations for which the insurer either reserves its position as to
 8 coverage or accepts coverage. The independent counsel shall keep detailed
 9 records allocating fees and costs accordingly. A dispute between the insurer and
 10 insured regarding attorney fees that is not resolved by the insurance policy or this
 11 section shall be resolved by arbitration under AS 09.43.

12 * Sec. 42. AS 21.89.100 is amended by adding a new subsection to read:

13 (h) When an insured is represented by independent counsel, the insurer may
 14 settle directly with the plaintiff if the settlement includes all claims based upon the
 15 allegations for which the insurer previously reserved its position as to coverage or
 16 accepted coverage, regardless of whether the settlement extinguishes all claims against
 17 the insured.

18 * Sec. 43. AS 23.30.015(g) is amended to read:

19 (g) If the employee or the employee's representative recovers damages from
 20 the third person, the employee or representative shall promptly pay to the employer the
 21 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
 22 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 23 and expenses. Any excess recovery by the employee or representative shall be
 24 credited against any amount payable by the employer thereafter. If the employer is
 25 allocated a percentage of fault under AS 09.17.080, the amount due the employer
 26 under this subsection shall be reduced by an amount equal to the employer's
 27 equitable share of damages assessed under AS 09.17.080(c).

28 * Sec. 44. AS 44.77.015(a) is amended to read:

29 (a) For the purposes of filing claims for medical services provided under
 30 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
 31 within six months after the date of service, or as provided in (b) of this section, if

there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

* Sec. 45. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

(1) That the issues in the case have actually been joined;

(2) That all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;

(3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;

(4) Whether trial by jury has been timely demanded;

(5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;

(6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;

(7) Which, if any, statute or rule entitles the case to preference on the trial calendar;

(8) That the parties have complied with [PARAGRAPH] (k) of this rule.

* Sec. 46. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

(n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and

1 to develop a proposed discovery plan. The attorneys of record and all unrepresented
 2 parties that have appeared in the case are jointly responsible for arranging and being
 3 present or represented at the meeting, for attempting in good faith to agree on the
 4 proposed discovery plan, and for submitting to the court within 10 days after the
 5 meeting a written report outlining the proposed discovery plan. The proposed
 6 discovery plan shall indicate the parties' views and proposals concerning

7 (1) what changes should be made in the timing or forms of subsequent
 8 disclosures under the rules, including a statement as to when the disclosures required
 9 under Rule 26(a) were made;

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

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

15 (4) whether a scheduling conference is unnecessary;

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

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

21 * **Sec. 47.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
 22 paragraph to read:

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

1 AS 09.68.130(c).

2 * **Sec. 48.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

7 * **Sec. 49.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

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

13 * **Sec. 50.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
14 subsection to read:

15 (c) If the trier of fact determines that a party to a civil action has intentionally
16 made a false statement of a material fact in connection with the prosecution or defense
17 of a civil action, the court shall enter judgment against the party making the false
18 statement on the issue to which the false statement relates. If the civil action involves
19 multiple claims and the false statement does not apply to all claims, the judgment
20 required under this subsection shall apply only to those claims to which the false
21 statement relates.

22 * **Sec. 51.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
23 subsection to read:

24 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
25 result of compromise or other settlement between the parties, the parties shall submit
26 to the Alaska Judicial Council the information required under AS 09.68.130. A
27 dismissal by agreement under (a) of this rule must be accompanied by a certification
28 signed by the attorneys of record for all parties that the information required under
29 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
30 appellant or petitioner made under (b) of this rule must be accompanied by a
31 certification signed by the appellant's or petitioner's attorney of record. The

1 requirements of this subsection do not apply to the types of cases listed in
2 AS 09.68.130(c).

3 * **Sec. 52.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

4 * **Sec. 53.** AS 09.55.548 is repealed.

5 * **Sec. 54.** AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending
6 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
7 percentage of an award of punitive damages be deposited into the general fund.

8 * **Sec. 55.** AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending
9 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
10 damages by certain tax rates in effect on the date of injury or death if taxable.

11 * **Sec. 56.** AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
13 periodically if requested by a party, with a lump sum payment for certain attorney fees.

14 * **Sec. 57.** AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending
15 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
16 is paid by periodic payments.

17 * **Sec. 58.** AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending
18 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
19 increases for future inflation.

20 * **Sec. 59.** AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending
21 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
22 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
23 among the claimants, defendants, third-party defendants, persons who have been released from
24 liability, or other person who is responsible for the damages.

25 * **Sec. 60.** AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending
26 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
27 testifying as an expert witness.

28 * **Sec. 61.** AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of
29 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
30 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
31 eliminating provisions relating to interest and by providing that a subsequent offer revokes

1 prior offers.

2 * **Sec. 62.** AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending
3 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
4 awarded for future economic or noneconomic damages.

5 * **Sec. 63. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
6 legislation to create a pilot alternative dispute resolution procedure within the existing civil
7 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
8 disputes.

9 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
10 Association, review court sanctioned alternative dispute resolution programs in other states and
11 in the federal court system, and make recommendations to assist the legislature and the Alaska
12 Court System in the establishment of a pilot program for alternative dispute resolution within
13 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
14 legislature and to the Alaska Supreme Court within six months after the effective date of this
15 Act. The report must include specific types of programs, specific types of cases within each
16 program that are amenable to alternative dispute resolution, the cost to the parties and to the
17 Alaska Court System under these programs, and the qualifications of the neutral parties,
18 including nonlawyers, who will provide dispute resolution services under the program.

19 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
20 and early neutral evaluation.

21 * **Sec. 64. APPLICABILITY.** This Act applies to all causes of action accruing on or after
22 the effective date of this Act.

23 * **Sec. 65. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
24 application of a provision of this Act to any person or circumstance is held invalid, the
25 remainder of this Act and the application to other persons shall not be affected.

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

6 * **Section 1. LEGISLATIVE INTENT.** In enacting this bill, it is the intent of this
7 legislature as a matter of public policy to

8 (1) encourage the efficiency of the civil justice system by discouraging
9 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
10 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
11 compensation for tortious injuries caused by others;

12 (2) provide for reasonable, but not excessive, punitive damage awards against
13 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
14 hampering a positive business environment by allowing excessive penalties;

1 (3) encourage individual savings and economic growth by fostering an
2 environment likely to control the increase of liability insurance rates to individuals and
3 businesses resulting in a savings to the state, municipalities, and private businesses that are
4 self-insured;

5 (4) encourage the traditionally recognized Alaska values of self-reliance and
6 independence by underscoring the need for personal responsibility in making choices and
7 personal accountability for the consequences of those choices;

8 (5) alleviate the high cost of malpractice insurance premiums that discourage
9 physicians, architects, engineers, attorneys, and other professionals from rendering needed
10 services to the public;

11 (6) ensure that hospitals that comply with the disclosure requirements set out
12 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
13 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

14 (7) ensure that one of several tortfeasors is not held responsible for the
15 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
16 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

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

19 (9) ensure that in actions involving the fault of more than one person, the fault
20 of each claimant, defendant, third-party defendant, person who has been released from
21 liability, or other person responsible for the damages be determined and awards be allocated
22 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
23 (Alaska 1994); and

24 (10) reduce the amount of litigation proceeding to trial by modifying the
25 allocation of attorney fees and court costs based on the offer of judgment and the final court
26 award, thereby providing a financial incentive to both parties to settle the dispute.

27 * Sec. 2. AS 06.05.473(h) is amended to read:

28 (h) After the payment of all other claims, including interest at the rate of 10.5
29 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay
30 claims that are otherwise valid but that were not filed within the time prescribed.

31 * Sec. 3. AS 09.10.050 is repealed and reenacted to read:

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

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

Sec. 09.10.053. Contract actions to be brought in three years. Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040 or as otherwise provided by law.

* **Sec. 5.** AS 09.10.055 is repealed and reenacted to read:

Sec. 09.10.055. Statute of repose of eight years. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within eight years of the earlier of the date of

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; in this paragraph, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended; or

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

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

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

(4) the provisions of this section are waived by contract.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

* Sec. 6. AS 09.10.070(a) is amended to read:

(a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

* Sec. 7. AS 09.10.140(a) is amended to read:

(a) Except as provided under (c) of this section, if [IF] a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

* Sec. 8. AS 09.10.140 is amended by adding a new subsection to read:

(c) In an action for personal injury or death of a person who was under the age of six years at the time of the injury or death, the time period before the person's sixth birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing the civil action.

1 * Sec. 9. AS 09.17.010 is repealed and reenacted to read:

2 **Sec. 09.17.010. Noneconomic damages.** (a) In an action to recover damages
3 for personal injury or wrongful death, all damage claims for noneconomic losses shall
4 be limited to compensation for pain, suffering, inconvenience, physical impairment,
5 disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary
6 damage.

7 (b) Except as provided under (c) of this section, ~~the damages~~ awarded by a
8 court or a jury under (a) of this section for ~~all claims of a person~~, including a loss of
9 consortium claim, arising out of a single injury or death may not exceed \$300,000.

10 (c) In an action for personal injury, the damages awarded by a court or jury
11 that are described under (b) of this section may not exceed \$500,000 when the
12 claimant, as a result of the injury,

13 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent
14 functional loss of one or more limbs resulting from injury to the spine or spinal cord;
15 or

16 (2) has permanently impaired cognitive capacity and is incapable of
17 making independent, responsible decisions.

18 (d) Multiple injuries sustained by one person as a result of a single incident
19 shall be treated as a single injury for purposes of this section.

20 * Sec. 10. AS 09.17.020 is amended to read:

21 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in
22 an action, whether in tort, contract, or otherwise, unless supported by clear and
23 convincing evidence of malice or conscious acts showing deliberate disregard of
24 another person's rights by the person from whom the punitive damages are
25 sought.

26 * Sec. 11. AS 09.17.020 is amended by adding new subsections to read:

27 (b) Except as provided under (c) of this section, the amount of punitive
28 damages awarded by a court or jury under (a) of this section may not exceed three
29 times the amount of compensatory damages awarded or \$300,000, whichever amount
30 is greater.

31 (c) The amount of punitive damages awarded by a court or jury under (a) of

1 this section may not exceed four times the amount of compensatory damages awarded
2 or \$600,000, whichever amount is greater, if

3 (1) the wrongful conduct or omission arose in connection with a
4 commercial activity motivated by financial gain; and

5 (2) the likelihood of death or serious bodily injury from the commercial
6 activity was previously known by the person responsible for making policy decisions
7 relating to the commercial activity and the knowledge was gained from previous
8 instances of death or serious bodily injury arising from the same wrongful conduct or
9 omission, regardless of where the previous wrongful conduct or omission occurred.

10 (d) If a person receives an award of punitive damages, the court shall require
11 that 50 percent of the award be deposited into the general fund of the state. This
12 subsection does not grant the state the right to file or join a civil action to recover
13 punitive damages.

14 * Sec. 12. AS 09.17.040(a) is amended to read:

15 (a) In every case where damages for personal injury or death are awarded by
16 the court or jury,

17 (1) the verdict shall be itemized between economic loss and
18 noneconomic loss, if any, as follows:

19 (A) [(1)] past economic loss;

20 (B) [(2)] past noneconomic loss;

21 (C) [(3)] future economic loss;

22 (D) [(4)] future noneconomic loss; [AND]

23 (E) [(5)] punitive damages; and

24 (2) the amount of damages awarded shall be reduced by the
25 amount of federal and state income tax that would have been paid on damages
26 contained in the verdict under tax rates in effect on the date of the injury or
27 death; this paragraph does not apply to an award of damages if the damages are
28 taxable under federal or state law.

29 * Sec. 13. AS 09.17.040(d) is amended to read:

30 (d) In an action to recover damages, the court shall, at the request of a [AN
31 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor

1 for future damages that exceed \$100,000 be paid to the maximum extent feasible by
2 periodic payments rather than by a lump-sum payment. If a portion of the judgment
3 awarded is owed to an attorney under a contingent fee agreement, that portion
4 of the judgment shall be reduced to present value, if necessary, and paid in a
5 lump sum, and the remaining portion of the judgment shall be paid as provided
6 under this subsection.

7 * Sec. 14. AS 09.17.040(e) is amended to read:

8 (e) Except as provided in this subsection, if a judgment is paid by
9 structured settlement type periodic payments, the [THE] court shall [MAY] require
10 security be posted in the form of United States government obligations [,] in order
11 to ensure that funds are available as periodic payments become due. The court may
12 not require security to be posted if the state, a self-insured municipality, or an
13 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
14 obligation to discharge the judgment, provided that an authorized insurer must be
15 rated by two nationally recognized independent rating agencies to be in the two
16 highest categories of quality and financial soundness. If a judgment is paid by
17 annuity type period payments, the court shall require the annuity be purchased
18 from an authorized insurer that is rated by two nationally recognized independent
19 rating agencies to be in the two highest categories of quality and financial
20 soundness. The injured party shall determine whether a structured settlement or
21 an annuity is the source of the periodic payments. The injured party may not be
22 required to accept a structured settlement or annuity from the defendant's or
23 other party's insurer or from any affiliated companies of the insurer.

24 * Sec. 15. AS 09.17.040(f) is amended to read:

25 (f) A judgment ordering payment of future damages for personal injury or
26 death by periodic payment shall specify the recipient, the dollar amount of the
27 payments, including any increases in future payments for anticipated inflation, the
28 interval between payments, and the number of payments or the period of time over
29 which payments shall be made. Payments may be modified only in the event of the
30 death of the judgment creditor, in which case payments may not be reduced or
31 terminated, but shall be paid to persons to whom the judgment creditor owed a duty

1 of support, as provided by law, immediately before death. In the event the judgment
 2 creditor owed no duty of support to dependents at the time of the judgment creditor's
 3 death, the money remaining shall be distributed in accordance with a will of the
 4 deceased judgment creditor accepted into probate or under the intestate laws of the
 5 state if the deceased had no will. In this subsection, "inflation" means the change
 6 in the consumer price index for United States city average, all urban consumers,
 7 all items indices, compiled by the Bureau of Labor Statistics, United States
 8 Department of Labor.

9 * Sec. 16. AS 09.17.070 is repealed and reenacted to read:

10 Sec. 09.17.070. Collateral benefits. (a) A claimant in an action for personal
 11 injury or death may only recover damages that exceed amounts received by the
 12 claimant, or that with reasonable probability will be received in the future by the
 13 claimant, as compensation for the injuries from collateral sources, whether private,
 14 group, or governmental, and whether contributory or noncontributory, except when

15 (1) the collateral source is a federally funded program that by law must
 16 seek subrogation;

17 (2) the collateral source has a right of subrogation under federal law;

18 (3) the collateral source is the payment of a dependent child's medical
 19 bills by the injured child's parent that does not result from insurance coverage;

20 (4) the benefit consists of death benefits paid under life insurance; or

21 (5) the benefit consists of workers' compensation benefits received
 22 under AS 23.30.

23 (b) A person defending a claim may introduce into evidence at trial an amount
 24 paid or payable as a benefit to the claimant as a result of the personal injury or death
 25 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 26 sickness, disability, accident, or income-disability insurance; insurance that provides
 27 health benefits or income-disability coverage; and a contract or agreement of a group,
 28 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 29 or reimburse the cost of medical, hospital, dental, or other health care services,
 30 disability, or lost wages. However, evidence of a collateral source described under
 31 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person

defending a claim elects to introduce evidence described in this subsection, the claimant may introduce evidence of the amount that the claimant has paid or contributed to secure the claimant's right to the collateral benefit, including the cost to the claimant resulting from depleted or exhausted coverage.

(c) A person who provides a collateral benefit admissible under (b) of this section may not recover an amount against the claimant as reimbursement for those benefits and may not be subrogated to the rights of a claimant against a person defending a claim.

* Sec. 17. AS 09.17.080(a) is amended to read:

(a) In all actions involving fault of more than one person [PARTY TO THE ACTION], including third-party defendants and persons who have been released [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

(2) the percentage of the total fault [OF ALL OF THE PARTIES TO EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant, [AND] person who has been released from liability, or other person responsible for the damages to each claimant regardless of whether the other person, including an employer, is or could have been named as a party to the action [UNDER AS 09.16.040].

* Sec. 18. AS 09.17.080(b) is amended to read:

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each person [PARTY] at fault, and the extent of the causal relation between the conduct and the damages claimed. [THE TRIER OF FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH PERSON CANNOT BE DISTINGUISHED.]

* Sec. 19. AS 09.17.080(c) is amended to read:

(c) The court shall determine the award of damages to each claimant in accordance with the findings [, SUBJECT TO A REDUCTION UNDER AS 09.16.040,] and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault as determined under (a) of this section. Except as provided under AS 23.30.015(g), an assessment of a percentage of fault against a person who is not a party may only be used as a measure for accurately determining the percentages of fault of a named party. Assessment of a percentage of fault against a person who is not a party does not subject that person to civil liability in that action and may not be used as evidence of civil liability in another action.

* Sec. 20. AS 09.17.900 is amended to read:

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, or intentional toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

* Sec. 21. AS 09.20 is amended by adding a new section to read:

Sec. 09.20.185. Expert witness qualification. (a) In an action based on professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness is

(1) a professional who is licensed in this state or in another state or country;

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

(3) certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue; however, this paragraph does not apply if a board does not exist that could certify the witness

1 in the particular field or matter at issue.

2 * Sec. 22. AS 09.30.065 is amended to read:

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

20 (1) if the offer was served no later than 60 days after both parties
21 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
22 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
23 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
24 REDUCED BY FIVE PERCENT A YEAR];

25 (2) if the offer was served more than 60 days after both parties
26 made the disclosures required by the Alaska Rules of Civil Procedure but more
27 than 90 days before the trial began, the offeree shall pay 75 percent of the
28 offeror's reasonable actual attorney fees;

29 (3) if the offer was served 90 days or less but more than 10 days
30 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
31 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE

1 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
2 YEAR].

3 * Sec. 23. AS 09.30.065 is amended by adding new subsections to read:

4 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
5 of this section, that offeror shall be considered the prevailing party for purposes of an
6 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
7 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
8 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
9 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
10 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
11 this section. A party who receives attorney fees under this section may not also
12 receive attorney fees under the Alaska Rules of Civil Procedure.

13 (c) If an offeror makes more than one offer of judgment, the last offer served
14 on the adverse party shall be considered to be a revocation of any prior offer of
15 judgment.

16 * Sec. 24. AS 09.30.070(a) is amended to read:

17 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
18 and decrees for the payment of money, including prejudgment interest, is three
19 percentage points above the 12th Federal Reserve District discount rate in effect
20 on January 2 of the year in which the judgment or decree is entered [10.5
21 PERCENT A YEAR], except that a judgment or decree founded on a contract in
22 writing, providing for the payment of interest until paid at a specified rate not
23 exceeding the legal rate of interest for that type of contract, bears interest at the rate
24 specified in the contract if the interest rate is set out in the judgment or decree.

25 * Sec. 25. AS 09.30.070 is amended by adding a new subsection to read:

26 (c) Prejudgment interest may not be awarded for future economic damages,
27 future noneconomic damages, or punitive damages.

28 * Sec. 26. AS 09.50.280 is amended to read:

29 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
30 rendered for the plaintiff, it shall be for the legal amount found due from the state with
31 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME

1 DUE] and without punitive damages.

2 * Sec. 27. AS 09.55.440(a) is amended to read:

3 (a) Upon the filing of the declaration of taking and the deposit with the court
4 of the amount of the estimated compensation stated in the declaration, title to the estate
5 as specified in the declaration vests in the plaintiff, and that property is condemned
6 and taken for the use of the plaintiff, and the right to just compensation for it vests in
7 the persons entitled to it. The compensation shall be ascertained and awarded in the
8 proceeding and established by judgment. The judgment must include interest at the
9 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
10 awarded that [WHICH] exceeds the amount paid into court under the declaration of
11 taking. The interest runs from the date title vests to the date of payment of the
12 judgment.

13 * Sec. 28. AS 09.55.535(k) is amended to read:

14 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
15 apply to arbitrations under this section if they do not conflict with the provisions of
16 this section; arbitrations under this section shall be conducted in accordance with
17 procedures established by any rules of court which may be adopted and according to
18 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
19 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

20 * Sec. 29. AS 09.55.536(a) is amended to read:

21 (a) In an action for damages due to personal injury or death based upon
22 the provision of professional services by a health care provider, including a person
23 providing services on behalf of a governmental entity, when the parties have not
24 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
25 20 days after filing of answer to a summons and complaint a three-person expert
26 advisory panel unless the court decides that an expert advisory opinion is not necessary
27 for a decision in the case. When the action is filed, the court shall, by order,
28 determine the professions or specialties to be represented on the expert advisory panel,
29 giving the parties the opportunity to object or make suggestions.

30 * Sec. 30. AS 09.55.536(c) is amended to read:

31 (c) Not more than 30 days after selection of the panel, the panel [IT] shall

1 make a written report to the parties and to the court, answering the following questions
 2 and other questions submitted to the panel by the court in sufficient detail to explain
 3 the case and the reasons for the panel's answers:

4 (1) Why did the claimant seek [WHAT WAS THE DISORDER FOR
 5 WHICH THE PLAINTIFF CAME TO] medical care?

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

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

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

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

17 (6) What specifically caused the medical injury?

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

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

22 * Sec. 31. AS 09.55.536(f) is amended to read:

23 (f) Discovery may not be undertaken in a case until the report of the expert
 24 advisory panel is received or 60 days after selection of the panel, whichever occurs
 25 first. However, the court may relax this prohibition upon a showing of good cause by
 26 any party. If the panel has not completed its report within the 30-day period
 27 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
 28 an additional 30 days.

29 * Sec. 32. AS 09.55.536 is amended by adding a new subsection to read:

30 (i) This section applies regardless of whether a party in the action or the health
 31 care provider whose professional services are the subject of the action is a

1 governmental entity or in the public or private sector.

2 * Sec. 33. AS 09.55.560(1) is amended to read:

3 (1) "health care provider" means an acupuncturist licensed under
 4 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
 5 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
 6 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
 7 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
 8 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
 9 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
 10 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
 11 hospital as defined in AS 18.20.130, including a governmentally owned or operated
 12 hospital; [AND] an employee of a health care provider acting within the course and
 13 scope of employment; an ambulatory surgical facility and other organizations
 14 whose primary purpose is the delivery of health care, including a health
 15 maintenance organization, individual practice association, integrated delivery
 16 system, preferred provider organization or arrangement, and a physical hospital
 17 organization.

18 * Sec. 34. AS 09.55.560 is amended by adding new paragraphs to read:

19 (4) "professional negligence" means a negligent act or omission by a
 20 health care provider in rendering professional services;

21 (5) "professional services" means service provided by a health care
 22 provider that is within the scope of services for which the health care provider is
 23 licensed and that is not prohibited under the health care provider's license or by a
 24 facility in which the health care provider practices.

25 * Sec. 35. AS 09.60 is amended by adding a new section to read:

26 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
 27 collects a contingency fee in connection with an action for personal injury, death, or
 28 property damage and the damages awarded by a court or jury include an award of
 29 punitive damages, the contingent fee due the attorney shall be calculated after that
 30 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
 31 from the total award of damages.

1 * Sec. 36. AS 09.65 is amended by adding a new section to read:

2 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
3 electrical service to the public for compensation under a certificate of public
4 convenience and necessity issued by the Alaska Public Utilities Commission under
5 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
6 injury resulting from an act or omission of the utility relating to the production,
7 delivery, or sale of electricity.

8 (b) This section does not preclude liability for civil damages that are the result
9 of an intentional, reckless, or negligent act or omission.

10 * Sec. 37. AS 09.65 is amended by adding a new section to read:

11 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
12 hospital is not liable for civil damages as a result of an act or omission by an
13 emergency room physician who is not an employee or actual agent of the hospital if
14 the hospital provides notice that the emergency room physician is an independent
15 contractor and the emergency room physician is insured as described under (c) of this
16 section. The hospital is responsible for exercising reasonable care in granting
17 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
18 and for taking appropriate steps to revoke or restrict privileges in appropriate
19 circumstances. The hospital is not otherwise liable for the acts or omissions of an
20 emergency room physician who is an independent contractor. The notice required by
21 this subsection must be posted conspicuously in all admitting areas of the hospital,
22 published at least annually in a newspaper of general circulation in the area, and must
23 be in substantially the following form:

24 **Notice of Limited Liability**

25 The following emergency room physicians are independent
26 contractors and are not employees of the hospital:

27 (List specific emergency room physicians)

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

30 (c) A hospital is not immune from liability under (a) of this section for an act
31 or omission of an emergency room physician who is an independent contractor unless

the emergency room physician has liability insurance coverage in the amount of at least \$500,000 for each incident and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

(d) In this section,

(1) "emergency room physician" means a physician who provides health care services in a hospital emergency room;

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

(3) "independent contractor" means an emergency room physician who is not an employee or actual agent of the hospital in connection with the rendition of the health care services.

* Sec. 38. AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs. A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the felony substantially contributed to the personal injury or death;

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

(A) substantially contributed to the personal injury or death; and

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

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

1 (A) during the flight or apprehension substantially contributed
2 to the injury or death; and

3 (B) is proven by the defendant in the civil trial by clear and
4 convincing evidence;

5 (4) operating a vehicle, aircraft, or watercraft while under the influence
6 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
7 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
8 the conduct substantially contributed to the personal injury or death; or

9 (5) engaged in conduct that would constitute a violation of
10 AS 28.35.030 for which the person was not convicted if the conduct substantially
11 contributed to the personal injury or death and the conduct is proven by the defendant
12 in the civil trial by clear and convincing evidence.

13 * Sec. 39. AS 09.68 is amended by adding a new section to read:

14 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
15 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
16 information relating to the compromise or other settlement of all civil litigation. The
17 information, including the case name and file number, a general description of the
18 claims being settled, the dollar amount of the settlement, to whom the settlement was
19 paid, and any nonmonetary terms, shall be collected on a form developed by the
20 council for that purpose.

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

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

- 27 (1) divorce and dissolution;
28 (2) adoption, custody, support, visitation, and emancipation of children;
29 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
30 cases under 47.12;
31 (4) domestic violence protective orders under AS 18.66.100 -

1 18.66.180;

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

3 (6) small claims under AS 22.15.040.

4 * Sec. 40. AS 21.06 is amended by adding a new section to read:

5 Sec. 21.06.087. **Insurance report.** (a) The director shall require reporting of
6 and shall compile information necessary to evaluate the effect of the measures enacted
7 in this Act on the availability and cost of insurance in the state.

8 (b) Information described in (a) of this section shall be provided by all insurers
9 doing business in this state in the format specified by the director and must include
10 factual information stating premiums, claims, losses, expenses, and solvency of the
11 company as a whole. Information shall be compiled by the division in a way that
12 protects the identity of individual insureds.

13 (c) The director shall adopt regulations to implement and interpret this section,
14 including requiring insurers doing business in the state to provide information
15 necessary for the division to carry out its responsibilities under (a) and (b) of this
16 section. If there are indications of market disruption, the director may waive all or
17 part of the reporting requirements in this section.

18 (d) Beginning June 1, 2000, the information compiled under (a) of this section
19 shall be reported annually to the governor and the judiciary committees of both houses
20 of the legislature.

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

24 * Sec. 41. AS 21.89.100(d) is amended to read:

25 (d) If the insured selects independent counsel at the insurer's expense, the
26 insurer may require that the independent counsel have at least four years of experience
27 in civil litigation, including defense experience in the general subject area at issue in
28 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
29 policy, the obligation of the insurer to pay the fee charged by the independent counsel
30 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
31 course of business in the defense of a similar civil action in the community in which

the claim arose or is being defended. In providing independent counsel, the insurer is not responsible for the fees and costs of defending an allegation for which coverage is properly denied and shall be responsible only for the fees and costs to defend those allegations for which the insurer either reserves its position as to coverage or accepts coverage. The independent counsel shall keep detailed records allocating fees and costs accordingly. A dispute between the insurer and insured regarding attorney fees that is not resolved by the insurance policy or this section shall be resolved by arbitration under AS 09.43.

* Sec. 42. AS 21.89.100 is amended by adding a new subsection to read:

(h) When an insured is represented by independent counsel, the insurer may settle directly with the plaintiff if the settlement includes all claims based upon the allegation for which the insurer previously reserved its position as to coverage or accepted coverage, regardless of whether the settlement extinguishes all claims against the insured.

* Sec. 43. AS 23.30.015(g) is amended to read:

(g) If the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)] of this section [,] insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter. If the employer is allocated a percentage of fault under AS 09.17.080, the amount due the employer under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080(c).

* Sec. 44. AS 44.77.015(a) is amended to read:

(a) For the purposes of filing claims for medical services provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1) within six months after the date of service, or as provided in (b) of this section, if there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from

1 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

2 * Sec. 45. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

9 (1) That the issues in the case have actually been joined;

10 (2) That all parties have completed discovery or have a reasonable
11 opportunity to do so within the next 60 days;

12 (3) That the procedure for listing witnesses and exhibits and providing
13 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;

14 (4) Whether trial by jury has been timely demanded;

15 (5) The estimated number of days for the trial, including estimates for
16 each party's case and for jury selection;

17 (6) The names, addresses and telephone numbers of all attorneys and
18 pro se parties who are responsible for the conduct of the litigation;

19 (7) Which, if any, statute or rule entitles the case to preference on the
20 trial calendar;

21 (8) That the parties have complied with [PARAGRAPH] (k) of this
22 rule.

23 * Sec. 46. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

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

1 proposed discovery plan, and for submitting to the court within 10 days after the
 2 meeting a written report outlining the proposed discovery plan. The proposed
 3 discovery plan shall indicate the parties' views and proposals concerning

4 (1) what changes should be made in the timing or forms of subsequent
 5 disclosures under the rules, including a statement as to when the disclosures required
 6 under Rule 26(a) were made;

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

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

12 (4) whether a scheduling conference is unnecessary;

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

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

18 * Sec. 47. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
 19 paragraph to read:

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

30 * Sec. 48. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

31 (g) **Discovery.** Except by leave of court, no discovery may be conducted until

1 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
2 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
3 to occur, unless discovery is further stayed for good cause by order of the court.

4 * Sec. 49. Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

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

10 * Sec. 50. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
11 subsection to read:

12 (c) If the trier of fact determines that a party to a civil action has intentionally
13 made a false statement of a material fact in connection with the prosecution or defense
14 of a civil action, the court shall enter judgment against the party making the false
15 statement on the issue to which the false statement relates. If the civil action involves
16 multiple claims and the false statement does not apply to all claims, the judgment
17 required under this subsection shall apply only to those claims to which the false
18 statement relates.

19 * Sec. 51. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
20 subsection to read:

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

31 * Sec. 52. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

1 * Sec. 53. AS 09.55.548 is repealed.

2 * Sec. 54. AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending
3 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
4 percentage of an award of punitive damages be deposited into the general fund.

5 * Sec. 55. AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending
6 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
7 damages by certain tax rates in effect on the date of injury or death if taxable.

8 * Sec. 56. AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending
9 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
10 periodically if requested by a party, with a lump sum payment for certain attorney fees.

11 * Sec. 57. AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
13 is paid by periodic payments.

14 * Sec. 58. AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending
15 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
16 increases for future inflation.

17 * Sec. 59. AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending
18 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
19 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
20 among the claimants, defendants, third-party defendants, persons who have been released from
21 liability, or other person who is responsible for the damages.

22 * Sec. 60. AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending
23 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
24 testifying as an expert witness.

25 * Sec. 61. AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of
26 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
27 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
28 eliminating provisions relating to interest and by providing that a subsequent offer revokes
29 prior offers.

30 * Sec. 62. AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending
31 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be

1 awarded for future economic or noneconomic damages.

2 * Sec. 63. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
3 legislation to create a pilot alternative dispute resolution procedure within the existing civil
4 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
5 disputes.

6 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
7 Association, review court sanctioned alternative dispute resolution programs in other states and
8 in the federal court system, and make recommendations to assist the legislature and the Alaska
9 Court System in the establishment of a pilot program for alternative dispute resolution within
10 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
11 legislature and to the Alaska Supreme Court within six months after the effective date of this
12 Act. The report must include specific types of programs, specific types of cases within each
13 program that are amenable to alternative dispute resolution, the cost to the parties and to the
14 Alaska Court System under these programs, and the qualifications of the neutral parties,
15 including nonlawyers, who will provide dispute resolution services under the program.

16 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
17 and early neutral evaluation.

18 * Sec. 64. APPLICABILITY. This Act applies to all causes of action accruing on or after
19 the effective date of this Act.

20 * Sec. 65. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
21 application of a provision of this Act to any person or circumstance is held invalid, the
22 remainder of this Act and the application to other persons shall not be affected.

Alaska State Legislature

House of Representatives

Official Business



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

March 15, 1997

Sectional Summary
of
CS of SSHB 58 (FIN)

An Act Relating to Civil Actions

Section 1. Legislative intent. This section generally sets forth the legislative intent of this Act.

Section 2. Minor consistency change. This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

Section 3. Certain property actions to be brought in six years. This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

Section 4. Contract actions to be brought in three years. This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

Section 5. Statute of repose of eight years. This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

This section does not apply if the cause of action resulted from:

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;

- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

Section 6. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS 09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

Section 7. Disabilities of minority and incompetency. This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

Section 8. Disabilities of minority and incompetency. This new subsection was added by amendment by the House Finance Committee. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of six years at the time of the injury or death, until the minor's sixth birthday. This means the minor may bring an action for birth trauma injuries anytime before the minor's eighth birthday.

Section 9. Non economic damages. This new section replaces an earlier version of this statute pertaining to non economic damages. This section generally places more stringent limits on the amounts which may be awarded for non economic damages. It also specifically adds loss of consortium to the list of items for which non economic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadriplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska

Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

Section 11. Punitive damages. This section relates to new subsections which are added to the preceding section in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 12. Award of damages; tax reductions. This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 13. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

This subsection was amended in the House Judiciary Committee to leave the word "future" in the existing language of the statute to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be immediately available to the injured person for the payment of such obligations.

Section 14. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 15. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

This section was amended at the House Judiciary Committee by changing the inflation index from "Anchorage" to the "United States city average". The former is updated annually, while the latter is updated monthly. An injured person should have the benefit of establishing an inflation baseline as close as possible to the date of judgment.

Section 16. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and

various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

Section 17. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

Section 18. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

This subsection was amended at the House Judiciary Committee by deleting the last sentence as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

Section 19. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

Section 20. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 21. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert

witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

Section 22. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 23. Offers of judgment. The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

Section 24. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

Section 25. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 26. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 23 interest rate to judgments against the State of Alaska.

Section 27. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 23.

Section 28. Voluntary arbitration. This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

Section 29. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 30. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 31. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 32. Expert advisory panel; public sector provider. This section

is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 33. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 34. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 35. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 36. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 37. Civil liability of hospitals for non employees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident.

Section 38. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or water craft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section applies to survival and wrongful death actions which might otherwise have been brought by the personal representative of the perpetrator.

Section 39. Collection of settlement information. This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 40. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

The June 1, 2000 commencement date for the reports to the governor and legislature is suggested by the division of insurance as a realistic starting date considering existing regulatory reporting deadlines.

This section was amended in the House Judiciary Committee by inserting the phrase "fees and" in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that section.

Section 41. Appointment of independent counsel; conflicts of interest.

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 42. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer

has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 43. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 44. Claims against the state for medical claims. This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 45. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 46. Alaska Rule of Civil Procedure 16.1(n). This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

Section 48. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 49. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$10,000 against attorneys, increased from \$1,000 under the existing rule.

Section 50. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 51. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 52. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 45.

Section 53. Collateral benefits. This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 54 - Section 62. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 63. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first: what the experience has been in other jurisdictions before putting any program into operation.

Section 64. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

[Section 65. **Effective date.** This section was deleted by amendment by the House Finance Committee. There is no effective date.]

Alaska State Legislature

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Section 1. Legislative intent. This section generally sets forth the legislative intent of this Act.

Section 2. Minor consistency change. This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

Section 3. Certain property actions to be brought in six years. This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

Section 4. Contract actions to be brought in three years. This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

Section 5. Statute of repose of eight years. This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

This section does not apply if the cause of action resulted from:

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;

- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

Section 6. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS 09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

Section 7. Disabilities of minority and incompetency. This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

Section 8. Disabilities of minority and incompetency. This new subsection was added by amendment by the House Finance Committee. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of six years at the time of the injury or death, until the minor's sixth birthday. This means the minor may bring an action for birth trauma injuries anytime before the minor's eighth birthday.

Section 9. Non economic damages. This new section replaces an earlier version of this statute pertaining to non economic damages. This section generally places more stringent limits on the amounts which may be awarded for non economic damages. It also specifically adds loss of consortium to the list of items for which non economic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadriplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska

Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

Section 11. Punitive damages. This section relates to new subsections which are added to the preceding section in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 12. Award of damages; tax reductions. This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 13. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

This subsection was amended in the House Judiciary Committee to leave the word "future" in the existing language of the statute to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be immediately available to the injured person for the payment of such obligations.

Section 14. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 15. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

This section was amended at the House Judiciary Committee by changing the inflation index from "Anchorage" to the "United States city average". The former is updated annually, while the latter is updated monthly. An injured person should have the benefit of establishing an inflation baseline as close as possible to the date of judgment.

Section 16. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and

various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

Section 17. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 F.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

Section 18. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

This subsection was amended at the House Judiciary Committee by deleting the last sentence as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

Section 19. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

Section 20. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 21. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert

witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

Section 22. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 23. Offers of judgment. The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

Section 24. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

Section 25. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 26. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 23 interest rate to judgments against the State of Alaska.

Section 27. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 23.

Section 28. Voluntary arbitration. This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

Section 29. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 30. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 31. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 32. Expert advisory panel; public sector provider. This section

is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 33. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 34. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 35. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 36. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 37. Civil liability of hospitals for non employees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident.

Section 38. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or water craft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section applies to survival and wrongful death actions which might otherwise have been brought by the personal representative of the perpetrator.

Section 39. Collection of settlement information. This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 40. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

The June 1, 2000 commencement date for the reports to the governor and legislature is suggested by the division of insurance as a realistic starting date considering existing regulatory reporting deadlines.

This section was amended in the House Judiciary Committee by inserting the phrase "fees and" in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that section.

Section 41. Appointment of independent counsel; conflicts of interest.

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 42. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer

has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 43. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 44. Claims against the state for medical claims. This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 45. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 46. Alaska Rule of Civil Procedure 16.1(n). This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

Section 48. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 49. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$10,000 against attorneys, increased from \$1,000 under the existing rule.

Section 50. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 51. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 52. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 45.

Section 53. Collateral benefits. This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 54 - Section 62. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 63. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first what the experience has been in other jurisdictions before putting any program into operation.

Section 64. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

[Section 65. **Effective date.** This section was deleted by amendment by the House Finance Committee. There is no effective date.]

Alaska State Legislature



Official Business

House Majority Leader

State Capitol
Juneau, AK 99801-1182
(907) 465-3718

To: Representative Pete Jott
Chairman, House Rules Committee

From: Representative Brian Porter
House Majority Leader

Re: Request for Floor Action on HB 58

Date: March 14, 1997

In accordance with your memorandum of instruction dated January 13, 1997, attached please find copies of the following documents:

1. Copies of all versions of HB 58.
2. A Sponsor Statement.
3. A Sectional Analysis.
4. Current Fiscal Notes.

Please schedule HB 58 for floor action this coming ^{mon.} ~~Tuesday~~ or ~~Wednesday~~.

Respectfully yours,

A handwritten signature in cursive script that reads "Brian Porter".

Brian Porter

FISCAL NOTE

Bill Version: CSSSHB 58 (JUD)(H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Effective Date: _____

Department Affected: AdministrationBill: "An Act relating to civil actions; amending Rules 49 and BRU: Risk Management68Component: Risk ManagementSponsor: Representatives Porter, CowderyRequestor: House JudiciaryCOMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE:

(Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: \$ -0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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

The state funds the liability coverage provided through Risk Management on a "cash flow" basis, appropriating only the amounts expected to be paid the next fiscal year—collected solely through interagency receipts assessed each agency.

In future years, Risk Management's liability premium assessments will reflect the reductions actually realized by this legislation as premiums are developed from actual claims expenses incurred.

No immediate negative fiscal impact can be shown due to outstanding unfunded liabilities.

Prepared by: J. Brad Thompson, DirectorPhone: 465-5723Division: Risk Management

Date: _____

Approved by Commissioner: Mark BoyerAgency: Department of AdministrationDate: 2/20/97

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FISCAL NOTE

No. 2
Bill Version: CSSSHB 58(JUD)
(H) Publish Date: 2/27/97

STATE OF ALASKA 1997 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to civil actions: . . . amending
. . . AK Rules of Civil Procedure, . . . AK Rules of Evidence . . .
Sponsor: Representative Porter
Requester: House Judiciary Committee

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services
COMPONENT SERIAL NO. 2087

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY97) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

Sponsor Substitute for HB 58 is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kason
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Phone: 465-5370
Date: 2/20/97
Date: 2/20/97

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FISCAL NOTE

No. 3

Bill Version: CSSSHB 58 (JUD)

(H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Revision Date:

Title: An Act relating to civil actions: relating to independent counsel provided under an insurance policy.

Sponsor: Porter

Requestor:

Department: Commerce and Economic Development

BRU: Insurance

Component: Insurance

COMPONENT SERIAL NO.

324

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES

CHANGE IN REVENUES

FUND SOURCE

(Thousands of Dollars)

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

Estimate of any current year (FY 97) cost: \$

0.0

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

This legislation will have a slight fiscal impact which can be managed by the division. The division currently requires the information requested in Section 38 of the legislation but will have to implement regulations for new compilation and reporting requirements.

Prepared by:

Marianne K. Burke, Director

Division:

Insurance

Phone: 465-2515

Date: 2-20-97

Approved by Commissioner:

William L. Hensley

Date: 2-20-97

Agency:

Commerce and Economic Development

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COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB58

Revision Date: 02/18/97

Dept. Affected: Alaska Judicial Council

Title: Civil Actions & Attorneys Provided by
Insurance Company

BRU: _____

Components: _____

Sponsor: Reps. Brian Porter and John Cowdery

Requestor: _____

COMPONENT SERIAL NO. 0771

EXPENDITURES/REVENUES

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	17.5	16.7	16.7	16.7	16.7	16.7
TRAVEL		1.3	1.3	1.3	1.3	1.3
CONTRACTUAL	9.0	1.2	1.2	1.2	1.2	1.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.5	19.2	19.2	19.2	19.2	19.2

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.5	19.2	19.2	19.2	19.2	19.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	26.5	19.2	19.2	19.2	19.2	19.2

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	1	1	1	1	1	1

Estimate of current year (FY 97) cost: \$ None

ANALYSIS: (See attached pages)

Prepared by: William T. Cotton, Executive Director
Agency: Alaska Judicial Council

Phone: 279-2526
Date: 2/19/97

Approved by: William T. Cotton, Executive Director
Agency: Alaska Judicial Council

Date: 2/19/97

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**Analysis for Alaska Judicial Council
Fiscal Note on HB 58:
Civil Actions and Attorneys Provided by Insurance Company**

The bill assigns two tasks to the Alaska Judicial Council: (1) review and report on alternative dispute resolution (ADR) programs in other states; and (2) collect, analyze and report on Alaska civil cases which are settled. The costs of the two functions are discussed separately.

1. Review of ADR Programs

The bill provides:

Section 09.42.010. Legislative Intent. It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive and efficient resolution of civil disputes.

Sec. 09.42.020. Pilot program for alternative dispute resolution. The Alaska Judicial Council shall consult with the Alaska Dispute Settlement Association, review court sanctioned alternative dispute resolution programs in other states and in the federal court system, and make recommendations to assist the legislature and the Alaska Court System in the establishment of a pilot program for alternative dispute resolution within the Alaska Court System. The Alaska Judicial Council shall submit a written report to the legislature and to the Alaska Supreme Court within six months after the effective date of this legislation. The report shall include specific types of programs; specific types of cases within each program which are amenable to alternative dispute resolution; the cost to the parties and to the Alaska Court System under these programs; and the qualifications of the neutrals who will provide dispute resolution services under the programs, including nonlawyers.

Sec. 09.42.030. Definitions. In this chapter,

(a) "alternative dispute resolution" is limited to arbitration, mediation and early neutral evaluation.

The Council would hire a contract attorney to complete much of the review of ADR programs. The attorney would be paid \$35 per hour for 200 hours for a total of \$7,000. The contract attorney would work with Council staff to complete the project. Other costs would include a temporary secretary, long distance telephone, and costs for various books and other literature.

ADR Costs Summarized

Personnel

Temporary Secretary	
50 hours @ \$16.38/ hour	\$ 841

Contractual

Contract Attorney (200 hours @\$35/hour)	\$7,000
Telephone	\$ 500
Books	\$ 300

TOTAL	\$8,641
--------------	----------------

2. Review of Settlement Data

The bill provides in relevant part:

Sec. 42. AS 09.68 is amended by adding a new section to read:

Sec. 09.68.130. Collection of settlement information.

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

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

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

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children in need of aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100- 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

The Council estimates that 8,000 settlement forms would be filed per year. The data would be entered into a Microsoft Access database (estimating four minutes per form). A data entry employee also would review approximately 500 case files per year to check the accuracy of the settlement data and put the settlements in context (estimated 20 minutes per case). Finally, the data employee would spend about 300 hours cleaning the data and working with Judicial Council staff to conduct the preliminary analysis.

Council staff would complete the analysis and issue a fairly brief annual report based on the settlement forms. A more extensive report would be prepared in the third year based on data both from the settlement forms and the case data. The time of existing Council staff is not included in the fiscal note.

Other costs include short trips to Fairbanks and Juneau to collect case data, a temporary secretary for forty hours, and a small amount for printing and postage.

Settlement Data Review Annual Costs Summarized

Personnel

One Part-time Data Entry/Analysis Employee
 8,000 forms @ 4 minutes each =533 hours
 5,000 case files @ 20 minutes each =167 hours
 Data cleaning and Prelim Analysis =300 hours

Total Hours: 1,000 @ \$16.00 per hour = **\$16,000.00**

Temporary Secretary
 40 hours @ \$16.83 per hour = **\$ 673.20**

Travel

One 5 day trip to Fairbanks **\$ 700.00**
One 3 day trip to Juneau **\$ 600.00**

Contractual

Postage and Printing **\$ 1,200.00**

TOTAL **\$19,173.20**

FISCAL NOTE**STATE OF ALASKA
1997 LEGISLATIVE SESSION****BILL NO. CSSSHB 58 (JUD)**Revision Date: 03/11/97Dept. Affected: Alaska Court SystemTitle: Tort ReformBRU: Trial Courts

Component: _____

Sponsor: Rep. PorterRequestor: House JudiciaryCOMPONENT SERIAL NO. 788**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	5.7	5.7	5.7	5.7	5.7	5.7
TRAVEL						
CONTRACTUAL	13.7	13.7	13.7	13.7	13.7	13.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.4	19.4	19.4	19.4	19.4	19.4

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

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

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	18.4	18.4	18.4	18.4	18.4	18.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	18.4	18.4	18.4	18.4	18.4	18.4

Estimate of any current year (FY 97) 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 CounselAgency: Alaska Court SystemPhone: 264-8228Date: 03/11/97Approved by: Stephanie J. Cole, Acting Administrative DirectorAgency: Alaska Court SystemDate: 03/11/97

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Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

CSSSHB 58 (JUD) proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

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

At the present time, a defendant has no right to pay a civil judgment for future damages periodically; such damages must be paid as a lump sum unless the plaintiff requests periodic payments. Plaintiffs rarely exercise this option because they generally do not perceive periodic payments as being in their economic best interest. Thus, as a practical matter, the court system does not now hold hearings on this issue. Sections 11, 12, 13, and 14 of CSSSHB 58 (JUD) give a defendant the option of making periodic payments to a successful plaintiff for judgments in excess of \$100,000. The judgment must set the amounts of the payments, including any increases for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments will be made. Setting the appropriate amount, number, and inflation factor of these payments will require taking and evaluating conflicting testimony from experts and others representing each party, if the parties disagree. Such disagreements are inevitable. The payment hearing will be held before a judge and will not require the expenditure of jury costs. However, additional costs will inevitably arise when a percentage of plaintiffs return to court in later years because the defendant has stopped making periodic payments for some reason. This fiscal note estimates that approximately ten percent of superior court tort judgments are for future damages in an amount in excess of \$100,000.

While California has been cited as a state in which mandatory periodic payments do not result in additional court time, this reputed result was not achieved for at least five to six years following passage of the legislation; during this period, substantial court time was expended on the issue of periodic payments, and the question of the constitutionality of such payments was appealed to the California Supreme Court on two separate occasions before it was finally upheld.

Section 15 of CSSSHB 58 (JUD) 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.

Section 23 of CSSSHB 58 (JUD) modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed thousands of times per year, so even small increases in time spent per case can have a major impact on clerical staff.

Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 28 of CSSSHB 58 (JUD) increases the number of medical malpractice three-person expert advisory panels which will be paid for each year by the court system, by requiring the appointment of such panels in cases involving claims against government doctors. The number of additional panels appointed each year should be relatively low, and this note does not include costs for payments to the panel members.

CSSSHB 58 (JUD) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by CSSSHB 58 (JUD). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 96, there were 1005 tort cases filed. Approximately 42 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 53 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 42 default judgments entered, with all entered for the plaintiff. Determining periodic payments will average one day of court time without a jury. 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 96, there were 515 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
CSSSHB 58 (JUD)

Personal Services
Position

<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
\$3,706	\$2,025	<u>\$5,731</u>

Pro Tem Judge, fully vested, Anchorage, PPT, 1 3/4 months

Contractual Services

Jury Fees

8,663

Superior Court-

42 - 1/2 day length collateral benefit hearings with 13
jurors at \$12.50 a half day (from trials)

6,825

District Court-

21 - 1/2 day length collateral benefit hearings with 7
jurors at \$12.50 a half day (from trials)

1,838

Programming

(one-time cost)

Modification of Statewide Court Information Processing System to provide
automatic updating of prejudgment interest rates. This expenditure will
reduce personnel costs for entering interest rate information.

5,000

Total Contractual Services

13,663

Estimated Total Cost

\$19,394

11:20 AM

3.18.97

~~Geo~~
KARMA

(#43) : 12-20

(#44) : 12-19

(#45) & (#51) Not offered

(#52) 12-20

(#53-55) Not offered

(#56) 12-20

(#57) & (#61) Not offered

(#62) 10-19

★ (#68) — Adopted

(#71) 11-20

(#73) 11-20

(#76) 12-19

#80: 10-20

Berkowitz re ^{the} Pennix issue:
"There won't be any ~~other~~ air
lent insurance avail in the just
because of tort reform."

3rd Reading,
Final passage

Me: Get Judy ready to charge
"outrageous" for punitive.

Me: Read Berkowitz's
comment on record, for
and others.

2:10
11:35
about



TWENTIETH ALASKA LEGISLATURE

First Session

HOUSE CALENDAR

Sixty-fourth Legislative Day

Monday - March 17, 1997 - 11:00 a.m.

Official Business

Invocation: Judy Minor

Christian Science Practitioner

REVISED

SECOND READING OF HOUSE BILLS

HB 13

"An Act relating to marine safety training and education programs."

STA RPT 7DP

P. 418

FISCAL NOTE (REV)

P. 418

ZERO FISCAL NOTE (LABOR)

P. 418

FIN RPT CS(FIN) 3DP 4NR

P. 554

ZERO FISCAL NOTE (H.FIN/REV)

P. 555

ZERO FISCAL NOTE (LABOR) 2/21/97

P. 555

SSHB 58

"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and providing for an effective date."

JUD RPT CS(JUD) 5DP 2DNP

P. 0503

3 ZERO FNS (ADM, LAW, DCED)

P. 0503

FINANCE COMMITTEE REPORT CS(FIN) TODAY

SECOND READING OF SENATE RESOLUTIONS

SJR 13

Relating to RS 2477 rights-of-way.

RES REFERRAL WAIVED Y23 N10 A7

P. 614

LEGISLATIVE CITATIONS

Honoring - Specialist Carl Wetzel, Fort Wainwright Soldier of the Year

By Representatives Vezey, Phillips, Berkowitz, Brice, Bunde, Cowdery, Davies, Davis, Elton, Foster, Green, Grussendorf, Ivan, James, Joule, Kelly, Kemplen, Kohring, Kott, Mulder, Nicholia, Ogan, Porter, Rokeberg, Ryan, Therriault

Honoring - Jay A. Rabinowitz

By Senator Wilken; Representatives Brice, Phillips, Austerman, Barnes, Berkowitz, Bunde, Cowdery, Croft, Davies, Davis, Elton, Foster, Grussendorf, Hanley, Ivan, James, Joule, Kelly, Kemplen, Kohring, Kott, Kubina, Martin, Mulder, Nicholia, Ogan, Porter, Rokeberg, Ryan, Therriault, Vezey

Honoring - Rick Mackey, 1997 Yukon Quest Winner

By Senator Lincoln; Representatives Nicholia, Phillips, Austerman, Berkowitz, Brice, Bunde, Cowdery, Croft, Davies, Davis, Elton, Foster, Green, Grussendorf, Hanley, Hodgins, Ivan, James, Joule, Kelly, Kemplen, Kohring, Kott, Kubina, Martin, Masek, Mulder, Ogan, Porter, Rokeberg, Ryan, Therriault, Vezey

Amend #1

19-13 Kelly, Barnes: Yes

① What state resolution judges to have income tax into act.

② Hanna Notes → Brunswick

③ This is all about CFC's. The more the recovery, the more the city get.

18-13

Amend #2

Another man, Kelly, Barnes = Yes.
Delete none soon & more

① Q. Simpson Argmt.

Need to amend northern rules to limit # of Amends & amount of time to debate

~~START NOT HULT~~

Amend #3

13-19

Davis & Barnes: Yes

Amend #4

No OBJ'N by BRIAN

Amend #5

w/ draw

#6 Amendment: Appportionment of Fault.

11-21

#7 Amendment Sunset of minor rates not ϕ .

- Amended ~~#7A~~ to move it 10 years
to year 2007.

- Me: Need to tighten language...

- Amend ~~#7B~~ re CPT Amendment.
20-12 (Sanders Leg)

13-19

#8 Amendment

14-18
Failed

OG/AN/KS

NY ATTYS ~~Personality~~

#9 Amend

Remove Caps on punitive -

11-21

#10 Amended w/drawn

#11 Amended 11-21

#12 Amended 11-21

#13 Amended 11-21

#14 Amended 11-21

#15 Amended 11-21

* #16 Amended - NO OBJECTION

#17 Amended 11-21

#18 Amended : 11-21

#19 Amended : 10-22 Bruce

#20 Amended 11-21

~~#21~~ ~~#22~~ Amend - withdrawn

#23 Amend 10-20

#24 Amend - withdrawn

#25 Amend 11-18

#26 Amend 10-20

⊗ #27 Amend - No objection

~~#28~~ Amend 10-19

#29 Amend → withdrawn

#30 →

#31 - 8-21

(32) 11-19

(33) withdrawn

(34) 10-20

(35) 10-20

(36) 8-20

(37) withdrawn

(38) (39) not appeared

(40) 9-19

(41) 8-21

(42) No

(43)

AMENDMENT #1 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH 58 (FIN)

Page 6:

Delete lines 14 through 28

§12. Deletes reduction in
judgments for income taxes
which would have been
paid on future damages

New

AMENDMENT # 2 ✓

L-1

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

CROFT

Page 5, lines 1-19:

delete all material

renumber the following bill sections accordingly

*Delete § 9. Noneconomic
damages.*

13-19
AMENDMENT # 3 ✓ L-4

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERKOWITZ

Page 5, line 13:

B

following "(1)",

delete "is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord"

insert "suffers disfigurement or severe physical impairment"

AMENDMENT #4 ✓

L-6

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

CROFT

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) has third degree burns over one half or more of the claimant's body."

AMENDMENT #5 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 5, line 9:

Following "\$300,000"

Insert "plus \$100,000 for each minor child"

Page 5, line 11:

Following "\$500,000"

Insert "plus \$100,000 for each minor child"

§9. NONECONOMIC DAMAGES.
Same as one DAVIES put in
AT FINANCE

W. Davies

Neen

AMENDMENT

#6 ✓

58-15

BY REPRESENTATIVE

CROFT

OFFERED IN HOUSE JUDICIARY
TO: CSSSHB 58 (FIN)

Page 9, line 9 through page 10, line 11:
Delete all material.

Renumber following bill sections accordingly.

Page 20, lines 15 through 24:
Delete all material.

Renumber following bill sections accordingly.

Page 24, lines 17 through 21:
Delete all material.

Renumber following bill sections accordingly.

*Apportionment
of Damages*

AMENDMENT #7 ✓

BY REPRESENTATIVE

BERKOWITZ

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 25, line 19 following "Act.":

Insert "Sec. 65. This Act sunsets if, on July 1, 2000, the director of the Division of Insurance certifies to the lieutenant governor and the revisor of statutes that the liability insurance rates filed with the Division of Insurance have not been reduced by at least 10 percent from those filed on January 1, 1997. In this section, "liability insurance" means insurance described under AS 21.12.070(a)(2).

Renumber the following bill section accordingly.

SAME AS
CROSS 58-19New

AMENDMENT #8



OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 7, line 1:

Following "\$100,000"

Insert "or the total of medical bills and other costs reasonably expected to be incurred by the injured party from the time of the injury through two years after the date of judgment, whichever is greater"

§13, SAME AS WHAT
DAVIES put in AT FINANCE

New

AMENDMENT #9 ✓**BY REPRESENTATIVE****OFFERED IN HOUSE JUDICIARY
TO: CSSSHB 58 (FIN)****PERKOWITZ****Page 5, line 26 through page 6, line 13:****Delete entire section.****Renumber following bill sections accordingly.**

*Takes out our cap
on punitives.*

new

AMENDMENT #10 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 6, lines 1-2:

Delete "four times the amount of compensatory damages awarded or \$600,000, whichever is greater,"

Insert "three times the annual net profit reasonably attributable to the commercial activity"

SAME AS ONE DAVIES
put ON AT FINANCE.

W/drawn

New

AMENDMENT #11 ✓

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

CROFT

Page 5, line 27 through page 6, line 13:

Delete all material.

Insert new subsections to read:

"(b) Except as provided in (c) of this section, the court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of three times the amount of compensatory damages or \$300,000.

(c) The court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of four times the amount of compensatory damages awarded or \$600,000, if

(1) the wrongful conduct or omission arose in connection with a commercial activity motivated by financial gain; and

(2) the likelihood of death or serious bodily injury from the commercial activity was previously known by the person responsible for making policy decisions relating to the commercial activity and the knowledge was gained from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, regardless of where the previous wrongful conduct or omission occurred.

(d) If a court or jury awards punitive damages under (a) of this section, the court shall requires that 100 percent of the punitive damages award that exceeds the maximum amounts described under (b) or (c) of this section, as applicable, be deposited into the general fund or the Alaska permanent fund under AS 37.13.010. The party paying the punitive damages shall elect which fund shall receive the money required to be paid under this subsection.

(e) The provisions of this section do not grant the state the right to file or join a civil action to recover punitive damages."

Page 15, line 30, following "damages":

Delete "due the state under AS 09.17.020(d)"

Insert "required to be deposited under AS 09.17.020"

Page 24, line 4, following "fund":

Insert "or the Alaska permanent fund"

AMENDMENT #12

L-33

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

MARKOWITZ

Page 5, line 23:

following "evidence"

delete "of malice or conscious acts showing deliberate disregard of another person's rights by the person from whom the punitive damages are sought",

insert "of outrageous conduct"

AMENDMENT #13 ✓

BY REPRESENTATIVE

CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 6, following line 9:

Insert new subsection to read:

"(d) Limits under this section only apply when the person defending a claim is a small business.

(e) Limits under this section do not apply when the claimant is a small business.

(f) In subsections (d) and (e) "small business" means a business with fewer than 10 employees."

Renumber the following subsection accordingly.

Trues to apply our 2nd TIER
(higher) punitive to businesses
with 10 or more employees!

New

New Amendment #14

✓
L-11

OFFERED IN THE HOUSE
TO CSSH (FIN) 58

BY REPRESENTATIVE NICHOLIA

Page 3, line 31:

After "commerce;"

Insert:

"or"

Page 3, after line 31:

Add a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in an elementary or secondary school."

AMENDMENT #114 ✓

L-11

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

NICHOLIA

Page 3, line 31:

delete " ", insert "; or"

Page 3, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in an elementary or secondary school."

SAME AS BEROWITZ L-11.

AMENDMENT

#15 ✓

L-28

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERKOWITZ

Page 4, following line 9:

insert a new subsection to read,

"(d) the limitations imposed by this section and AS 09.10.080
are tolled for claims described under AS 09.10.080 until the
claimant reaches the age of 18."

Save AS Berkowitz L-28

✓
AMENDMENT #16

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 9, line 21, following "action"

Insert "; in this paragraph. "other persons responsible" does not include a person protected from a civil action under AS 09.10.055"

This is the one ~~DAVIES~~
you were hoping
would not come.

New

AMENDMENT #17 ✓

L-31

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERKOWITZ

Page 4, line 29:

following "person's"

delete "sixth", insert "tenth"

SAME AS
BERKOWITZ C-31

AMENDMENT #18

L-19

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

CROFT

Page 16, line 10 through page 17, line 12:

delete all material

renumber the following bill sections accordingly

SAME AS
BEKOWITZ L-19

AMENDMENT #19 ✓

REPRESENTATIVE
KUBANA

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

1 Page 5, line 27, following "(c)":

2 Insert "or (d)"

3 Page 5, line 31:

4 Delete "The"

5 Insert "Except as provided under (d) of this section, the"

6 Page 6, following line 9:

7 Insert a new subsection to read:

8 "(d) The limits or punitive damages imposed under (b) and (c) of this section
9 do not apply to punitive damages awarded as a result of an act or omission involving
10 natural resources."

ie. Oil Co.,

11 Reletter the following subsection accordingly.

12 Page 15, line 30:

13 Delete "AS 09.17.020(d)"

14 Insert "AS 09.17.020(e)"

consistency changes

15 Page 24, line 2:

16 Delete "AS 09.17.020(d)"

17 Insert "AS 09.17.020(e)"

new

✓
AMENDMENT #20 REPRESENTATIVE
CROFT

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 9, line 21, following "action":
- 2 Insert "; in this paragraph, "other person responsible" does not include a person
- 3 who cannot be identified or located"

If the used car dealer in Seattle (CROFT's example at Judiciary) cannot be located, the defendants to the third party action get stuck with the used car dealer's share of fault.
Violates the voter's initiative.

Entirely
New

AMENDMENT

#21

58-11

BY REPRESENTATIVE

KEMPLER

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 7, line 1 following "exceed":

Delete "100,000"

Insert "250,000"

w/draw

AMENDMENT #22

58-9

BY REPRESENTATIVE *WILL KEMPLER*

OFFERED IN HOUSE
TO: CSSSHB 58 (FIN)

Page 6, line 30 following "of" to line 31:

Delete "a party"

Insert "both parties"

Page 24, line 10, following "by":

Delete "a party"

Insert "both parties"

W. Kempler

AMENDMENT

23 ✓

L-12

OFFERED IN THE HOUSE

BY REPRESENTATIVE KEMPLER

TO: CSSH(B)(FIN) 58

Page 3, line 31:

delete ".", insert "; or"

Page 3, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in a church, synagogue, or other house of worship."

AMENDMENT #24

L-15

OFFERED IN THE HOUSE

BY REPRESENTATIVE KEMPLER

TO: CSSSHB(FIN) 58

Page 3, line 31:

delete ".", insert "; or"

Page 3, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in any home for the elderly, convalescent center, or nursing home."

W/ham

AMENDMENT

25

58-10

BY REPRESENTATIVE Kookesh

OFFERED IN THE HOUSE
TO: CSSSHB 58 (FIN)

Page 6, line 29 through page 8, line 8:

Delete all material.

Renumber following bill sections accordingly.

Page 24, lines 8 - 16:

Delete all material.

Renumber following bill sections accordingly.

*Periodic
Rmt*

AMENDMENT #26 ✓

BY REPRESENTATIVE Kookesh

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 5, lines 27 through page 6, line 9:

Delete all material

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."

Renumber following subsection accordingly.

New

AMENDMENT #27 ✓

L-5 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE
KOOKESH

TO: CSSH(B)(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) is blind ~~in one or both eyes.~~"

totally

AMENDMENT #27 ✓

L-5

OFFERED IN THE HOUSE

**BY REPRESENTATIVE
KOOKESH**

TO: CSSSHB(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) is blind in one or both eyes."

AMENDMENT #28 ✓

L-7

OFFERED IN THE HOUSE

BY REPRESENTATIVE
KOOKESH

TO: CSSSHB(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

paraplegic, etc.

Page 5, after line 17:

insert a new subsection to read

OR lost functional use of
"(3) has lost both arms or both legs or an arm and a leg."

AMENDMENT #29. ✓

L-2

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH(B) 58

Page 5, after line 19:

insert a new subsection to read,

"(e) On July 1 of each year, the amounts specified under (b) and (c) of this section shall be changed to reflect inflation, if any. The Alaska Department of Labor shall adopt a regulation on or before June 30 of each year announcing the change in dollar amounts required by this subsection. In this subsection, "inflation" means the change in the consumer price index for the United States city average, all urban consumers, all items indices, compiled by the Bureau of Labor Statistics, United States Department of Labor."

A handwritten signature, appearing to be "W. Davis", is enclosed within a hand-drawn oval. The signature is written in a cursive, flowing style.

AMENDMENT

#30 ✓

L-3

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERKOWITZ

Page 5, line 9:

following "exceed",

delete "\$300,000", insert "\$500,000"

Page 5, line 11:

following "section",

delete "may not exceed \$500,000", insert "are not limited"

AMENDMENT

#31 ✓

L-17

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSSHB(FIN) 58

Page 10, lines 25-26:

delete all material

Page 10, line 27:

preceding "trained" delete "(2)"

Page 10, line 28:

following "issue" delete "; and", insert "."

Page 10, line 29 through page 11, line 1:

delete all material

AMENDMENT #32 ✓

511

BY REPRESENTATIVE KEMPLER

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 7, line 1 following "exceed":

Delete "100,000"

Insert "250,000"

SB-12

O-LS0056L.4
Ford
3/17/97

AMENDMENT #33 ✓

OFFERED IN THE HOUSE

REPRESENTATIVE CROFT

TO: CSSH B 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 7, line 1, following "future":
- 2 Insert "economic or noneconomic"
- 3 Page 7, line 25, following "future":
- 4 Insert "economic or noneconomic"

W/D
~~Enacted 3/19~~

AMENDMENT

#34 ✓

58-13

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE :

TO: CSSSHB 58 (FIN)

Page 8, line 9 through page 9, line 8:

C/B.

Delete entire section.

Renumber the following bill sections accordingly.

AMENDMENT:

#35 ✓

58-14

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 8, line 12, following "claimant":

Delete ", or that with reasonable probability will be received in the future by the claimant,"

AMENDMENT # 37 ✓

BY REPRESENTATIVE DAVIES

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 6, line 23, following "damages":

Delete "; and

(2) the amount of damages awarded shall be reduced by the amount of federal and state income tax that would have been paid on damages contained in the verdict under tax rates in effect on the date of the injury or death; this paragraph does not apply to an award of damages if the damages are taxable under federal or state law"

Page 24, lines 5 through 7:

Delete entire section.

Renumber the following bill sections accordingly.

A handwritten signature in cursive script, likely reading "W. Brown", is written diagonally across the lower half of the page.

AMENDMENT: #362

OFFERED IN THE HOUSE

REP. CROFT

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 1, line 3:
- 2 Delete "Rule"
- 3 Insert "Rules 411 and"

- 4 Page 11, following line 1:
- 5 Insert a new bill section to read:
- 6 "* Sec. 22. AS 09.25 is amended by adding a new section to read:
- 7 Sec. 09.25.035. Evidence of liability insurance. A claimant in an action for
- 8 personal injury or death may introduce evidence that a person defending a claim is
- 9 insured by a policy of liability insurance. In this section, "liability insurance" means
- 10 a policy of insurance described under AS 21.12.070(a)(2)."

- 11 Renumber the following bill sections accordingly.

- 12 Page 24, following line 24:
- 13 Insert a new bill section to read:
- 14 "* Sec. 62. AS 09.25.035, enacted in sec. 22 of this Act, has the effect of amending Rule
- 15 411, Alaska Rules of Evidence, by providing that evidence of liability insurance may be
- 16 introduced by a claimant in a civil action for personal injury or death."

- 17 Renumber the following bill sections accordingly.

- 18 Page 24, line 25:
- 19 Delete "secs. 22 and 23"
- 20 Insert "secs. 23 and 24"

✓ #30, p. 2

0-LS0056L3

- 1 Page 24, line 30:
- 2 Delete "sec. 25"
- 3 Insert "sec. 26"

AMENDMENT #38. ✓

Rep. Croft

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 9, line 21, following "action":
- 2 Insert "in this paragraph, "other person responsible" does not include a person
- 3 who cannot be identified or located"

Not offered

58-21

0-LS0056L.6
Ford
3/17/97

AMENDMENT

#39 ✓

Rep. Kubina

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

1 Page 5, line 27, following "(c)":

2 Insert "or (d)"

3 Page 5, line 31:

4 Delete "The"

5 Insert "Except as provided under (d) of this section, the"

6 Page 6, following line 9:

7 Insert a new subsection to read:

8 "(d) The limits or punitive damages imposed under (b) and (c) of this section
9 do not apply to punitive damages awarded as a result of an act or omission involving
10 natural resources."

11 Reletter the following subsection accordingly.

12 Page 15, line 30:

13 Delete "AS 09.17.020(d)"

14 Insert "AS 09.17.020(e)"

15 Page 24, line 2:

16 Delete "AS 09.17.020(d)"

17 Insert "AS 09.17.020(e)"

NLO

AMENDMENT #40 ✓

58-9

BY REPRESENTATIVE **KEMPLER**

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 6, line 30 following "of" to line 31:

Delete "a party"

Insert "both parties"

Page 24, line 10, following "by":

Delete "a party"

Insert "both parties"

AMENDMENT #41 ✓

L-36

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSH(B)(FIN) 58

Page 3, line 9 through page 4, line 9:

delete all material

New
AMENDMENT # 42

✓
L-8

OFFERED IN THE HOUSE

BY REPRESENTATIVE Elton

TO: CSSSHB(FIN) 58

Page 3, line 10:

following "of",

delete "eight", insert "ten"

Page 3, line 12:

following "within",

delete "eight", insert "ten"

AMENDMENT

#42 ✓

L-8

OFFERED IN THE HOUSE

BY REPRESENTATIVE

ELTON

TO: CSSH(B)(FIN) 58

Page 3, line 10:

following "within",

delete "eight", insert "ten"

Page 3, line 12:

following "within",

delete "eight", insert "ten"

AMENDMENT - #43

L-9

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERKOWITZ

Page 3, line 25:

following "to",

insert "a"

following "hazardous",

delete "waste", insert "substance"

AMENDMENT #44 ✓

L-10

OFFERED IN THE HOUSE

BY REPRESENTATIVE ELTON

TO: CSSH(B)(FIN) 58

Page 3, line 25:

following "(A)",

delete "prolonged"

AMENDMENT #45 ✓

L-12

OFFERED IN THE HOUSE

BY REPRESENTATIVE **KEMPLER**

TO: CSSSHB(FIN) 58

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in a church, synagogue, or other house of worship."

AMENDMENT

#46 ✓

L-13

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

ELTON

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

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

AMENDMENT

47 ✓

L-14

OFFERED IN THE HOUSE

BY REPRESENTATIVE KUBINA

TO: CSSH(B)(FIN) 58

Page 3, line 31:

delete ":", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in any child care facility."

AMENDMENT

#48 ✓

L-15

OFFERED IN THE HOUSE

BY REPRESENTATIVE KEMPLER

TO: CSSH(B) 58

Page 3, line 31:

delete “.”, insert “; or”

Page 5, after line 31:

insert a new subsection to read,

“(F) the collapse, structural failure, or unsafe condition in any home for the elderly, convalescent center, or nursing home.”

AMENDMENT #49 ✓

OFFERED IN THE HOUSE

REP. CROFT

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

1 Page 1, line 3:

2 Delete "and 95"

3 Insert "95, and 100"

4 Page 12, following line 27:

5 Insert a new bill section to read:

6 "** Sec. 26. AS 09 is amended by adding a new chapter to read:

7 Chapter 42. Alternative Dispute Resolution.

8 Sec. 09.42.010. Findings; purpose. The legislature finds that providing a
9 formalized program of alternative dispute resolution procedures within the existing
10 civil litigation system can promote the timely and efficient resolution of many civil
11 disputes. The purpose of this chapter is to provide for an initial pilot program of
12 alternative dispute resolution of certain civil cases filed in the superior court on or
13 after January 1, 1998.

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

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

20 (1) divorce and dissolution;

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

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

24 (4) domestic violence protective orders under AS 18.66.100 -

1 18.66.180;

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

3 (6) cases when no answer to the complaint or petition is filed by any
4 party to the case with the court.

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

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

14 (c) For a case referred under the program, the parties may mutually agree to
15 select a person to conduct the alternative dispute resolution procedure regardless of
16 whether the person appears on the list established under (b) of this section or whether
17 the person meets the minimum qualifications to be selected for the list. If an
18 agreement cannot be reached, the trial court judge assigned the case shall appoint a
19 person from the list. A person selected or appointed under this subsection has judicial
20 immunity for conducting the alternative dispute procedure to the same extent as a
21 judge. The person shall abide by applicable rules of confidentiality related to
22 alternative dispute resolution procedures established by the supreme court.

23 (d) Fees and costs to conduct an alternative dispute resolution procedure under
24 this chapter shall be shared equally among the parties to the case being referred unless
25 the court finds a party indigent and orders payment at public expense. The supreme
26 court shall establish guidelines for the determination of indigency under the program.
27 Fees and costs borne at public expense under this subsection constitute a lien on any
28 recovery in the case by that party and shall be paid first from the recovery.

29 (e) The superior court shall establish standards for the timely referral to and
30 the conclusion of the alternative dispute resolution procedure required under this
31 program. The standards must include that the alternative dispute resolution procedure

32 (1) shall terminate no more than 100 days after the defendant's answer

1 is served unless the trial court grants a time extension in an exceptional case and for
2 good cause shown; and

3 (2) be limited to no more than 12 hours for the procedure unless the
4 parties mutually agree to a longer period.

5 **Sec. 09.42.040. Evaluation of pilot program.** (a) The Alaska Judicial
6 Council shall evaluate annually the efficacy of the pilot program. Among other
7 factors, the evaluation shall address the speed with which cases are resolved, the
8 satisfaction of the parties to the cases, the expenditures made by the parties to the
9 cases, and the expenditure of court resources.

10 (b) The council shall work with the court system to create a system for
11 efficient collection of information needed to evaluate the program. The council shall
12 report the results of its evaluation to the governor and legislature each year by
13 March 31.

14 **Sec. 09.42.050. Definitions.** In this chapter,

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

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

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

21 Renumber the following bill sections accordingly.

22 Page 25, lines 2 - 17:

23 Delete all material.

24 Insert a new bill section to read:

25 **"* Sec. 64.** AS 09.42, as enacted by sec. 26 of this Act, has the effect of amending Alaska
26 Rule of Civil Procedure 100 by making the mediation process mandatory for certain civil
27 cases in the superior court, third judicial district, and by expanding the scope of the rule to
28 include other forms of alternative dispute resolution in addition to mediation."

AMENDMENT #50 ✓

L-16

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSSHB(FIN) 58

Page 5, lines 20-25:

delete all material

renumber the following bill sections accordingly

AMENDMENT

#51

582

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 5, lines 28 - 29 following "not exceed":

Delete "three"

Insert "four"

Page 5, line 29 following "awarded or":

Delete "300,000"

Insert "500,000"

Page 6, line 1 following "not exceed":

Delete "four"

Insert "six"

Page 6, line 2 following "or":

Delete "600,000"

Insert "1,000,000"

AMENDMENT, #52 ✓

58-7

BY REPRESENTATIVE BERKOWITZ

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 6, line 4, following "gain;":

Delete "and"

Insert "or"

AMENDMENT: #53 ✓

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 5, line 19 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)(1) or (2)"

AMENDMENT

#54 ✓

D-6

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 25:

Delete lines 20 - 22

AMENDMENT

#55 ✓

L-20

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSSHB(FIN) 58

Page 16, line 12 following "hospital" through page 17, line 12:

delete all material

insert "may not escape liability for the actions or inactions of emergency room physicians by contractual device, change in employment status, or purported notice to or waiver by emergency room patients. Nothing in this section is intended to modify the standard of care for emergency room physicians or apply to a physician that is independently hired and not associated with the hospital's provision of emergency services."

AMENDMENT

#56 ✓

L-21

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSH(B) 58

Page 17, line 2:

following "least", delete "\$500,000"

insert "\$1,000,000"

L-29

AMENDMENT #57 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSH(B)(FIN) 58

Page 4, line 3:

following "shorter", insert "or longer"

AMENDMENT #58 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSSHB(FIN) 58

Page 11, line 13:

following "is" delete "at least five, less", insert "not more"

Page 11, lines 14-17:

following "offer,"

delete "the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made,"

insert "the interest awarded under AS 09.30.070 and accrued up to the date judgment is entered shall be adjusted"

Page 11, line 20 through page 12, line 15:

delete all material

Page 11, line 20:

insert "(1) if the offeree is the party making the claim, the interest rate shall be adjusted as follows:

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

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

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

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

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

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

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

Renumber the following bill sections accordingly

AMENDMENT #59 ✓

L-32

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSSHB(FIN) 58

Page 5, line 8:

following "for"

delete "all", insert "any"

AMENDMENT #60 ✓

D-7

By Representative Davies

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

Page 25, following line 22:

Add a new section to read:

"Sec. 66. Section 5 of this act becomes effective 90 days after the Alaska Judicial Council has submitted a written report to the Alaska State Legislature on the tenth day of the regular legislative session following enactment of this legislation. The report shall evaluate the necessity of the provisions of this section.

AMENDMENT

#61 ✓

L-25

OFFERED IN THE HOUSE

BY REPRESENTATIVE KUBINA

TO: CSSH(B)(FIN) 58

Page 2, lines 5-7:

delete all material

AMENDMENT

#62 ✓

L-34

OFFERED IN THE HOUSE

BY REPRESENTATIVE **BERKOWITZ**

TO: CSSSHB(FIN) 58

Page 5, line 24:

following "rights",

insert "or reckless indifference to the interests of others"

AMENDMENT #63 ✓

By Representative Davies

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

Page 25, following line 22:

Add a new section to read:

"Sec. 66. Section 9 of this act becomes effective 90 days after the Alaska Judicial Council has submitted a written report to the Alaska State Legislature on the tenth day of the regular legislative session following enactment of this legislation. The report shall evaluate the necessity of the provisions of this section.

AMENDMENT #64 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSH(B) 58

Page 5, line 27 through page 6, line 13:

delete all material and insert,

- "(b) At a separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider**
- (1) the likelihood at the time of the misconduct that serious harm would arise from the defendant's misconduct;**
 - (2) the degree of the defendant's awareness of that likelihood;**
 - (3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's misconduct;**
 - (4) the duration of the misconduct and any intentional concealment of it;**
 - (5) the attitude and conduct of the defendant upon discovery of the misconduct;**
 - (6) the financial condition of the defendant; and**
 - (7) the total deterrence of other damages and punishment imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.**
- (c) At the conclusion of the separate proceeding under (b) of this section, the fact finder shall determine the amount of punitive damages to be awarded and the court shall enter judgment for that amount.**
- (d) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (b)(3) or (b)(6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) of this section. The court may issue such orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (b)(3) or (b)(6) of this section available for production immediately at the close of the initial trial, so as to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.**
- (e) Except as provided in (f) or (g) of this section or otherwise provided by law, an award of punitive damages may not exceed the greater of**
- (1) three times the amount of compensatory damages awarded to the plaintiff in the action; or**
 - (2) the sum of \$500,000.**
- (f) Except as provided in (g) of this section or otherwise provided by law, if the fact finder finds that the conduct proven under (a) of**

this section was motivated by financial gain, it may award an amount of punitive damages not to exceed the greatest of

(1) the amount calculated under the limitation in (e) of this section

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

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

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

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

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

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

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

D-9
AMENDMENT #65 ✓
By Representative Davies

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

Page 25, following line 22:

Add a new section to read:

"Sec. 66. Section 10 of this act becomes effective 90 days after the Alaska Judicial Council has submitted a written report to the Alaska State Legislature on the tenth day of the regular legislative session following enactment of this legislation. The report shall evaluate the necessity of the provisions of this section.

AMENDMENT

#66 ✓

L-26

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSSHB(FIN) 58

Page 2, lines 8-10:

delete all material

AMENDMENT # 67 ✓

D-10

By Representative Davies

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

Page 25, following line 22:

Add a new section to read:

"Sec. 66. Section 22 of this act becomes effective 90 days after the Alaska Judicial Council has submitted a written report to the Alaska State Legislature on the tenth day of the regular legislative session following enactment of this legislation. The report shall evaluate the necessity of the provisions of this section.

AMENDMENT

#68 ✓

L-27

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSH(B)(FIN) 58

Page 3, line 7:

following "AS 09.10.040"

insert ", the provisions of this section ^{may be} ~~are~~ waived by contract,"

AMENDMENT # 69 ✓

By Representative Davies

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

Page 25, following line 22:

Add a new section to read:

"Sec. 66. Section 37 of this act becomes effective 90 days after the Alaska Judicial Council has submitted a written report to the Alaska State Legislature on the tenth day of the regular legislative session following enactment of this legislation. The report shall evaluate the necessity of the provisions of this section.

AMENDMENT

#70

L-24

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSSHB(FIN) 58

Page 2, lines 1-4:

delete all material

AMENDMENT #71

L-23

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSH(B)(FIN) 58

Page 1, line 14:

following "positive" insert "big"

AMENDMENT

72 ✓

L-22

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSSHB(FIN) 58

Page 1, line 9:

following the second occurrence of "litigation",

delete "without", insert "by"

AMENDMENT

#73 ✓

BY REPRESENTATIVE DAVIES**OFFERED IN HOUSE****TO: CSSSHB 58 (FIN)****Page 5, line 7 following "(c)":****Insert "or (e)"****Page 5, line 10:****Delete "In"****Insert "Except as provided under (e) of this section, in"****Page 5, following line 19:****Insert a new subsection to read:**

"(e) On January 1 of each year, the amounts specified under (b) and (c) of this section shall be changed to reflect inflation, if any. The Department of Labor shall adopt a regulation on or before December 31 of each year announcing the change in dollar amounts required by this subsection. In this subsection, "inflation" means the change in the Consumer Price Index for Anchorage, All Items Index, compiled by the Bureau of Labor Statistics, United States Department of Labor."

AMENDMENT #74 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: CSSH(B)(FIN) 58

Page 4, lines 11-18:

delete all material,

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

AMENDMENT

#75 ✓

L-3

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

NICHOLIA

Page 5, line 9:

following "exceed",

delete "\$300,000", insert "\$500,000"

Page 5, line 11:

following "section",

delete "may not exceed \$500,000", insert "are not limited"

HOUSE AMENDMENT # 76 ✓

TO: CSSS/HB (Fin) BY: Elton

Page 25 Line 19 following "Act." :

Insert

"Sec. 65. This Act sunsets if, on July 1, 2007, the director of the Division of Insurance certifies to the lieutenant governor and the revisor of statutes that the liability insurance rates filed with the Division of Insurance have not been held to a level at least 10 percent less than the average national increase since January 1, 1997. In this section, "liability insurance" means insurance described under AS 21.12.070(a)(2).

**Submit original amendment to the Chief Clerk.
It will then be numbered and duplicated.**

Amendment # 77



OFFERED IN THE HOUSE
TO CSSS HB 58 (FIN)

REPRESENTATIVE
HODGINS

PAGE 15

SECTION # 35.

INSERT NEW SUBSECTION (a)
TO READ:

Anytime prior to final appeal
either DEFENDANT OR PLAINTIFF may
elect not to pay ATTORNEY FOR
SERVICES RENDERED FOR ANY REASON.

IF ATTORNEY OBJECTS, ATTORNEY
MUST IMMEDIATELY POST \$25,000.00
NONREFUNDABLE BOND AND DO
3,000 hours of community service

✓
AMENDMENT # 78

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

DAVIES

Page 1, line 6:

Delete through page 2, line 26

✓
AMENDMENT #79

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

DAVIE

Page 10, line 21:

Delete through page 11, line 1

✓
AMENDMENT #80

OFFERED IN THE HOUSE

DAVIES

TO: CSSSHB 58 (FIN)

Page 11, line 2:

Sec. 22

Delete through page 12, line 2

✓
AMENDMENT #81

OFFERED IN THE HOUSE

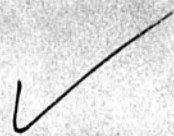
TO: CSSSHB 58 (FIN)

DAVIES

Page 12:

Delete lines 3 - 15

AMENDMENT #82



OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

DAVIES

Page 17, line 13:

Delete through page 18, line 12

✓
AMENDMENT #83

OFFERED IN THE HOUSE

TO: CSSSHB 58 (FIN)

DAVIES

Page 20:

Delete lines 9 - 14

L-5

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVES

TO: CSSSHB(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read:

"(3) is totally blind."

Deal 3/17/97

- ① L-5 - Blink
- ② L-6

me
do.
Deleting
insert
being done

③ L-7

④ Elim tax deduction

⑤ Amend as periodic amt.
\$100K or total of - - -

⑥ Apportionment. Start of Repose
Exception.

① put wst out

① Switch: US:

① nonecon. Damage =
"per claimant"

②: If ~~the~~ a trial

Sub Allocated fault to Arch/Sy/Es
{ where

AMENDMENT**BY REPRESENTATIVE DAVIES****OFFERED IN HOUSE JUDICIARY****TO: CSSSHB 58 (FIN)**

Page 5, line 7 following "(c)":

Insert "or (e)"

Page 5, line 10:

Delete "In"

Insert "Except as provided under (e) of this section, in"

Page 5, following line 19:

Insert a new subsection to read:

"(e) On January 1 of each year, the amounts specified under (b) and (c) of this section shall be changed to reflect inflation, if any. The Department of Labor shall adopt a regulation on or before December 31 of each year announcing the change in dollar amounts required by this subsection. In this subsection, "inflation" means the change in the Consumer Price Index for Anchorage, All Items Index, compiled by the Bureau of Labor Statistics, United States Department of Labor."

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 6, line 4, following "gain;":

Delete "and"

Insert "or"

AMENDMENT**BY REPRESENTATIVE CROFT****OFFERED IN HOUSE JUDICIARY****TO: CSSSHB 58 (FIN)****Page 5, line 27 through page 6, line 13:****Delete all material.****Insert new subsections to read:**

"(b) Except as provided in (c) of this section, the court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of three times the amount of compensatory damages or \$300,000.

(c) The court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of four times the amount of compensatory damages awarded or \$600,000, if

(1) the wrongful conduct or omission arose in connection with a commercial activity motivated by financial gain; and

(2) the likelihood of death or serious bodily injury from the commercial activity was previously known by the person responsible for making policy decisions relating to the commercial activity and the knowledge was gained from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, regardless of where the previous wrongful conduct or omission occurred.

(d) If a court or jury awards punitive damages under (a) of this section, the court shall requires that 100 percent of the punitive damages award that exceeds the maximum amounts described under (b) or (c) of this section, as applicable, be deposited into the general fund or the Alaska permanent fund under AS 37.13.010. The party paying the punitive damages shall elect which fund shall receive the money required to be paid under this subsection.

(e) The provisions of this section do not grant the state the right to file or join a civil action to recover punitive damages."

Page 15, line 30, following "damages":**Delete "due the state under AS 09.17.020(d)"****Insert "required to be deposited under AS 09.17.020"****Page 24, line 4, following "fund":****Insert "or the Alaska permanent fund"**

AMENDMENT

BY REPRESENTATIVE

OFFERED IN HOUSE JUDICIARY

TO: CSSH B 58 (FIN)

Page 5, line 19 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)(1) or (2)"

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 6, line 30 following "of" to line 31:

Delete "a party"Insert "both parties"

Page 24, line 10, following "by":

Delete "a party"

Insert "both parties"

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 7, line 1 following "exceed":

Delete "100,000"

Insert "250,000"

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 6, line 29 through page 8, line 8:

A handwritten signature, possibly 'CROFT', is written next to the text 'Periodic prints'. The signature is in cursive and appears to be written in ink.

Delete all material.

Renumber following bill sections accordingly.

Page 24, lines 8 - 13:

Delete all material.

Renumber following bill sections accordingly.

AMENDMENT

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 8, line 9 through page 9, line 8:

Delete entire section.

*Child
Benefits*

Renumber the following bill sections accordingly.

*out AT
PAGE to
PAGE*

AMENDMENT

BY REPRESENTATIVE

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 8, line 12, following "claimant":

**Delete ", or that with reasonable probability will be received in the future by
the claimant,"**

AMENDMENT**BY REPRESENTATIVE****OFFERED IN HOUSE JUDICIARY****TO: CSSSHB 58 (FIN)**

Page 9, line 9 through page 10, line 11: *Delete all our*
Delete all material. *Alaskan language.*

Re-number following bill sections accordingly.

Page 20, lines 15 through 24:
Delete all material.

W.C. Lien Reduction -

Re-number following bill sections accordingly.

Page 24, lines 17 through 21:
Delete all material.

Re-number following bill sections accordingly.

AMENDMENT

BY REPRESENTATIVE

CROFT

15

OFFERED IN HOUSE JUDICIARY
TO: CSSSHB 58 (FIN)

Page 25, line 19 following "Act.":

Insert "*Sec. 65. This Act sunsets if, on July 1, 2000, the director of the Division of Insurance certifies to the lieutenant governor and the revisor of statutes that the liability insurance rates filed with the Division of Insurance have not been reduced by at least 10 percent from those filed on January 1, 1997. In this section, "liability insurance" means insurance described under AS 21.12.070(a)(2).

Renumber the following bill section accordingly.

NO

§ 9

AMENDMENT

L-1

Berkowitz

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 5, lines 1-19:

delete all material

renumber the following bill sections accordingly

DELETES NONECONOMIC
DAMAGE ~~AND~~ CAPS

§9

AMENDMENT

L-2

OFFERED IN THE HOUSE

BY REPRESENTATIVE

Beck

TO: CSSSHB(FIN) 58

Page 5, after line 19:

insert a new subsection to read,

"(e) The amounts in sections (b) and (c) of this section shall be adjusted for inflation on June 1 of each year. In this subsection, "inflation" means the change in the consumer price index for the United States city average, all urban consumers, all items indices, compiled by the Bureau of Labor Statistics, United States Department of Labor."

*Attempts to put a CPI
ESCALATOR TO OUR
SECTION 9 (NONECONOMIC
DAMAGES CAP).*

89

AMENDMENT

L-3

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERK.

- ① Page 5, line 9: ~~INCREASES OUR \$300K CAP~~
following "exceed", ~~ON NONECONOMIC DAMAGES TO~~
~~\$500,000.~~
delete "\$300,000", insert "\$500,000"

- ② Page 5, line 11:

following "section",

delete "may not exceed \$500,000", insert "are not limited"

Attempts to REMOVE ANY
CAP ON NONECONOMIC
DAMAGES IN SEVERE CASES.

89

L-4

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 5, line 13:

following "(1)",

delete "is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord"

insert "suffers disfigurement or severe physical impairment"

EXISTING LAW puts NO CAP ON).

This will ~~be~~ MAKE
DISFIGUREMENT, etc SUBJECT
TO 500K CAP.

§9

L-5

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Berk

Page 5, line 17:

delete ":", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) is blind in one or both eyes."

Allows \$500K cap to
apply to blindness in
one or both eyes,
(close to initiative).

*Arian
Perry OK*

§ 9

L-6

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERK

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) has third degree burns over one half or more of the claimant's body."

Allows \$500K cap to
apply to severe BURN
cases, (same as
initiative).

Brian
Sey OK

89

L-7

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Berk

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read, *lost functional use of*
or has lost
"(3) has lost both arms or both legs or an arm and a leg."

*Allows \$500K cap
for loss of limbs.
(But not for loss
of 1 limb)*

*Inconsistent
w/ #1*

35

L-8

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

Bernie

Page 3, line 10:

following "within",

delete "eight", insert "ten"

Page 3, line 12:

following "within",

delete "eight", insert "ten"

Increases statute of Repose
to 10 years.

NO

35

L-9

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERK

Page 3, line 25:

following "to",

insert "a"

following "hazardous",

delete "waste", insert "substance"

stat. of repose not apply
if injury resulted from
"prolonged exposure to a
hazardous substance."

Q: what "hazardous substances"
does he have in mind
that are not a "hazardous
waste"? 2

85

L-10

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERK

Page 3, line 25:

following "(A)",

delete "prolonged"

STAT. of Repose not
apply if there is ANY
exposure to hazardous
waste, even if for a
few seconds.

NO

85

there is no ~~amendment~~

L-11

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERK

Page 3, line 31:

delete "." insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in an elementary or secondary school."

cuts the statute of repose
by excepting "(F)".

85

AMENDMENT

L-12

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BEAL

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in a church, synagogue, or other house of worship."

Guts the statute of repose,
by excepting "(F)".

85

AMENDMENT

L-13

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERK

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

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

Cuts the Statute of Repose,
by excepting "(F)".

§5

L-14

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERK.

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in any child care facility."

SAME objection.

85

L-15

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BECK

Page 3, line 31:

delete ":", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in any home for the elderly, convalescent center, or nursing home."

same objection.

§10

AMENDMENT

L-16

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

BERK

Page 5, lines 20-25:

delete all material

renumber the following bill sections accordingly

Deletes our Amendment
to existing punitive damage
statute.

Deletes requirement
of showing "malice or
conscious acts".

NO
✓

§21

Expert Witness Qualification

L-17

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSH(B) 58

BE
BY REPRESENTATIVE

① Page 10, lines 25-26:

delete all material

①

REQUIREMENT THAT WITNESS BE
LICENSED ANYWHERE IN WORLD IS
DELETED.

② Page 10, line 27:

preceding "trained" delete "(2)"

②

DELETE ALL REQUIREMENTS
OTHER THAN THE
EXPERT WITNESS
BE TRAINED AND
EXPERIENCED IN
THE SAME AREA.

Page 10, line 28:

following "issue" delete "; and", insert ".

Page 10, line 29 through page 11, line 1:

delete all material

322. offers of Judgment L-18

AMENDMENT

OFFERED IN THE HOUSE

BEK
BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

① Page 11, line 13:

following "is" delete "at least five, less", insert "not more"

② Page 11, lines 14-17:

following "offer,"

delete "the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made,"

insert "the interest awarded under AS 09.30.070 and accrued up to the date judgment is entered shall be adjusted"

③ Page 11, line 20 through page 12, line 15:

delete all material

Page 11, line 20:

④ insert "(1) if the offeree is the party making the claim, the interest rate shall be adjusted as follows:"

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

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

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

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

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

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

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

Renumber the following bill sections accordingly

§37 Civil liability of Hospitals

L-19

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

Page 16, line 10 through page 17, line 12:

delete all material

renumber the following bill sections accordingly

Gets over §37.

§ 37

L-20

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

Page 16, line 12 following "hospital" through page 17, line 12:

delete all material

insert "may not escape liability for the actions or inactions of emergency room physicians by contractual device, change in employment status, or purported notice to or waiver by emergency room patients. Nothing in this section is intended to modify the standard of care for emergency room physicians or apply to a physician that is independently hired and not associated with the hospital's provision of emergency services."

Another way to put
our § 37.

§ 37.

L-21

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Perk

Page 17, line 2:

following "least", delete "\$500,000"

insert "\$1,000,000"

RAISES EMERGENCY ROOM
DOCTORS' LIABILITY INSURANCE
FROM \$500K TO \$1M.

M

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 1, line 9:

following the second occurrence of "litigation",

delete "without", insert "by"

Cheap shot!
makes legislative intent
to increase efficiency of
civil justice system ^{by}
diminishing the protection
of innocent Alaskans' rights
to compensation.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 1, line 14:

following "positive" insert "big"

Another cheap shot.

"BIG BUSINESS"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 2, lines 1-4:

delete all material

shot at unlikely to control the
increase of liability insurance rates to
individuals - - - .

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 2, lines 5-7:

delete all material

cheap shot.
Deletes our "self-reliance"
and "personal responsibility" —
personal accountability
(un)wage

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 2, lines 8-10:

delete all material

Deletes our "Alleviate the
high cost of malpractice insurance"
for professionals.

(shortened statute of limitations
will help lawyers).

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 3, line 7:

following "AS 09.10.040"

insert ", the provisions of this section are waived by contract,"

Specifies that three year statute
of limitations for contract
actions may be waived
by contract.

I think this one might be OK.

OK

§5

Statute of Repose

L-28

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

Page 4, following line 9:

insert a new subsection to read,

"(d) the limitations imposed by this section and AS 09.10.080 are tolled for claims described under AS 09.10.080 until the claimant reaches the age of 18."

Tries to toll the Statute of
Repose until A child
reaches the age of 18.
Gets our §5.

NO

§5

L-29

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

Page 4, line 3:

following "shorter", insert "or longer"

Tries to make the statute of
Repose inapplicable where
A "longer" period of time for
Bringing an action is found
elsewhere in the code:

i.e. AGE of MAJORITY
statute.

✓

§6 : 2 YEAR Statute of limitations

L-30

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

Page 4, lines 11-18:

delete all material.

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

← LEFT out
"OF THE ACCRUAL
OF THE CAUSE
OF ACTION"

THIS language is (3)
IN our Bill.

§ 8

L-31

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

BERK

Page 4, line 29:

following "person's"

delete "sixth", insert "tenth"

It gives a child injured before
its sixth birthday up to the
child's 10th birthday (+ 2 yrs)
to BRING AN ACTION.

§9 NONECONOMIC DAMAGES

L-32

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

SEK

Page 5, line 8:

following "for"

delete "all", insert "any"

I'm not sure what the intent is,
or what he's up to.
Appears to somehow limit
which claims are subject to
the lower cap of \$300K.

NO

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

- ① Page 5, line 27 through page 6, line 13:

- cuts out Bill.

delete all material and insert,

- ② "(b) At a separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider
- (1) the likelihood at the time of the misconduct that serious harm would arise from the defendant's misconduct;
 - (2) the degree of the defendant's awareness of that likelihood;
 - (3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's misconduct;
 - (4) the duration of the misconduct and any intentional concealment of it;
 - (5) the attitude and conduct of the defendant upon discovery of the misconduct;
 - (6) the financial condition of the defendant; and
 - (7) the total deterrence of other damages and punishment imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.
- (c) At the conclusion of the separate proceeding under (b) of this section, the fact finder shall determine the amount of punitive damages to be awarded and the court shall enter judgment for that amount.
- (d) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (b)(3) or (b)(6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) of this section. The court may issue such orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (b)(3) or (b)(6) of this section available for production immediately at the close of the initial trial, so as to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.
- (e) Except as provided in (f) or (g) of this section or otherwise provided by law, an award of punitive damages may not exceed the greater of
- (1) three times the amount of compensatory damages awarded to the plaintiff in the action; or
 - (2) the sum of \$500,000.
- (f) Except as provided in (g) of this section or otherwise provided by law, if the fact finder finds that the conduct proven under (a) of

will take many attempts to decide what these mean.

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this section was motivated by financial gain, it may award an amount of punitive damages not to exceed the greatest of

(1) the amount calculated under the limitation in (e) of this section

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

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

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

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

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

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

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

~~① A separate trial proceeding~~

② basically same as Gov's task force / recommendation.

③ A separate proceeding gives big advantage to plaintiffs. It will be a mini-trial to really bite ~~the~~ get a second bite of the apple.

④ To GHA, the cap = \$4.87B / \$2B. (That kills their \$2B/yr for R&D).



Official Business

TWENTIETH ALASKA LEGISLATURE

First Session

HOUSE CALENDAR

Sixty-fifth Legislative Day

Tuesday - March 18, 1997 - 11:00 a.m.

Invocation: Judy Minor
Christian Science Practitioner

HOUSE BILLS IN SECOND READING

CSSSHB 58(FIN) AM

"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

HELD IN SECOND READING WITH PENDING AM 43 TO 3/18 CALENDAR

LEGISLATIVE CITATIONS

Honoring - Steven Jimerfield, Trooper of the Year

By Senator Taylor; Representatives Grussendorf, Phillips, Austerman, Brice, Bunde, Croft, Davis, Elton, Hanley, Ivan, Kemplen, Kohring, Kott, Kelly, Kubina, Masek, Mulder, Nicholia, Ogan, Porter, Rokeberg, Ryan, Sanders, Therriault

Honoring - Karen Ann Maudal

By Senator Ward; Representatives Ivan, Kott, Kelly, Ogan, Porter, Rokeberg, Ryan, Sanders,