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HOUSE BILL NO. 58**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY REPRESENTATIVE PORTER****Introduced: 1/13/97****Referred: Judiciary, Finance****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; amending Rules 49 and 68, Alaska Rules of
2 Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and providing for
3 an effective date."

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

5 * **Section 1.** AS 09.10.055 is repealed and reenacted to read:

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

10 (1) substantial completion of the construction alleged to have caused
11 the personal injury, death, or property damage; however, the limitation of this
12 paragraph does not apply to a claim resulting from an intentional or reckless disregard
13 of specific project design plans and specifications or building codes; or

14 (2) the last act alleged to have caused the personal injury, death, or

1 property damage.

2 (b) This section does not apply if

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

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

8 (B) an intentional act or gross negligence;

9 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

27 (d) In this section, "substantial completion" means the date when construction
28 is sufficiently completed to allow the owner or a person authorized by the owner to
29 occupy the improvement or to use the improvement in the manner for which it was
30 intended.

31 * Sec. 2. AS 09.10.070(a) is amended to read:

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

8 * **Sec. 3.** AS 09.10 is amended by adding a new section to read:

9 **Sec. 09.10.075. Limitation on actions involving injury to person or**
 10 **property.** (a) Notwithstanding the disability of minority described under
 11 AS 09.10.140(a), a person may not bring an action for personal injury, death, property
 12 damage, or injury to the rights of another not arising on contract unless the action is
 13 brought within two years of the accrual of the action.

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

16 * **Sec. 4.** AS 09.17.010 is repealed and reenacted to read:

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

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

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

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

31 (B) has lost both arms or both legs or an arm and a leg;

(C) has permanently impaired cognitive capacity, is incapable of making independent, responsible decisions, and is permanently incapable of independently performing the activities of normal, daily living;

(D) is both deaf and blind; or

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

(d) The limit under (b) or (c) of this section does not apply to noneconomic damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(e) 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. 5. 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 outrageous conduct, including acts done with malice or bad motives, or reckless indifference to the interest of another person.

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

(b) 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 is greater.

(c) The limit under (b) of this section does not apply to punitive damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(d) If a person receives an award of punitive damages, the court shall require that 75 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover

1 punitive damages.

2 * **Sec. 7.** AS 09.17.070 is repealed and reenacted to read:

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

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

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

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

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

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

16 (b) A person defending a claim may introduce into evidence an amount paid
17 or payable as a benefit to the claimant as a result of the personal injury or death under
18 42 U.S.C. 301 - 1397 (Social Security Act); a state or federal disability act; health,
19 sickness, disability, accident, or income-disability insurance; insurance that provides
20 health benefits or income-disability coverage; and a contract or agreement of a group,
21 organization, partnership, or corporation, or other collateral source, to provide, pay for,
22 or reimburse the cost of medical, hospital, dental, or other health care services,
23 disability, or lost wages. However, evidence of a collateral source that is a federally
24 funded program that by law must seek subrogation or that has a right of subrogation
25 under federal law, evidence of death benefits paid under life insurance, or evidence of
26 workers' compensation benefits received under AS 23.30, may not be introduced under
27 this subsection. If a person defending a claim elects to introduce evidence described
28 in this subsection, the claimant may introduce evidence of the amount that the claimant
29 has paid or contributed to secure the claimant's right to the collateral benefit, including
30 the cost to the claimant resulting from depleted or exhausted coverage.

31 (c) A person who provides a collateral benefit admissible under (b) of this

1 section may not recover an amount against the claimant as reimbursement for those
 2 benefits and may not be subrogated to the rights of a claimant against a person
 3 defending a claim.

4 * Sec. 8. AS 09.17.080(a) is amended to read:

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

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

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

18 * Sec. 9. AS 09.17.080(b) is amended to read:

19 (b) In determining the percentages of fault, the trier of fact shall consider both
 20 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 21 causal relation between the conduct and the damages claimed. The trier of fact may
 22 assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO
 23 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages
 24 claimed and the separate act or omission of each person cannot be distinguished.

25 * Sec. 10. AS 09.17.080(c) is amended to read:

26 (c) The court shall determine the award of damages to each claimant in
 27 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
 28 AS 09.16.040,] and enter judgment against each party liable. The court also shall
 29 determine and state in the judgment each party's equitable share of the obligation to
 30 each claimant in accordance with the respective percentages of fault as determined
 31 under (a) of this section. 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. 11. AS 09.20 is amended by adding a new section to read:

Sec. 09.20.185. Expert witness qualification. (a) Except as provided under

(b) of this section, 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 a professional who is licensed in this state or in another state or country and is

(1) 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

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

(b) The provisions of (a) of this section do not apply to a person who is testifying on the appropriate standard of care in a profession that is not licensed in this state, or another state or country, and who the court determines is qualified as an expert witness.

(c) In this section, "professional negligence" means a negligent act or omission in rendering professional services.

* Sec. 12. 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. 13. AS 09.55.535(k) is amended to read:

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

* Sec. 14. AS 09.65 is amended by adding a new section to read:

1 Sec. 09.65.096. Civil liability of hospitals for nonemployees. (a) A hospital
2 is not liable for civil damages as a result of an act or omission by a health care
3 provider who is not an employee or actual agent of the hospital if the hospital provides
4 notice that the health care provider is an independent contractor. The notice required
5 by this subsection must be posted conspicuously in all admitting areas of the hospital,
6 published at least annually in a newspaper of general circulation in the area, and be
7 in substantially the following form:

8 Notice of Limited Liability

9 The following health care providers are independent contractors
10 and are not employees of the hospital:

11 (List specific health care providers)

12 The hospital is responsible for exercising reasonable care in granting staff privileges
13 to practice in the hospital, for reviewing those privileges on a regular basis, and for
14 taking appropriate steps to revoke or restrict privileges in appropriate circumstances.

15 The hospital is not otherwise liable for the acts or omissions of a health care provider
16 who is an independent contractor.

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

19 (c) In this section,

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

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

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

30 * Sec. 15. AS 09.65.210 is repealed and reenacted to read:

31 Sec. 09.65.210. Damages resulting from commission of a felony. (a) A

1 person who suffers personal injury or property damage may not recover damages for
2 the personal injury or property damage if the injury occurred while the person was
3 attempting to commit or committing a felony, or fleeing from the commission of a
4 felony, and the felony substantially contributed to the injury or property damage.

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

10 * Sec. 16. AS 09.55.548 is repealed.

11 * Sec. 17. AS 09.17.080(a), as amended by sec. 8 of this Act, has the effect of amending
12 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
13 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
14 among the claimants, defendants, third-party defendants, persons who have been released from
15 liability, or other person who is responsible for the damages.

16 * Sec. 18. AS 09.20.185, enacted by sec. 11 of this Act, has the effect of amending
17 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
18 testifying as an expert witness.

19 * Sec. 19. AS 09.30.070(c), added by sec. 12 of this Act, has the effect of amending
20 Rule 68, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
21 awarded for future economic or noneconomic damages.

22 * Sec. 20. APPLICABILITY. This Act applies to all causes of action accruing on or after
23 the effective date of this Act, except that this Act does not apply to a cause of action resulting
24 from the Exxon Valdez oil spill occurring on March 24, 1989.

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

28 * Sec. 22. This Act takes effect July 1, 1997.

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2 Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and providing for
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8 action for personal injury, death, or property damage unless commenced within eight
9 years of the earlier of the date of

10 (1) substantial completion of the construction alleged to have caused
11 the personal injury, death, or property damage; however, the limitation of this
12 paragraph does not apply to a claim resulting from an intentional or reckless disregard
13 of specific project design plans and specifications or building codes; or

14 (2) the last act alleged to have caused the personal injury, death, or

1 property damage.

2 (b) This section does not apply if

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

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

8 (B) an intentional act or gross negligence;

9 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

27 (d) In this section, "substantial completion" means the date when construction
28 is sufficiently completed to allow the owner or a person authorized by the owner to
29 occupy the improvement or to use the improvement in the manner for which it was
30 intended.

31 * Sec. 2. 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 [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years.

* Sec. 3. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. Limitation on actions involving injury to person or property. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, property damage, or injury to the rights of another not arising on contract unless the action is brought within two years of the accrual of the action.

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

* Sec. 4. 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 amount of damages awarded by a court or a jury under (a) of this section for all claims, 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 (a) of this section may not exceed \$500,000 when the claimant, as a result of the injury,

(A) 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;

(B) has lost both arms or both legs or an arm and a leg;

(C) has permanently impaired cognitive capacity, is incapable of making independent, responsible decisions, and is permanently incapable of independently performing the activities of normal, daily living;

(D) is both deaf and blind; or

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

(d) The limit under (b) or (c) of this section does not apply to noneconomic damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(e) 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. 5. 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 outrageous conduct, including acts done with malice or bad motives, or reckless indifference to the interest of another person.

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

(b) 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 is greater.

(c) The limit under (b) of this section does not apply to punitive damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(d) If a person receives an award of punitive damages, the court shall require that 75 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover

1 punitive damages.

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6 claimant, as compensation for the injuries from collateral sources, whether private,
7 group, or governmental, and whether contributory or noncontributory, except when

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

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

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

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

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

16 (b) A person defending a claim may introduce into evidence an amount paid
17 or payable as a benefit to the claimant as a result of the personal injury or death under
18 42 U.S.C. 301 - 1397 (Social Security Act); a state or federal disability act; health,
19 sickness, disability, accident, or income-disability insurance; insurance that provides
20 health benefits or income-disability coverage; and a contract or agreement of a group,
21 organization, partnership, or corporation, or other collateral source, to provide, pay for,
22 or reimburse the cost of medical, hospital, dental, or other health care services,
23 disability, or lost wages. However, evidence of a collateral source that is a federally
24 funded program that by law must seek subrogation or that has a right of subrogation
25 under federal law, evidence of death benefits paid under life insurance, or evidence of
26 workers' compensation benefits received under AS 23.30, may not be introduced under
27 this subsection. If a person defending a claim elects to introduce evidence described
28 in this subsection, the claimant may introduce evidence of the amount that the claimant
29 has paid or contributed to secure the claimant's right to the collateral benefit, including
30 the cost to the claimant resulting from depleted or exhausted coverage.

31 (c) A person who provides a collateral benefit admissible under (b) of this

1 section may not recover an amount against the claimant as reimbursement for those
 2 benefits and may not be subrogated to the rights of a claimant against a person
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4 * Sec. 8. AS 09.17.080(a) is amended to read:

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

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

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

18 * Sec. 9. AS 09.17.080(b) is amended to read:

19 (b) In determining the percentages of fault, the trier of fact shall consider both
 20 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 21 causal relation between the conduct and the damages claimed. The trier of fact may
 22 assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO
 23 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages
 24 claimed and the separate act or omission of each person cannot be distinguished.

25 * Sec. 10. AS 09.17.080(c) is amended to read:

26 (c) The court shall determine the award of damages to each claimant in
 27 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
 28 AS 09.16.040,] and enter judgment against each party liable. The court also shall
 29 determine and state in the judgment each party's equitable share of the obligation to
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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. 11. AS 09.20 is amended by adding a new section to read:

Sec. 09.20.185. Expert witness qualification. (a) Except as provided under (b) of this section, 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 a professional who is licensed in this state or in another state or country and is

(1) 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

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

(b) The provisions of (a) of this section do not apply to a person who is testifying on the appropriate standard of care in a profession that is not licensed in this state, or another state or country, and who the court determines is qualified as an expert witness.

(c) In this section, "professional negligence" means a negligent act or omission in rendering professional services.

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

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

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30 * Sec. 15. A

31

1 person who suffers personal injury or property damage may not recover damages for
2 the personal injury or property damage if the injury occurred while the person was
3 attempting to commit or committing a felony, or fleeing from the commission of a
4 felony, and the felony substantially contributed to the injury or property damage.

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

10 * Sec. 16. AS 09.55.548 is repealed.

11 * Sec. 17. AS 09.17.080(a), as amended by sec. 8 of this Act, has the effect of amending
12 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
13 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
14 among the claimants, defendants, third-party defendants, persons who have been released from
15 liability, or other person who is responsible for the damages.

16 * Sec. 18. AS 09.20.185, enacted by sec. 11 of this Act, has the effect of amending
17 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
18 testifying as an expert witness.

19 * Sec. 19. AS 09.30.070(c), added by sec. 12 of this Act, has the effect of amending
20 Rule 68, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
21 awarded for future economic or noneconomic damages.

22 * Sec. 20. APPLICABILITY. This Act applies to all causes of action accruing on or after
23 the effective date of this Act, except that this Act does not apply to a cause of action resulting
24 from the Exxon Valdez oil spill occurring on March 24, 1989.

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

28 * Sec. 22. This Act takes effect July 1, 1997.

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58(RLS)

1 Page 7, lines 18 - 27:

2 Delete all material and insert:

3 "(g) Except as provided in (h) of this section, if the fact finder determines that
4 the conduct proven under (b) of this section was motivated by financial gain and the
5 adverse consequences of the conduct were actually known by the defendant or the
6 person responsible for making policy decisions on behalf of the defendant, it may
7 award an amount of punitive damages not to exceed the greatest of

8 (1) four times the amount of compensatory damages awarded to the
9 plaintiff in the action;

10 (2) four times the aggregate amount of financial gain that the
11 defendant received as a result of the defendant's misconduct; or

12 (3) the sum of \$7,000,000."

13 Page 8, line 1:

14 Delete "\$50,000"

15 Insert "\$200,000"

16 Delete "15"

17 Insert "100"

18 Page 8, lines 2 - 3:

19 Delete all material.

20 Renumber the following paragraphs accordingly.

21 Page 15, line 3:

- 1 Delete "after"
- 2 Insert "before"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58(RLS)

1 Page 5, line 20:

2 Delete "\$500,000"

3 Insert "\$400,000"

4 Page 5, line 21:

5 Delete "\$10,000"

6 Insert "\$8,000"

7 Page 5, line 23:

8 Delete "\$1,500,000"

9 Insert "\$1,000,000"

10 Page 5, lines 24 - 31:

11 Delete all material.

12 Insert "life expectancy in years multiplied by \$25,000, whichever is greater, when the
13 damages are awarded for severe permanent physical impairment or severe disfigurement."

14 Page 7, lines 18 - 27:

15 Delete all material and insert:

16 "(g) Except as provided in (h) of this section, if the fact finder determines that
17 the conduct proven under (b) of this section was motivated by financial gain and the
18 adverse consequences of the conduct were actually known by the defendant or the
19 person responsible for making policy decisions on behalf of the defendant, it may
20 award an amount of punitive damages not to exceed the greatest of

21 (1) four times the amount of compensatory damages awarded to the

1 plaintiff in the action;

2 (2) four times the aggregate amount of financial gain that the
3 defendant received as a result of the defendant's misconduct; or

4 (3) the sum of \$7,000,000."

5 Page 8, line 1:

6 Delete "\$50,000"

7 Insert "\$200,000"

8 Delete "15"

9 Insert "100"

10 Page 8, lines 2 - 3:

11 Delete all material.

12 Renumber the following paragraphs accordingly.

13 Page 15, line 3:

14 Delete "after"

15 Insert "before"

16 Page 23, line 29, through page 24, line 6:

17 Delete all material.

18 Renumber the following bill sections accordingly.

FISCAL NOTE**STATE OF ALASKA
1997 LEGISLATIVE SESSION****BILL NO. HB58**

Revision Date:

Dept. Affected: Alaska Judicial Council

Title:

Civil Actions & Attorneys Provided by

BRU:

Insurance Company

Components:

Sponsor:

Reps. Brian Porter and John Cowdery

Requester:

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	1.3
CONTRACTUAL	9.0	1.2	1.2	1.2	1.2	1.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	27.8	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	27.8	19.2	19.2	19.2	19.2	19.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	27.8	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 DirectorPhone: 279-2526

Agency:

Alaska Judicial CouncilDate: 2/19/97

Approved by:

William T. Cotton, Executive Director

Agency:

Alaska Judicial CouncilDate: 2/19/97**PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE**

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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

AMENDMENT

#10

By S. Kelly

OFFERED IN THE SENATE

TO: SCS CSSSHB 58(RLS)

1 Page 26, line 17:

2 Delete "Court System"

3 Insert "Judicial Council"

OK
Not
passed

Amendment

7

SCS for CS for CS for SSHB 58(RLS)

by Senator Ellis

On page 3, line 18:
Delete 10, insert 11

Am 7 a

On page 3, line 20:
Delete 10, insert 11

On page 3, line 24:
After the word "from" insert "gross negligence",
delete the word "an", insert the word "or"

On page 4, line 2:
Delete the word "prolonged"
Delete the word "waste" and insert "substance"

Am 7 b

On page 4, line 3:
After the word "intentional" insert "or reckless"

✓ On page 4, after line 8:
Insert "(f) breach of trust or fiduciary duty"

Am 7 c

✓ On page 4, line 14:
Delete "give notice of a potential"
insert "constitute accrual of a"

Am 7 d

AMENDMENT #1

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SCS CSSSHB 58(RLS)

1 Page 15, lines 26 - 31:

2 Delete all material.

3 Insert "this subsection must (1) be posted conspicuously in all admitting areas of the
4 hospital; (2) consist of a sign at least two feet high and two feet wide, with print at least two
5 inches high; (3) be published at least annually in a newspaper of general circulation in the
6 area; and (4) be in substantially the following form:

7 Notice to Hospital Users and

8 Notice of Limited Liability

9 (Name of hospital) may not be responsible for the actions of
10 emergency room physicians in (name of hospital's emergency
11 room). The following emergency room physicians are
12 independent contractors and are not employees of the hospital:"

Donley moved
Adopted UC _____
13 Yeas _____ Nays _____
Failed _____ Yeas _____ Nays _____

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: SCS CSSSHB 58(RLS)

1 Page 15, lines 26 - 31:

2 Delete all material.

3 Insert "this subsection must (1) be posted conspicuously in all admitting areas of the
4 hospital; (2) consist of a sign at least two feet high and two feet wide, with print at least two
5 inches high; (3) be published at least annually in a newspaper of general circulation in the
6 area; and (4) be in substantially the following form:

7 Notice to Hospital Users and

8 Notice of Limited Liability

9 (Name of hospital) may not be responsible for the actions of
10 emergency room physicians in (name of hospital's emergency
11 room). The following emergency room physicians are
12 independent contractors and are not employees of the hospital:"

#2

AMENDMENT NO. -- "INSURANCE COVERAGE FOR
EMERGENCY ROOM DOCTORS"

OFFERED IN SENATE RULES COMMITTEE

BY: SENATOR DONLEY

TO: SCS CSSSHB 58(~~1001-1000~~)

7
Page 16, line 8:

Delete "\$500,000"

Insert "\$1,000,000"

Delete "\$1,500,000"

Insert "\$2,000,000"

\$17K v. \$20K/yr premiums
Lemon opposed st.
Yes to NO 11
~~to be~~

Alaska State Senate
Twentieth Legislature
First Session

RCS# 295
Item 3

04-16-97
14:25:58

SCS CS SSHB 58(RLS) am S
Second Reading
Amendment No. 6

Yeas:	6	Adams, Donley, Duncan, Ellis, Hoffman, Lincoln
Nays:	12	Green, Halford, Kelly, Leman, Miller, Parnell, Pearce, Phillips, Sharp, Torgerson, Ward, Wilken
Excused:	2	Mackie, Taylor
Absent:	0	

AMENDMENT NO:

#9

OFFERED IN THE SENATE BY: ELLIS

TO: SCS CSSSHB58

Page 9, lines 13 through line 24

Delete all material

Page 9, line 25

Delete "Section 14"

Insert "Section 13"

Renumber the following bill sections accordingly

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58(RLS)

- 1 Page 26, line 17:
- 2 Delete "Court System"
- 3 Insert "Judicial Council"

Alaska State Senate
Twentieth Legislature
First Session

RCS# 355
Item 7

04-17-97
16:10:47

SCS CS SSHB 58(RLS) am S
Adopt Court Rule Changes

Yeas:	14	Donley, Green, Halford, Hoffman, Kelly, Leman, Miller, Parnell, Pearce, Phillips, Sharp, Torgerson, Ward, Wilken
Nays:	4	Adams, Duncan, Ellis, Lincoln
Excused:	2	Mackie, Taylor
Absent:	0	

Alaska State Senate
Twentieth Legislature
First Session

RCS# 354
Item 6

04-17-97
16:10:03

SCS CS SSHB 58(RLS) am S
Third Reading - Final Passage
Court Rules

Yeas:	13	Donley, Green, Halford, Kelly, Leman, Miller, Parnell, Pearce, Phillips, Sharp, Torgerson, Ward, Wilken
Nays:	5	Adams, Duncan, Ellis, Hoffman, Lincoln
Excused:	2	Mackie, Taylor
Absent:	0	

Alaska State Senate
Twentieth Legislature
First Session

RCS# 373
Item 21

04-18-97
15:41:40

SCS CS SSHB 58(RLS) am S
Second Reading
Amendment No. 17, Part A

Yeas:	13	Donley, Green, Halford, Kelly, Leman, Mackie, Miller, Parnell, Phillips, Sharp, Torgerson, Ward, Wilken
Nays:	4	Adams, Duncan, Lincoln, Pearce
Excused:	3	Ellis, Hoffman, Taylor
Absent:	0	

AMENDMENT**OFFERED IN THE SENATE****TO: SCS CSSSHB 58(RLS)***none*

1 Page 5, line 20:

2 Delete "\$500,000"

3 Insert "\$400,000"

4 Page 5, line 21:

5 Delete "\$10,000"

6 Insert "\$8,000"

7 Page 5, line 23:

8 Delete "\$1,500,000"

9 Insert "\$1,000,000"

10 Page 5, lines 24 - 31:

11 Delete all material.

12 Insert "life expectancy in years multiplied by \$25,000, whichever is greater, when the
13 damages are awarded for severe permanent physical impairment or severe disfigurement."

14 Page 7, lines 18 - 27:

substitution

15 Delete all material and insert:

16 "(g) Except as provided in (h) of this section, if the fact finder determines that
17 the conduct proven under (h) of this section was motivated by financial gain and the
18 adverse consequences of the conduct were actually known by the defendant or the
19 person responsible for making policy decisions on behalf of the defendant, it may
20 award an amount of punitive damages not to exceed the greatest of

21 (1) four times the amount of compensatory damages awarded to the

1 plaintiff in the action;

2 (2) four times the aggregate amount of financial gain that the
 3 defendant received as a result of the defendant's misconduct; or

4 (3) the sum of \$7,000,000."

5 Page 8, line 1:

6 Delete "\$50,000"

7 Insert "\$200,000"

8 Delete "15"

9 Insert "100"

10 Page 8, lines 2 - 3:

11 Delete all material.

12 Renumber the following paragraphs accordingly.

13 Page 15, line 3:

14 Delete "after"

15 Insert "before"

16 Page 23, line 29, through page 24, line 6:

17 Delete all material.

18 Renumber the following bill sections accordingly.

0-1.S0056\C.13

Ford

4/18/97

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSHIB 58(RLS)

1 Page 5, line 20:

2 Delete "\$500,000"

3 Insert "\$400,000"

4 Page 5, line 21:

5 Delete "\$10,000"

6 Insert "\$8,000"

7 Page 5, line 23:

8 Delete "\$1,500,000"

9 Insert "\$1,000,000"

10 Page 5, lines 24 - 31:

11 Delete all material.

12 Insert "life expectancy in years multiplied by \$25,000, whichever is greater, when the
13 damages are awarded for severe permanent physical impairment or severe disfigurement."

14 Page 7, lines 18 - 27:

15 Delete all material and insert:

16 "(g) Except as provided in (h) of this section, if the fact finder determines that
17 the conduct proven under (b) of this section was motivated by financial gain and the
18 adverse consequences of the conduct were actually known by the defendant or the
19 person responsible for making policy decisions on behalf of the defendant, it may
20 award an amount of punitive damages not to exceed the greatest of

21 (1) four times the amount of compensatory damages awarded to the

0-1.S0056\C.13

- 1 plaintiff in the action;
- 2 (2) four times the aggregate amount of financial gain that the
- 3 defendant received as a result of the defendant's misconduct; or
- 4 (3) the sum of \$7,000,000."

5 Page 8, line 1:

- 6 Delete "\$50,000"
- 7 Insert "\$200,000"
- 8 Delete "15"
- 9 Insert "100"

10 Page 8, lines 2 - 3:

11 Delete all material.

12 Renumber the following paragraphs accordingly.

13 Page 15, line 3:

- 14 Delete "after"
- 15 Insert "before"

16 Page 23, line 29, through page 24, line 6:

17 Delete all material.

18 Renumber the following bill sections accordingly.

This section would be substituted for Section (g):

"Except as provided in (h) of this section or otherwise provided by law, if the fact finder finds by clear and convincing evidence that the wrongful conduct proven under (b) of this section was motivated by financial gain and the wrongful nature of the conduct that caused the injury or damage was previously known by the defendant or the person responsible for making policy decisions on behalf of the defendant for a sufficient period of time before the injury or damage occurred for the defendant to have prevented the injury or damage, it may award an amount of punitive damages not to exceed the greatest of

- (1) four times the amount of compensatory damages awarded to the plaintiff in the action;
- (2) four times the amount of actual financial gain the defendant received or expected to receive as a result of the wrongful conduct; or
- (3) the sum of \$3,000,000.

4.18.97
PML

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58(R S)

- 1 Page 26, line 17:
- 2 Delete "Court System"
- 3 Insert "Judicial Council"

4:38 pm
4-17-97
Annette will TCO
She is accountable
& responsible.

Mike Ford

1. Section 9: Noneconomic damage caps:

WE HAVE OUR CHOICE OF

(1) THE EXISTING LANGUAGE IN THE SENATE VERSION,
INCLUDING THE ITEMIZED LIST OF INJURIES THAT TRIGGER THE
UPPER LIMITS, OR

(2) THE FOLLOWING:

Page 5, line 20-21:

Delete: "\$500,000" AND "10,000".

Insert: "\$400,000" AND "\$8,000".

Page 5, line 23-24:

Delete: "\$1,500,000" AND "\$30,000"

Insert: "\$1,000,000" AND "\$25,000"

Page 5, line 24:

Delete "injured".

Page 5, lines 25-31:

Delete all material and insert:

"damages are awarded for severe permanent physical
impairment or severe disfigurement."

4-8-97 10:30 AM
FOR
BENCH &
BRAIN:
IS THIS
ACCURATE?
JMS.

Note correction

2. Section 10. Punitive damage caps:

Page 7, lines 18-27:

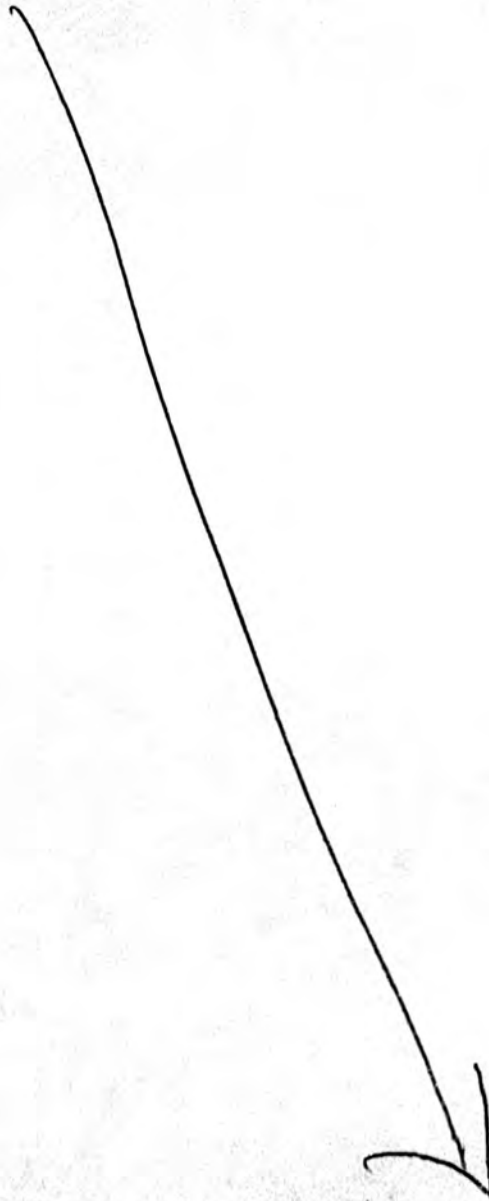
Delete all material and insert:

"(g) Except as provided in (h) of this section, if the fact finder
finds that the conduct proven under (b) of this section was motivated by
financial gain and the adverse consequences of the conduct ~~was~~ actually
known by the defendant or the person responsible for making policy
decisions on behalf of the defendant, it may award an amount of punitive
damages not to exceed the greatest of

were

- (1) four times the amount of compensatory damages awarded to the plaintiff in the action;
- (2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or
- (3) the sum of \$7,000,000."

See



3. ~~PAGE 8~~, line 1:

Following "(1)":

Delete "\$50,000."

Insert "\$200,000."

Following "less than":

Delete "15"

Insert "100"

Page 8, lines 2-3

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

4. Page 15, line 4:

Delete "after"

Insert "before"

DRAFT

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 of a person who was under the age of eight years at the time of the injury, the time period before the person's eighth 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, including a loss of consortium claim, arising out of a single injury or death may not exceed \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater.

(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 \$1,500,000 or the person's life expectancy in years multiplied by \$30,000, whichever is greater, when the injured person, as a result of the injury,

(1) has lost, or has lost the functional use of, one or more limbs;

(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 or totally deaf.

1 (d) At the conclusion of the separate proceeding under (c) of this section, the
2 fact finder shall determine the amount of punitive damages to be awarded, and the
3 court shall enter judgment for that amount.

4 (e) Unless that evidence is relevant to another issue in the case, discovery of
5 evidence that is relevant to the amount of punitive damages to be determined under
6 (c)(3) or (6) of this section may not be conducted until after the fact finder has
7 determined that an award of punitive damages is allowed under (a) and (b) of this
8 section. The court may issue orders as necessary, including directing the parties to
9 have the information relevant to the amount of punitive damages to be determined
10 under (c)(3) or (6) of this section available for production immediately at the close of
11 the initial trial in order to minimize the delay between the initial trial and the separate
12 proceeding to determine the amount of punitive damages.

13 (f) Except as provided in (g) and (h) of this section, an award of punitive
14 damages may not exceed the greater of

15 (1) three times the amount of compensatory damages awarded to the
16 plaintiff in the action; or

17 (2) the sum of \$500,000.

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

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

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

28 (h) Notwithstanding any other provision of law, in an action against an
29 employer to recover damages for an unlawful employment practice prohibited by
30 AS 18.80.220, the amount of punitive damages awarded by the court or jury may not
31 exceed

- 1 (1) \$50,000 if the employer has less than 15 employees in this state;
 2 (2) \$100,000 if the employer has 15 or more but less than 100
 3 employees in this state;
 4 (3) \$300,000 if the employer has 100 or more but less than 200
 5 employees in this state;
 6 (4) \$400,000 if the employer has 200 or more but less than 500
 7 employees in this state; and
 8 (5) \$500,000 if the employer has 500 or more employees in this state.

9 (i) Subsection (h) of this section may not be construed to allow an award of
 10 punitive damages against the state or a person immune under another provision of law.
 11 In (h) of this section, "employees" means persons employed in each of 20 or more
 12 calendar weeks in the current or preceding calendar year.

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

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

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

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

25 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 26 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 27 [AND] person who has been released from liability, or other person responsible for
 28 the damages unless the person was identified as a potentially responsible person,
 29 the person is not a person protected from a civil action under AS 09.10.055, and
 30 the parties had a sufficient opportunity to join that person in the action but chose
 31 not to; in this paragraph, "sufficient opportunity to join" means the person is

0-1.S0056\C.12
Ford
4/18/97

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58(RLS)

1 Page 7, lines 18 - 27:

2 Delete all material and insert:

3 . . . "(g) Except as provided in (h) of this section, if the fact finder determines that
4 the conduct proven under (b) of this section was motivated by financial gain and the
5 adverse consequences of the conduct were actually known by the defendant or the
6 person responsible for making policy decisions on behalf of the defendant, it may
7 award an amount of punitive damages not to exceed the greatest of

8 (1) four times the amount of compensatory damages awarded to the
9 plaintiff in the action;

10 (2) four times the aggregate amount of financial gain that the
11 defendant received as a result of the defendant's misconduct; or

12 (3) the sum of \$7,000,000."

13 Page 8, line 1:

14 Delete "\$50,000"

15 Insert "\$200,000"

16 Delete "15"

17 Insert "100"

18 Page 8, lines 2 - 3:

19 Delete all material.

20 Renumber the following paragraphs accordingly.

21 Page 15, line 3:

0-1.S0056C.12

- 1 Delete "after"
- 2 Insert "before"

1. Section 9: Noneconomic damage caps:

WE HAVE OUR CHOICE OF

(1) THE EXISTING LANGUAGE IN THE SENATE VERSION,
INCLUDING THE ITEMIZED LIST OF INJURIES THAT TRIGGER THE
UPPER LIMITS, OR

(2) THE FOLLOWING:

Page 5, line 20-21:

Delete: "\$500,000" AND "10,000".

Insert: "\$400,000" AND "\$8,000".

Page 5, line 23-24:

Delete: "\$1,500,000" AND "\$30,000"

Insert: "\$1,000,000" AND "\$25,000"

Page 5, line 24:

Delete "injured".

Page 5, lines 25-31:

Delete all material and insert:

"damages are awarded for severe permanent physical
impairment or severe disfigurement."

2. Section 10. Punitive damage caps:

Page 7, lines 18-27:

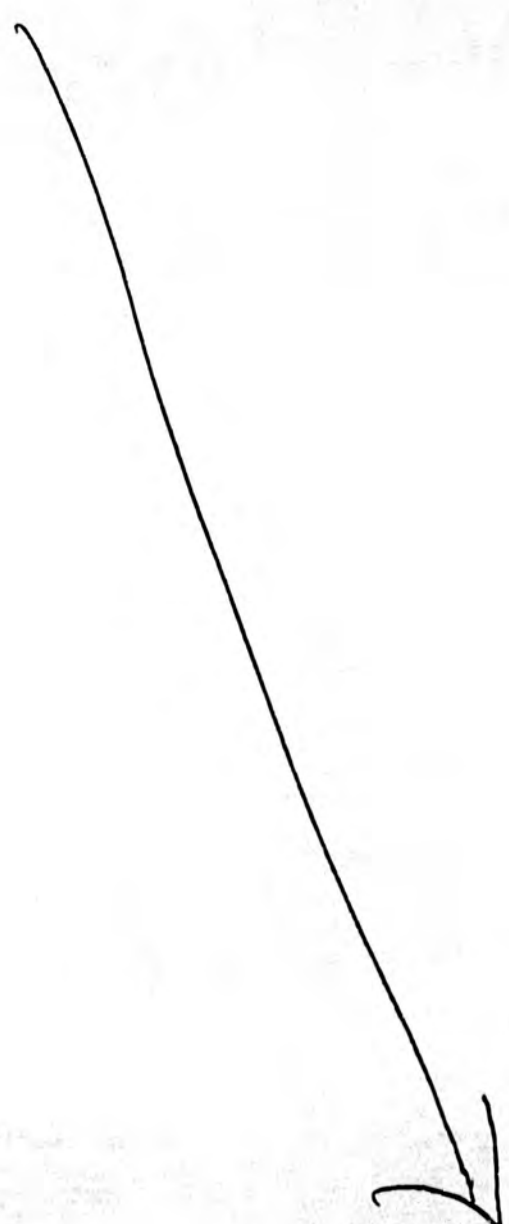
Delete all material and insert:

"(g) Except as provided in (h) of this section, if the fact finder finds that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct was actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

*4-18-97 10:30 AM
FOR
BENCH &
BRAIN:
IS THIS
ACCURATE?
JMS.*

- (1) four times the amount of compensatory damages awarded to the plaintiff in the action;
- (2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or
- (3) the sum of \$7,000,000."

See



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 of a person who was under the age of eight years at the time of the injury, the time period before the person's eighth 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, including a loss of consortium claim, arising out of a single injury or death may not exceed \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater.

(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 \$1,500,000 or the person's life expectancy in years multiplied by \$30,000, whichever is greater, when the injured person, as a result of the injury,

(1) has lost, or has lost the functional use of, one or more limbs;

(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 or totally deaf.

3. ~~Page 8~~, line 1:

Following "(1)":

Delete "\$50,000."

Insert "\$200,000."

Following "less than":

Delete "15"

Insert "100"

Page 8, lines 2-3

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

4. Page 15, line 4:

Delete "after"

Insert "before"

DRAFT

DRAFT

1. Section 9: Noneconomic damage caps:

Page 5, line 20-21:

Delete: "\$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater."

Insert: "\$400,000".

Page 5, line 23-24:

Delete: "\$1,500,000 or the person's life expectancy in years multiplied by \$30,000, whichever is greater"

Insert: "\$1,000,000".

2. Section 10. Punitive damage caps:

Page 7, lines 13-27:

Delete all material and insert:

"(g) Except as provided in (h) of this section, if the fact finder finds that the conduct proven under (b) of this section was motivated by financial gain and the adverse consequences of the conduct ~~was~~ actually known by the defendant or the person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greatest of

(1) four times the amount of compensatory damages awarded to the plaintiff in the action;

(2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct; or

(3) the sum of \$3,000,000."

3. ~~PAGE 8~~, line 1:

Following "(1)":

Delete "\$50,000."

Insert "\$200,000."

Following "less than":

Delete "15"

Insert "100"

Page 8, lines 2-3

DRAFT

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

Page 15, line 4:

Delete "after"

Insert "before"

Alaska State Legislature



Official Business

House Majority Leader

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

MEMORANDUM

DATE: April 16, 1997

TO: Senator Tim Kelly
Senate Rules Chairman

FROM: Representative Brian Porter *Brian Porter*
House Majority Leader

SUBJECT: HB 58 Proposed Resolution Package

This package was determined to be unacceptable in the main, because it's punitive damages section exposed all major state business's to liability based on an unpredictable schedule of their earnings and/or profits and removed the disincentive to settle found in returning a full 50% of these fines to the state. It also left unpredictable and illdefined the criteria and upper level of non-economic damages.

There are other concerns, but these two areas are the principle ingredients of tort reform.

To: Brian

Fm: Jim

March 28, 1997

Re: Tim Kelly Amendments to HB 58

Attachment 6.

1. Even though Tim Kelly received an Aetna amendment on collateral benefits from Jerry Reinwand does not mean that he will pass it out. According to Tim Benintendi, Tim Kelly will accept amendments from anybody, but won't report out without consulting with you. If you strongly oppose it, he probably won't report it out.

2. Sheet 1 attached contains the two amendments you asked me to give Tim Kelly. These deal with Rule 82 actual attorney fees and that there cannot be multiple claimants for noneconomic damages, no matter how many children. Tim Kelly has these.

3. Sheet 2 attached contains the other two amendments you asked me to prepare, but not trouble Tim Kelly with at this time. These deal with including loss of a limb to the \$500,000 cap on noneconomic damages and allowing only for "spouse, children and other dependents" as the only permissible multiple claimants for noneconomic damages.

Tim Benintendi is aware of these two possible amendments, but Tim Kelly is not.

Is it your intent to offer these at Finance or at Rules committee?

4. Tim Kelly will take more than three amendments from you if you wish. Anticipating next week's crunch, I have prepared more amendments, one to a sheet (sheets 3, 4 & 5 attached).

Sheet 3 makes a lawyer strictly and personally liable for Rule 82 actual attorney fees if he filed a frivolous action.

Sheet 4 adopts most of Robin Taylor's punitive damages for wrongful employment practices language, but improves it. [Don't forget to thank Robin for carving out a reasonable exception to the general punitive damages provisions---it seems unfair to impose the same punitive damages measure to personal injuries as well as to wrongful terminations].

5. Sheet 5 eliminates the second tier punitive damages, which is what Pam LaBolle has been pushing for.

6. Sheet 7 goes in if Brian wants it. If the Aetna Amendment goes into the bill, it will put in what Roseberg wanted.

7. Sheet 7 is - CFK & Roseberg (initials)

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TIM KELLY

TO: CSSSHB 58(FIN) am

Amendment 1 The intent is to change Rule 82 to award ACTUAL attorney fees to the prevailing party, and to make the award of such fees mandatory and outside the unfettered discretion of the trial judge.

Rule 82 should be redrafted to read as follows:

Rule 82. Attorney's Fees.

(a) **Award of reasonable actual attorney fees to prevailing party.** Except as agreed to by the parties, the prevailing party in a civil case shall be awarded reasonable actual attorney fees.

(b) **Trial court discretion.** The award of attorney fees shall be mandatory, except that the court may exercise limited discretion in determining if the actual attorney fees expended were reasonable. In determining reasonableness, the court may consider only the following factors:

- (1) the reasonableness of the attorney's hourly rates and the number of hours expended; and
- (2) the reasonableness of the number of attorneys used.

(c) - (f): [here insert the existing Rule 82 subsections (c), (d), (e) and (f)].

Amendment 2 The intent is to make clear that the caps on noneconomic damages (\$300,000 and \$500,000) apply per occurrence, irrespective of the number of claimants.

Page 5, line 8:

Delete "of a person" after the word "claims".

Insert ",irrespective of the number of claimants," after the word "claims".

2

2

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TIM KELLY

TO: CSSSHB 58(FIN) am

Page 5, lines 13-14:

Delete "(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;"

Page 5, line 13:

Insert "(1) has lost, or has lost functional use of, both arms or both legs, or an arm and a leg, or an arm or a leg."

Page 5, line 21:

Insert after "section." a new subsection (d): "(d) For purposes of this section, claims for noneconomic damages asserted by a person under subsection (b) and (c) shall be limited to ~~the injured person and that person's~~ ^{an injured} immediate family. Immediate family shall include only the spouse, children, or other dependents of the injured person."

who are we excluding

Nondependent
Parents
~~Adoptive~~
Siblings

2

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TIM KELLY

TO: CSSSHB 58(FIN) am

Page 25, line 26:

Add a new Section 66. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new subsection to read:

(d) If, at the time attorney fees are awarded, the court determines that the attorney representing a party to a civil action filed a frivolous action on behalf of that party, that attorney shall be strictly and personally liable for the payment of reasonable actual attorney fees incurred in opposing the frivolously filed action. The only discretion the court has in determining whether a frivolous action was filed, will be to consider whether, at the time the action was filed, the facts then known and existing law justified the filing of the action.

See
Eldon's
HB31

4-2-97

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TIM KELLY

TO: CSSSHB 58(FIN) am

Page 25, line 26:

Add a new section 66. AS 18.80 is amended by adding a new section to read:

Sec. 18.80.225. Punitive damages for unlawful employment practices.

(a) Notwithstanding punitive damage provisions contained elsewhere in the Alaska Statutes, in an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the total amount of compensatory and punitive damages awarded by the court or jury may not exceed

(1) \$50,000 if the employer has 15 or more employees, but fewer than 100 employees in Alaska;

(2) \$100,000 if the employer has 100 or more employees, but fewer than 200 employees in Alaska; and

(3) \$200,000 if the employer has more than 200 or more employees, but fewer than 500 employees in Alaska; and

(4) \$300,000 if the employer has 500 or more employees in Alaska.

(b) If the employer has fewer than 15 employees, punitive damages under this section may not exceed \$10,000.

(c) This section may not be construed to allow an award of punitive damages against the state or other immune entities.

Mike —
Forget the
earlier one I
sent you today
Tim

④

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR TIM KELLY

TO: CSSSHB 58(FIN) am

Page 6, lines 2 through 11:

Delete subsection (c) in its entirety, and renumber subsection (d) accordingly.

[The intent is to delete the second tier punitive damages altogether]

5

SEN. KELLY
3-26-97

AMENDMENT # 1

Offered in the SENATE

TO: CSSH 58(Fin)am

Page 8, line 11, is amended as follows:

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

Sec. 09.17.090. Collateral benefits. (a) A claimant in an action for personal injury or death may only recover damages that exceed amount received by the claimant, or that with reasonable probability will be received in the future by the claimant, as compensation for the injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory, except when

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

(2) the collateral source has a right of subrogation under federal, state or contract law;

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

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

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

(b) A person defending a claim may introduce into evidence at trial an amount paid or payable as a benefit to the claimant as a result of the personal injury or death

6

under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health, sickness, disability, accident or income-disability insurance; insurance that provides health benefits or income-disability coverage; and a contract of agreement of a group, organization, partnership, or corporation, or other collateral source, to provide, pay for, or reimburse the cost medical, hospital, dental, or other health care services, disability, or lost wages. However, the evidence of a collateral source described under (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.]**

LIMITATIONS ON CONTINGENT FEES.

The total of all contingent fees for representing all claimants in any liability claim or action shall not exceed the following limits:

- (1) Forty percent (40%) of the first fifty thousand dollars (\$50,000) recovered by the claimant(s);
- (2) Thirty-three and one-third percent (33 1/3%) of the next fifty thousand dollars (\$50,000) recovered by the claimant(s);
- (3) Twenty five percent (25%) of the next five hundred thousand dollars (\$500,000) recovered by the claimant(s);
- (4) Fifteen percent (15%) of any amount by which the recovery by the claimant(s) exceeds six hundred thousand dollars (\$600,000).

DEFINITIONS. for purposes of this section-

- (1) "Contingent fee" includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.
- (2) "Recovery" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Cost of health care incurred by the plaintiff and the attorney' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose

AS 05 is amended by adding a new chapter to read:

**CHAPTER 50. CIVIL LIABILITY FOR COMMERCIAL
RECREATIONAL ACTIVITIES.**

Sec. 05.50.010. ACCEPTANCE OF INHERENT RISKS. Participation in a commercial recreational activity constitutes acceptance of the inherent risks of the commercial recreational activity that are or should be apparent to an ordinarily prudent person.

Sec. 05.50.020. REDUCTION FOR NEGLIGENCE. A person who accepts an inherent risk of a commercial recreational activity as described in AS 05.50.010 is negligent to the extent that the inherent risk causes injury, death, or property damage. In an action seeking to recover damages for injury or death to a person or harm to property resulting from an inherent risk of a commercial recreational activity, compensatory damages shall be reduced by the injured person's negligence as provided under AS 09.17.060.

Sec. 05.50.030. RESPONSIBILITIES OF PARTICIPANTS. A participant in a commercial recreational activity has the responsibility to

- (1) learn about and expressly accept the risks of the activities;
- (2) act within the limits of the person's abilities;
- (3) heed all warnings regarding participation in the commercial recreational activity;
- (4) maintain control of the participant's person, the participant's children, and any equipment, devices, or animals the participant is using;
- (5) refrain from acting in a manner that may cause or contribute to injury of the participant or another person.

Sec. 05.50.040. RESPONSIBILITIES OF OPERATORS OF COMMERCIAL RECREATIONAL ACTIVITIES. A person who operates a business that offers a commercial recreational activity shall

- (1) explain to a participant the
 - (A) fundamental inherent risks of the commercial recreational activity; and
 - (B) skills or equipment required to participate in the commercial recreational activity that are not apparent to an inexperienced participant;
- (2) require that employees who are responsible for assisting participants in the actual performance of a commercial recreational activity have training in basic first aid and cardiopulmonary resuscitation and explain to those employees how to use emergency medical services available in the area;

- (3) maintain recreational equipment and facilities in good repair;
- (4) provide trained and competent personnel; and
- (5) act in a reasonably safe and competent manner.

Sec. 05.50.050. INTERACTION WITH OTHER LAWS. This chapter does not affect the immunity of an owner of unimproved land under AS 09.65.200 or of a ski area operator under AS 05.45.

Sec. 05.50.100. DEFINITIONS. In this chapter,

- (1) "children" means persons under 18 years of age;
- (2) "commercial recreational activity" means a recreational activity for which the participants pay compensation;
- (3) "recreational activity" means an outdoor activity undertaken for the purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

SENATE FINANCE
COMMITTEE

0-LS0056LA.13

Amendment Number: 2
Bill Number: CSSSHB 58(FIN)am
Sponsor: Torgerson Date: 4-3-97

Ford
4/2/97

Logged In By: DJ

AMENDMENT

OFFERED IN THE SENATE

Punitive

BY SENATOR TORGERSON

TO: CSSSHB 58(FIN) am

1 Page 6, line 13:

2 Following "award":

3 Insert "or the amount of the award that is equivalent to 100 percent of the costs
4 incurred by the state to adjudicate and litigate the action, whichever is lesser."

5 Following "state.":

6 Insert "For purposes of determining the costs incurred by the state to adjudicate and
7 litigate the action, the administrative director of the court system shall prepare a fiscal note
8 for each action in which punitive damage is awarded."

9 Page 6, line 15, following "damages.":

10 Insert "In this subsection, "costs incurred by the state to adjudicate and litigate"
11 includes the cost of providing a judge, jury, clerk, or any other administrative support
12 required to litigate the civil action and, if applicable, reasonable litigation costs and the
13 reasonable cost of attorneys paid by the state."

NO
1. calculation problem:
2. bring as is would be a lower & multiply object.
3. Obj. is

This tries to water down punitive that go the state. It defeats the purpose of having 1/2 of those going to the state, and would create a very large fiscal note. J

SENATE FINANCE
COMMITTEE

Amendment Number: 3 0-LS0056/LA.5
Bill Number: CSSSHB 58(FW)am Ford
Sponsor: Adams Date: 4-3-97 3/24/97
Logged In By: PJ Adams

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

- 1 Page 17, line 5:
2 Delete "\$500,000"
3 Insert "\$5,000,000"

ER
Dro
Jus'

Re: Emergency Room
Physicians:
Tries to raise
\$500K insurance to
\$5M! if passed,
no emergency room
medical service
anywhere!

SENATE FINANCE
COMMITTEE 0-LS0056LA.41
Amendment Number: 5 Ford
Bill Number: HB 58 4/7/97
Sponsor: Donley Date: 4/8/97
Logged In By: J. Sottari

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSSHB 58(FIN) am

- 1 Page 16, line 13, through page 17, line 15:
- 2 Delete all material.
- 3 Renumber the following bill sections accordingly.

Deletes
Emergency
Section
A

Jackson &
Powers

1. Fed reg. to
have E.P.A.
2. cost approx.
\$100,000 - contract
fee

Wasp. printing house
amc.

SENATE FINANCE

COMMITTEE 0-LS0056/LA.44

Amendment Number: 6 Ford

Bill Number: HB 58 4/7/97

Sponsor: Donley Date: 4/8/97

Logged In By: Koltari

AMENDMENT

OFFERED IN THE SENATE

TO: CSSH 58(FIN) am

BY SENATOR DONLEY

Emergency room
physician
sectionbefore
"emergency room"
insert

1 Page 16, line 24:

2 Following "must":

3 Insert "(1)"

4 Delete ","

5 Insert "; (2) consist of a sign at least four inches high and two inches wide, with print
 6 at least two inches high; (3) appear in all printed documents relating to emergency room
 7 services provided by the hospital; (4) be" delete

8 Page 16, line 25:

9 Delete ", and must"

10 Insert "; and (5)"

This attempt to make
 the Notice requirements
 in a sign 4' x 2' with
 2" print. The present
 bill requires
 adequate notice.

11 Page 16, line 27, before "Notice":

12 Insert ^{NOTICE} "Warning to Hospital Users and"

13 Page 16, line 28, before "The":

14 Insert "(Name of Hospital) may not be responsible for the actions of emergency room
 15 physicians in (Name of Hospital's) emergency room."

16 Page 17, line 5:

17 Delete "\$500,000"

18 Insert "\$5,000,000"

no.
 should be
 in amount
 common
 Deleted
 16, 17, 18

Refers to AS 21.36.125 Insurance Co's unfair claim settlement practices cause of action created

SENATE FINANCE
COMMITTEE 0-LS0056LA.43
Amendment Number: 7 Ford
Bill Number: HR 58 4/8/97
Sponsor: Donley Date: 4/8/97
Logged In By: 1/10/97

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

BAD FAITH
trouble damages assign rights & harass in court
BY SENATOR DONLEY

Post-It* Fax Note	7671	Date	1.9.97	# of pages	2
To	Jim TINKS	From	JIM SORANT		
Co./Dept.	USAA	Co.	Rep. PORTER		
Phone #		Phone #	907-465-3727		
Fax #	916-442-1328	Fax #	907-465-3834		

Page 19, following line 26:

Insert a new bill section to read:

** Sec. 41. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.128. Civil action for claim settlement practices. (a) A person who alleges a violation of AS 21.36.125 or a violation of a trade practice or claim settlement regulation adopted by the director may bring a civil action for damages. Notwithstanding any other provision of law, a person bringing an action under this section may not be required to prove that the violation occurred with a frequency that indicates a general business practice.

(b) Before filing a civil action under (a) of this section, the person filing the action shall give at least 60 days written notice to the person who committed the violation. Notice required under this subsection must include

- (1) a copy of the statute or regulation that the person is claimed to have violated;
- (2) the facts and circumstances giving rise to the violation;
- (3) the name of any individual involved in the violation;
- (4) reference to any policy that is relevant to the violation; this paragraph does not apply if the person bringing the civil action is a third party claimant unless the insurer has provided the person bringing the civil action with a copy of the policy; and
- (5) a statement that the notice is given in compliance with this subsection.

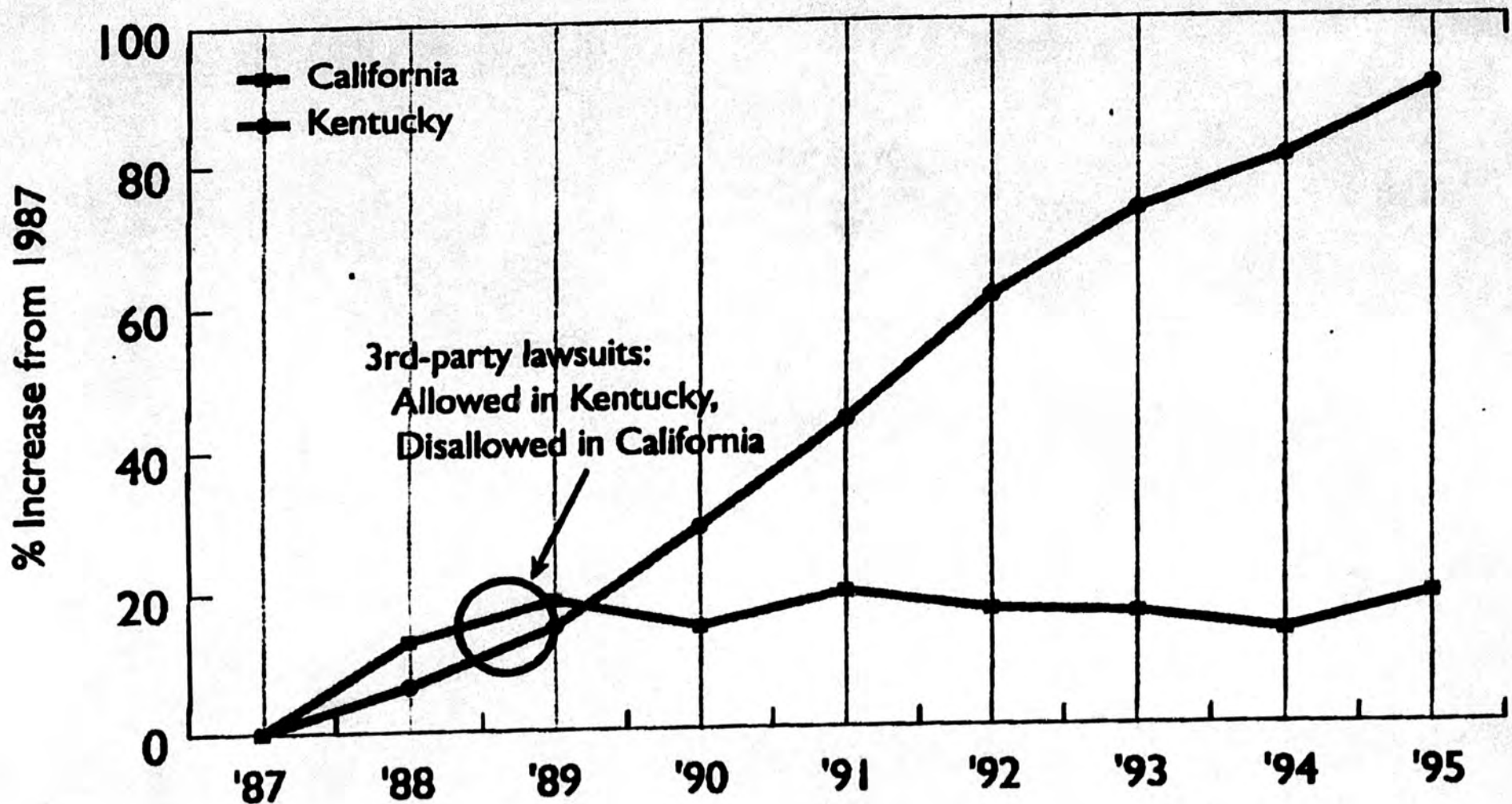
(c) If, within 60 days after notice required under (b) of this section is received by the insurer, the insurer pays the damages claimed by the person bringing the action or corrects the settlement practice giving rise to the action, a person may not bring

SEE CALIF/KENTUCKY CHART

Reg. was w/ "bad faith" trouble damages - attempts - done cause further
Dep. Reforan Comp bond

CALIFORNIA vs. KENTUCKY

Average Personal Auto Liability Premium Trends



Source: National Association of Insurance Commissioners Personal Auto Average Premium Report

SENATE FINANCE
COMMITTEE

0-LS0056\LA.46
Ford/Chenoweth
4/11/97

Amendment Number: 8
Bill Number: CSSSHB 58 (Fin) am
Sponsor: Dsnley Date: 4-11-97

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

1 Page 5, line 31:

2 Following "awarded":

3 Insert ","

4 Following "\$300,000":

5 Insert ", or 25 percent of the defendant's net worth"

6 Page 6, line 1:

7 Delete "greater"

8 Insert "greatest"

9 Page 6, line 3, following "awarded":

10 Insert ","

11 Page 6, line 4:

12 Following "\$600,000":

13 Insert ", or 35 percent of the defendant's net worth"

14 Delete "greater"

15 Insert "greatest"

16 Page 6, following line 15:

17 Insert a new subsection to read:

18 "(e) In (b) and (c) of this section, "net worth" is the average net worth of the
19 defendant for the three calendar years immediately preceding the defendant's conduct
20 on which the action to recover damages and the punitive damage award is made
21 except that, if the defendant is an entity that was not in existence for at least three

SENATE FINANCE
COMMITTEE

LA-1

Amendment Number: 9

Amendment Number: 14358

Sponsor: _____ Date: _____

Logged In By: B. Adams

(K)
CS for SS HB 58(FIN) am

On page 3, line 9 through page 4 line 9:

Delete all material.

Renumber accordingly.

*Substitute of
Response*

*Delete of
Substitute
Response*

SENATE FINANCE
COMMITTEE

LA-2

Amendment Number: 10

Amendment Number: H

Sponsor: _____ Date: _____

Logged In By: By Adams

(6)
CS for SS HB 58(FIN) am

On page 3, line 25:

- following "(A)" delete "prolonged" - ?
following the word "to", insert "a"

following the word "hazardous" insert the word "substance" and
delete the word "waste"

Broadens the exception
to the statute of repose
from "hazardous waste"
to "hazardous
substance". It could
include ~~the~~ stuff we
keep under the
kitchen sink. Too
Broad - more
suits.

J

SENATE FINANCE
COMMITTEE

LA-3

Amendment Number: 11

Amendment Bill Number:

Sponsor: Date:

Logged In By: By Adams

(B)
CS for SS HB 58(FIN) am

On page 5, lines 1-21:

delete all material

renumber the following sections accordingly

Delete
non econ
damage caps.

SENATE FINANCE
COMMITTEE

Amendment Number: 12

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

LA-4

CS for SS HB 58(FIN) am

By Adams

On page 6, line 6, following the word "gain":

Delete "and"

Insert "or"

Allows the higher cap
on punitive damages
just for being engaged
in a "commercial
activity motivated by financial
gain" !

SENATE FINANCE
COMMITTEE

LA-6

Amendment Number: 14

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

By Adams

16
CS for SS HB 58(FIN) am

On page 10, delete lines 28 and 29.

On page 10, line 30 delete (2).

On page 10, line 31, following the word "issue" delete "; and" insert "."

On page 11, delete lines 1-4.

*Expert witnesses in
professional malpractice
cases: Doesn't require
them to be licensed in
the profession.
i.e., allows
"hired guns"*

(K)

SENATE FINANCE
COMMITTEE

Amendment Number: 15

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

LB-7

CS for SS HB 58(FIN) am

By Adams

On page 9, line 11 through page 10, line 14:
Delete all material.

Renumber sections accordingly.

On page 20, lines 18-27:
Delete all material.

Renumber sections accordingly.

On page 24, lines 20-24:
Delete all material.

Renumber sections accordingly.

~~empty chair~~
~~deep pocket~~

3rd party exp c
- 100% or more

all other fault
Deletes allocation
of fault

On page 11, line 6

AMENDMENT 16

AS. 09.30.065 is amended to read:

After "Section .09.30.065. Offers of Judgment " Insert:

By: Adams
SENATE FINANCE
COMMITTEE

Amendment Number: _____

Bill Number: _____

Sponsor: _____ Date: _____

Logged In By: _____

a. Prior to Commencement of an Action: Upon receipt of a written offer of final settlement, prior to filing a complaint, in the form of an Offer of Judgment, pursuant to Alaska Civil Rule 68, an insurance company shall make payment of all monetary amounts, if any, due the offeror within 90 days of receipt of the written offer. If the judgment entered on the claim to which the payment was made under this section is at least 10% greater than the insurance company payment, the insurance company shall pay all actual costs and the reasonable actual attorneys incurred by the offeror from the date the offer was made through judgment or the termination of the action. This section in addition to any other remedy held by an insured or offeror specified in statute or common law.

b. After Commencement of an Action:

filed

This requires
an insurance money
company to pay all
in advance, to all
to create a hit
to watch the insurer
with.

Brian,
This is exactly
what offer of judgment
provision does - later
mhe

SENATE FINANCE
COMMITTEE

Amendment Number: 17

Bill Number: _____

Sponsor: _____ Date: _____

Logged In By: _____

Amendment

W/P
CS for SS HB 58(FIN) am

By Adams

On page 11, line 16:

following "is" delete "at least five, less", insert "not more"

On page 11, line 17: following the word "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"

Delete all material contained on page 11, lines 23 through page 12 line 18.

And insert on page 11, line 23:

" (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 sections accordingly.

the
put back
interest rate
sanction from
existing law.
It is no
different to
frivolous
litigation.

(10)

SENATE FINANCE
COMMITTEE

AMENDMENT #

Amendment Number: 18
Bill Number: _____
Sponsor: _____ Date: _____
Logged In By: _____

OFFERED BY SENATOR ADAMS

Page 25, delete lines 5 thru 20, replace with the following & renumber accordingly

A.S. 09 is amended to add a new chapter to read:
CHAPTER 42. ALTERNATIVE DISPUTE RESOLUTION.

Sec. 09.42.010. PURPOSE. The legislature finds that providing a formalized program of alternative dispute resolution procedures within the existing civil litigation system can promote the timely and efficient resolution of many civil disputes. To that end, the legislature enacts AS 09.42.010 - 09.42.050 to provide for an initial pilot program of alternative dispute resolution of certain civil cases.

Sec. 09.42.020. PILOT PROGRAM FOR ALTERNATIVE DISPUTE RESOLUTION. (a) The supreme court shall provide for a pilot program of no less than five years' duration for the submission of civil cases filed in the superior court, third judicial district, to alternative dispute resolution procedures. The program shall operate in accordance with the provisions of AS 09.42.010 - 09.42.050.

(b) The following types of cases shall not be included in the pilot program:

- (1) divorce and dissolution;
- (2) child custody and visitation;
- (3) other children's matters;
- (4) probate;
- (5) cases where no answer is filed.

Sec. 09.42.030. STRUCTURE OF PILOT PROGRAM.

(a) The program established under AS 09.42.020 shall provide criteria for the screening of covered cases to determine if they are appropriate for referral to alternative dispute resolution. The criteria shall be constructed so that at least 50 percent of the covered cases filed in a calendar year are referred.

(b) The program shall provide for a list of qualified persons to whom cases may be referred and a schedule of the fees charged by these individuals. The court shall establish minimum qualifications for those persons. Under the program, parties shall be permitted by mutual agreement to choose a person from the panel or to choose a person not on the panel to conduct the alternative dispute resolution procedure. In the event that the parties cannot agree, the person to conduct the procedure shall be appointed from the panel by the trial court.

(c) The program shall provide that the parties to an alternative dispute resolution procedure shall share the costs of the procedure equally. A party found indigent under guidelines established by the supreme court shall be eligible to have that

task
forces
for
bill

party's share of the costs borne at public expense. The costs borne at public expense on behalf of an indigent party shall constitute a lien on any recovery by that party to be paid first out of the recovery.

(d) The program shall provide procedures and rules promoting the timely referral to and conclusion of the alternative dispute resolution procedure. The time from the filing of defendant's answer to the conclusion of the alternative dispute resolution procedure shall not exceed 100 days unless permitted by the trial court in exceptional cases and for good cause shown. Unless a longer period is agreed to by mutual consent of the parties, the alternative dispute resolution session shall be limited to no more than 12 hours.

(e) A person appointed to conduct an alternative dispute resolution procedure under the program established pursuant to AS 09.42.010 - 09.42.050 shall have judicial immunity to the same extent as a judge and shall abide by applicable rules of confidentiality established by the supreme court.

Sec. 09.42.040. EVALUATION OF PILOT PROGRAM. (a) The Alaska Judicial Council shall evaluate the efficacy of the program established pursuant to AS 09.42.010 - 09.42.050 annually. The evaluation shall address factors such as the speed with which cases are resolved, the satisfaction of the litigants, the expenditure of court resources, and the expenditure of litigant resources.

(b) The council shall work with the court system to create a system for efficient collection of information needed to evaluate the program. The council shall report the results of its evaluation to the legislature each year by March 31.

Sec. 09.42.050. DEFINITION. As used in AS 09.42.010 - 09.42.050, "alternative dispute resolution procedure" includes mediation and early neutral evaluation.

- Sec. 33. AS 09.42, as enacted by sec. 11 of this Act, has the effect of amending Alaska Rule of Civil Procedure 100 by making the mediation process mandatory for certain civil cases in the superior court, third judicial district, and by expanding the scope of the rule to include other forms of alternative dispute resolution in addition to mediation.

SENATE FINANCE
COMMITTEE

0-LS0056\LA.12

Amendment Number: 1

Ford

Bill Number: CSSSHB 58 (FIN) am

4/2/97

Sponsor: Torgerson Date: 4-3-97

Logged in By: PJ

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSSHB 58(FIN) am

1 Page 1, following line 7:

2 Insert a new paragraph to read:

3 "(1) ensure that this Act does not apply to or in any way have an effect on
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have any
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);" *or any other*
Federal Admiralty petition now or in the future.

7 Renumber the following paragraphs accordingly.

SENATE FINANCE

COMMITTEE

0-LS0056\LA.13

Amendment Number: 2

Ford

Bill Number: CSSSHB 58(FIN)am

4/2/97

Sponsor: Torgerson Date: 4-3-97Logged In By: DJA M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSSHB 58(FIN) am

1 Page 6, line 13:

2 Following "award":

3 Insert "or the amount of the award that is equivalent to 100 percent of the costs
4 incurred by the state to adjudicate and litigate the action, whichever is lesser,"

5 Following "state.":

6 Insert "For purposes of determining the costs incurred by the state to adjudicate and
7 litigate the action, the administrative director of the court system shall prepare a fiscal note
8 for each action in which punitive damage is awarded."

9 Page 6, line 15, following "damages.":

10 Insert "In this subsection, "costs incurred by the state to adjudicate and litigate"
11 includes the cost of providing a judge, jury, clerk, or any other administrative support
12 required to litigate the civil action and, if applicable, reasonable litigation costs and the
13 reasonable cost of attorneys paid by the state."

SENATE FINANCE
COMMITTEE

Amendment Number: 3 0-LS0056\LA.5
Bill Number: CSSSHB 58(FW)am Ford
Sponsor: Adams Date: 4-3-97 3/24/97
Logged In By: PJ Adams

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

- 1 Page 17, line 5:
- 2 Delete "\$500,000"
- 3 Insert "\$5,000,000"

SENATE FINANCE
COMMITTEE

0-LS0056\LA.11

Amendment Number: 4

Ford

Bill Number: CSSSHB 58 (FIN) am

3/31/97

Sponsor: _____ Date: 4-7-97

Logged In By: Pl. Spnd.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR MACKIE

TO: CSSSHB 58(FIN) am

1 Page 1, following line 7:

2 Insert a new paragraph to read:

3 "(1) ensure that this Act does not apply to or in any way have an effect on
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Renumber the following paragraphs accordingly.

SENATE FINANCE
COMMITTEE 0-LS0056LA.41
Amendment Number: 5 Ford
Bill Number: HB 58 4/7/97
Sponsor: Donley Date: 4/8/97
Logged In By: J. Sottani

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSH 58(FIN) am

- 1 Page 16, line 13, through page 17, line 15:
- 2 Delete all material.
- 3 Renumber the following bill sections accordingly.

*Deletes
Emergency
Section*

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSSHB 58(FIN) am

*Emergency
Room
Section*

1 Page 16, line 24:

2 Following "must":

3 Insert "(1)"

4 Delete ","

5 Insert "; (2) consist of a sign at least four *feet* inches high and two *feet* inches wide, with print
6 at least two inches high; (3) ~~appear in all printed documents relating to emergency room~~
7 ~~services provided by the hospital; (4) be~~

8 Page 16, line 25:

9 Delete ", and must"

10 Insert "; and (5)"

11 Page 16, line 27, before "Notice":

12 Insert *Notice* ~~Warning~~ to Hospital Users and"

13 Page 16, line 28, before "The":

14 Insert "(Name of Hospital) may not be responsible for the actions of emergency room
15 physicians in (Name of Hospital's) emergency room."

16 Page 17, line 5:

17 Delete "\$500,000"

18 Insert "\$5,000,000"

refers to AS 21.36.125, CO Insurance claim settlement practices of New Action created

SENATE FINANCE

COMMITTEE 0-LS0056/LA.43

Amendment Number: 7 Ford

Bill Number: HR 58 4/8/97

Sponsor: Donley Date: 4/8/97

Logged In By: Moltani

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSSHB 58(FIN) am

Post-It* Fax Note	7671	Date	1.9.97	# of pages	2
To	Jim Tines	From	Jim Sourant		
Co./Dept.	ISAA	Co.	Rep. Porter		
Phone #		Phone #	907-465-3727		
Fax #	916-442-1328	Fax #	907-465-3834		

1 Page 19, following line 26:

2 Insert a new bill section to read:

3 **** Sec. 41. AS 21.36 is amended by adding a new section to read:**

4 **Sec. 21.36.128. Civil action for claim settlement practices.** (a) A person
 5 who alleges a violation of AS 21.36.125 or a violation of a trade practice or claim
 6 settlement regulation adopted by the director may bring a civil action for damages.
 7 Notwithstanding any other provision of law, a person bringing an action under this
 8 section may not be required to prove that the violation occurred with a frequency that
 9 indicates a general business practice.

10 (b) Before filing a civil action under (a) of this section, the person filing the
 11 action shall give at least 60 days written notice to the person who committed the
 12 violation. Notice required under this subsection must include

13 (1) a copy of the statute or regulation that the person is claimed to
 14 have violated;

15 (2) the facts and circumstances giving rise to the violation;

16 (3) the name of any individual involved in the violation;

17 (4) reference to any policy that is relevant to the violation; this
 18 paragraph does not apply if the person bringing the civil action is a third party
 19 claimant unless the insurer has provided the person bringing the civil action with a
 20 copy of the policy; and

21 (5) a statement that the notice is given in compliance with this
 22 subsection.

23 (c) If, within 60 days after notice required under (b) of this section is received
 24 by the insurer, the insurer pays the damages claimed by the person bringing the action
 25 or corrects the settlement practice giving rise to the action, a person may not bring

1 an action under (a) of this section.

2 (d) If an insurer receives a notice described under (b) of this section or settles
3 an alleged violation as provided under (c) of this section, the insurer shall provide a
4 copy of the notice to the director or notify the director of the settlement within 30
5 days after receiving the notice or settling the matter.

6 (e) Upon mailing or delivering the notice required under (b) of this section,
7 the applicable time limit for commencing an action under (a) of this section shall be
8 tolled for 65 days.

9 (f) If the person filing an action under (a) of this section is a prevailing party,
10 the person may recover

11 (1) costs and attorney fees as allowed under the Alaska Rules of Civil
12 Procedure; and

13 (2) damages that are foreseeable as a result of the violation, including
14 damages in excess of applicable insurance policy limits.

15 (g) Notwithstanding any other provision of law, a person filing an action
16 under (a) of this section may recover punitive damages if the act or omission giving
17 rise to the violation is

18 (1) wilful, wanton, or malicious; or

19 (2) in reckless disregard of the rights of the person filing the civil
20 action.

21 (h) The rights provided under this section are in addition to other rights
22 provided by law."

23 Renumber the following bill sections accordingly.

SENATE FINANCE
COMMITTEE

LA-1

Amendment Number: 9

Amendment Bill Number: 11358

Sponsor: _____ Date: _____

Logged In By: Adams

CS for SS HB 58(FIN) am

On page 3, line 9 through page 4 line 9:

Delete all material.

Renumber accordingly.

SENATE FINANCE
COMMITTEE

LA-2

Amendment Number: 10

Amendment Number: 11

Sponsor: _____ Date: _____

Logged In By: By Adams

CS for SS HB 58(FIN) am

On page 3, line 25:

- following "(A)" delete "prolonged" ~ ?
following the word "to", insert "a"

following the word "hazardous" insert the word "substance" and
delete the word "waste"

SENATE FINANCE
COMMITTEE

LA-3

Amendment Number: 11

Amendment Bill Number:

Sponsor: Date:

Logged In By: By Adams

CS for SS HB 58(FIN) am

On page 5, lines 1-21:

delete all material

renumber the following sections accordingly

SENATE FINANCE
COMMITTEE

Amendment Number: 12

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

LA-4

CS for SS HB 58(FIN) am

By Adams

On page 6, line 6, following the word "gain":

Delete "and"

Insert "or"

SENATE FINANCE
COMMITTEE

Amendment Number: 13

Bill Number: _____

Amendment: _____ Date: _____

Sponsor: _____

Logged In By: _____

By Adams

CS for SS HB 58(FIN) am

Page 8, Line 11, through page 9, line 10:
Delete entire section.

Renumber following sections accordingly.

SENATE FINANCE
COMMITTEE

LA-6

Amendment Number: 14

Bill Number: _____

Amendment
Sponsor: _____ Date: _____

Logged In By: _____

By Adams

CS for SS HB 58(FIN) am

On page 10, delete lines 28 and 29.

On page 10, line 30 delete (2).

On page 10, line 31, following the word "issue" delete "; and" insert "."

On page 11, delete lines 1-4.

SENATE FINANCE
COMMITTEE

Amendment Number: 15

Bill Number: _____

Arne ~~Sponson~~ _____ Date: _____

Logged In By: _____

LA-1

CS for SS HB 58(FIN) am

By Adams

On page 9, line 11 through page 10, line 14:
Delete all material.

Re-number sections accordingly.

On page 20, lines 18-27:
Delete all material.

Re-number sections accordingly.

On page 24, lines 20-24:
Delete all material.

Re-number sections accordingly.

On page 11, line 6

AMENDMENT 16

AS. 09.30.065 is amended to read:

After " Section .09.30.065. Offers of Judgment " Insert:

By: Adams
SENATE FINANCE
COMMITTEE

Amendment Number: _____

Bill Number: _____

Sponsor: _____ Date: _____

Logged In By: _____

a. Prior to Commencement of an Action: Upon receipt of a written offer of final settlement, prior to filing a complaint, in the form of an Offer of Judgment, pursuant to Alaska Civil Rule 68, an insurance company shall make payment of all monetary amounts, if any, due the offeror within 90 days of receipt of the written offer. If the judgment entered on the claim to which the payment was made under this section is at least 10% greater than the insurance company payment, the insurance company shall pay all actual costs and the reasonable actual attorneys incurred by the offeror from the date the offer was made through judgment or the termination of the action. This section in addition to any other remedy held by an insured or offeror specified in statute or common law.

b. After Commencement of an Action:

SENATE FINANCE
COMMITTEE

Amendment Number: 17

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

CS for SS HB 58(FIN) am

By Adams

On page 11, line 16:

following "is" delete "at least five, less", insert "not more"

On page 11, line 17: following the word "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"

Delete all material contained on page 11, lines 23 through page 12 line 18.

And insert on page 11, line 23:

" (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 sections accordingly.

AMENDMENT #

SENATE FINANCE
COMMITTEE
Amendment Number: 18
Bill Number: _____
Sponsor: _____ Date: _____
Logged In By: _____

OFFERED BY SENATOR ADAMS

Page 25, delete lines 5 thru 20, replace with the following & renumber accordingly

A.S. 09 is amended to add a new chapter to read:

CHAPTER 42. ALTERNATIVE DISPUTE RESOLUTION.

Sec. 09.42.010. PURPOSE. The legislature finds that providing a formalized program of alternative dispute resolution procedures within the existing civil litigation system can promote the timely and efficient resolution of many civil disputes. To that end, the legislature enacts AS 09.42.010 - 09.42.050 to provide for an initial pilot program of alternative dispute resolution of certain civil cases.

Sec. 09.42.020. PILOT PROGRAM FOR ALTERNATIVE DISPUTE RESOLUTION. (a) The supreme court shall provide for a pilot program of no less than five years' duration for the submission of civil cases filed in the superior court, third judicial district, to alternative dispute resolution procedures. The program shall operate in accordance with the provisions of AS 09.42.010 - 09.42.050.

(b) The following types of cases shall not be included in the pilot program:

- (1) divorce and dissolution;
- (2) child custody and visitation;
- (3) other children's matters;
- (4) probate;
- (5) cases where no answer is filed.

Sec. 09.42.030. STRUCTURE OF PILOT PROGRAM.

(a) The program established under AS 09.42.020 shall provide criteria for the screening of covered cases to determine if they are appropriate for referral to alternative dispute resolution. The criteria shall be constructed so that at least 50 percent of the covered cases filed in a calendar year are referred.

(b) The program shall provide for a list of qualified persons to whom cases may be referred and a schedule of the fees charged by these individuals. The court shall establish minimum qualifications for those persons. Under the program, parties shall be permitted by mutual agreement to choose a person from the panel or to choose a person not on the panel to conduct the alternative dispute resolution procedure. In the event that the parties cannot agree, the person to conduct the procedure shall be appointed from the panel by the trial court.

(c) The program shall provide that the parties to an alternative dispute resolution procedure shall share the costs of the procedure equally. A party found indigent under guidelines established by the supreme court shall be eligible to have that

party's share of the costs borne at public expense. The costs borne at public expense on behalf of an indigent party shall constitute a lien on any recovery by that party to be paid first out of the recovery.

(d) The program shall provide procedures and rules promoting the timely referral to and conclusion of the alternative dispute resolution procedure. The time from the filing of defendant's answer to the conclusion of the alternative dispute resolution procedure shall not exceed 100 days unless permitted by the trial court in exceptional cases and for good cause shown. Unless a longer period is agreed to by mutual consent of the parties, the alternative dispute resolution session shall be limited to no more than 12 hours.

(e) A person appointed to conduct an alternative dispute resolution procedure under the program established pursuant to AS 09.42.010 - 09.42.050 shall have judicial immunity to the same extent as a judge and shall abide by applicable rules of confidentiality established by the supreme court.

Sec. 09.42.040. EVALUATION OF PILOT PROGRAM. (a) The Alaska Judicial Council shall evaluate the efficacy of the program established pursuant to AS 09.42.010 - 09.42.050 annually. The evaluation shall address factors such as the speed with which cases are resolved, the satisfaction of the litigants, the expenditure of court resources, and the expenditure of litigant resources.

(b) The council shall work with the court system to create a system for efficient collection of information needed to evaluate the program. The council shall report the results of its evaluation to the legislature each year by March 31.

Sec. 09.42.050. DEFINITION. As used in AS 09.42.010 - 09.42.050, "alternative dispute resolution procedure" includes mediation and early neutral evaluation.

- * Sec. 33. AS 09.42, as enacted by sec. 11 of this Act, has the effect of amending Alaska Rule of Civil Procedure 100 by making the mediation process mandatory for certain civil cases in the superior court, third judicial district, and by expanding the scope of the rule to include other forms of alternative dispute resolution in addition to mediation.

0-LS0056LA.40

Ford

4/4/97

Rep. Porter

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

1 Page ²1, following line ²⁶7:

2 Insert a new paragraph to read:

3 ~~"(1) ensure that this Act does not apply to or in any way have an effect on~~
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Renumber the following paragraphs accordingly.

LEGAL SERVICES

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

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

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

MEMORANDUM

March 31, 1997

SUBJECT: Exxon Valdez litigation - (CSSSHB 58(FIN) am)

TO: Senator Jerry Mackie
Attn: Dave

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if the provisions in the above referenced bill would apply to In Re Exxon Valdez, A89-0095.Civ (D. Alaska), the civil litigation brought in federal court resulting from the Exxon Valdez oil spill. As explained in this memo, the provisions of the bill should not apply to this lawsuit.

Assuming that CSSSHB 58(FIN) am becomes law, under Sec. 64 the provisions of the Act will not apply to civil actions already filed or accrued, such as the In Re Exxon Valdez litigation. In addition to the bill itself, under AS 01.10.090 a statute is not retroactive unless expressly declared to be retroactive. Finally, there are constitutional due process problems if the bill were applied to existing civil actions. See 2 Sutherland Statutory Construction, Sec. 41.03 (4th Ed).

If you have further questions please contact me.

MFF:glc
97-216.glc

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR MACKIE

TO: CSSSHB 58(FIN) am

1 Page 1, following line 7:

2 Insert a new paragraph to read:

3 "(1) ensure that this Act does not apply to or in any way have an effect on
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Renumber the following paragraphs accordingly.

AMENDMENT #1

OFFERED IN THE SENATE

TO: SCS CSSSHB 58()(Draft 0-LS0056/Z, Dated 4/14/97)

- 1 Page 4, line 4:
2 Delete "fraudulent"
- 3 Page 4, line 15:
4 Delete "the minor or"
- 5 Page 8, line 29, following "responsible person":
6 Insert ", the person is not a person protected from a civil action under
7 AS 09.10.055,"
- 8 Page 8, line 31, through page 9, line 1:
9 Delete "is not a person protected from a civil action under AS 09.10.055 and"
- 10 Page 10, lines 14 - 16:
11 Delete all material and insert:
12 "(b) The provisions of (a) of this section do not apply if the state has not
13 recognized a board that ~~could certify~~ ^{has certified} the witness in the particular field or matter at
14 issue."
- 15 Page 18, line 10:
16 Delete "defending"
17 Insert "or owed by all"
- 18 Page 25, line 31:
19 Delete "a pilot"

1

Insert "an"

~~Adopted~~
4-1-14

0-LS0056Z.3
Ford
4/15/97

#2

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056Z, Dated 4/14/97)

- 1 Page 23, line 2:
- 2 Delete "cases"
- 3 Insert "a civil action for personal injury or property damage"
- 4 Page 23, line 31, following "action":
- 5 Insert "involving personal injury or property damage"
- 6 Page 24, line 10, following "However":
- 7 Insert "in a civil action for personal injury or property damage."
- 8 Page 24, line 17:
- 9 Delete "Unless"
- 10 Insert "In a civil action for personal injury or property damage, unless"

Adopted

Chris Christiansen

*pg 24 { 545
546*

*Take out "exceptional cases" in
2 places. Only "for good cause
shown"*

AMENDMENT

#3

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056Z, Dated 4/14/97)

1 Page 8, line 28:

2 Delete "to each claimant"

3 Page 9, line 4:

4 Delete "or"

5 Insert "and"

Adopted

DUNCANS

AMENDMENT NO. -- "STANDARD FOR TIER 2 PUNITIVE DAMAGES"

OFFERED IN SENATE RULES COMMITTEE

BY:

TO: SCS CSSSHB 58() (Version Z)

HS

Page 7, line 21:

Delete "(1)"

Page 7, line 22:

Delete "; and"

Insert "."

Page 7, lines 23 - 27:

Delete all material

This would allow
the higher punitive cap
just for being in
"a commercial
activity motivated
by financial gain"
Alone.

AMENDMENT NO. -- "PUNITIVE DAMAGES IN EMPLOYMENT CASES"

OFFERED IN SENATE RULES COMMITTEE

BY:

#6

TO: SCS CSSSHB 58() (Version Z)

Page 8, line 1:

Following "(1)":

Delete "\$50,000"

Insert "\$200,000"

Following "less than":

Delete "15"

Insert "100"

This deletes the punitive cap in ~~unlawful~~ employment practices cases for small businesses with fewer than 15 employees, and subjects them to the same \$200,000 cap as employer with 100 employees.

Page 8, lines 2 - 3:

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

AMENDMENT NO. — "NONECONOMIC DAMAGES CAP"

OFFERED IN SENATE RULES COMMITTEE

BY:

TO: SCS CSSSHB 58() (Version Z)

#7

Page 5, line 24:

Delete "injured"

— ?

Page 5, lines 25 - 31:

Delete all material and insert:

"damages are awarded for severe permanent physical impairment or severe disfigurement."

> This
opens the door to the higher cap
on noneconomic damages ~~and~~ for
"severe permanent physical
impairment or severe disfigurement,
and completely deletes our
(1) - (4) list of injuries for which
the higher cap applies."

AMENDMENT NO. _____ - "INSURANCE COVERAGE FOR
EMERGENCY ROOM DOCTORS"

OFFERED IN SENATE RULES COMMITTEE

BY:

TO: SCS CSSSHB 58() (Version Z)

(#8)

Page 16, line 8:

Delete "\$500,000"

Insert "\$1,000,000"

Delete "\$1,500,000"

Insert "\$2,000,000"

Requires Emergency
Room Physicians to
carry \$1m/\$2m liability
insurance. ~~Physicians~~
It would cause
loss of medical services
in outlying areas of the
state.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: CSSSHB 58(FIN) am

1 Page 6, lines 18 - 30:

2 Delete "jury,

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

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

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

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

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

9 (E) [(5)] punitive damages; and10 (2) the amount of damages awarded shall be reduced by the
11 amount of federal and state income tax that would have been paid on damages
12 contained in the verdict under tax rates in effect on the date of the injury or
13 death; this paragraph does not apply to an award of damages if the damages are
14 taxable under federal or state law"15 Insert "jury, the verdict shall be itemized between economic loss and noneconomic
16 loss, if any, as follows:

17 (1) past economic loss;

18 (2) past noneconomic loss;

19 (3) future economic loss;

20 (4) future noneconomic loss; and

21 (5) punitive damages"

22 Page 24, lines 8 - 10:

23 Delete all material.

periodic payments

0-LS0056LA.3
Ford -
3/21/97

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: CSSH 58(FIN) am

- 1 Page 7, lines 1 - 2:
- 2 Delete "a [AN INJURED]"
- 3 Insert "an injured"

- 4 Page 24, line 13:
- 5 Delete "a"
- 6 Insert "an injured"

1 Renumber the following bill sections accordingly.

AMENDMENT

**OFFERED IN THE SENATE
TO: CSSSHB 58(FIN) am**

BY SENATOR PARNELL

p. 5, lns. 25-27 Delete all material

**p.5, lns. 25-27 Insert "convincing evidence of outrageous conduct, including acts
done with malice or bad motives, or reckless indifference to the
interest of another person."**

1 and decrees for the payment of money, including prejudgment interest, is three
2 percent above the interest rate set by the United States Bureau of the Public Debt
3 for five-year treasury notes in effect on the day on which the judgment or decree
4 is entered [10.5 PERCENT A YEAR], except that a judgment or decree founded on
5 a contract in writing, providing for the payment of interest until paid at a specified rate
6 not exceeding the legal rate of interest for that type of contract, bears interest at the
7 rate specified in the contract if the interest rate is set out in the judgment or decree.

8 * Sec. 15. AS 09.55 is amended by adding a new section to read:

9 Sec. 09.55.551. EXPERT WITNESS QUALIFICATION. (a) Except as
10 provided under (b) of this section, an action based upon professional negligence, a
11 person may not testify as an expert witness on the issue of the appropriate standard of
12 care unless the witness is a professional who is licensed in this state or is licensed in
13 another state or country and

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

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

19 (b) The provisions of (a) of this section do not apply to a person who is
20 testifying on the appropriate standard of care in a profession that is not licensed in this
21 state, or another state or country, and who the court determines is qualified as an
22 expert witness.

23 * Sec. 16. AS 09.55.560 is amended by adding a new paragraph to read:

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

26 * Sec. 17. AS 09.55 is amended by adding a new section to read:

27 **ARTICLE 8. MANDATORY ARBITRATION.**

28 Sec. 09.55.700. MANDATORY ARBITRATION. (a) A person who files a
29 civil action for personal injury, death, or property damage shall also submit the claim
30 to the court for arbitration unless the action is excluded under (b) of this section. The
31 costs of arbitration shall be paid in equal shares by the parties.

HB0158H

-9-

SCS CSHB 158(RLS) am S(ct rls fld S)

New Text Underlined [DELETED TEXT BRACKETED]

Post-It* Fax Note	7671	Date	4.7	# of pages	1
To	Geoff Bullock	From	Jim S		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	586-5048	Fax #			

PROPOSED AMENDMENTS

Section 1.

Page 2, following line 26:

Insert a new paragraph to read:

"(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

Section 2. Okay.

Section 3. Okay.

Section 4. Okay.

Section 5: (Statute of Repose)

Page 3, lines 10 and 11:

~~delete:~~

~~"Notwithstanding the disability of minority described under AS 09.10.140(a),"~~

10 yrs not 8

Section 6. Okay.

Section 7. Okay.

Section 8: (Birth Injuries)

Replace lines 28-31 with a new paragraph to read:

"(c) notwithstanding the disability of minority, a person may not bring an action for an injury which occurred during birth unless the action is commenced by the time the person reaches 8 years of age."

Keep Long

Section 9: (Noneconomic Damages)

Page 5, line 9:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$5,000.00 or"

Page 5, line 11:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$7,000.00 or"

Page 5, line 14:

following the word "loss" add:

"of use"

Section 10. (Punitive Damages)

add Parnell language.

Section 11. (Punitive Damage Limit--Discuss)

Section 12.(Income Taxes) Out.

Section 13. (Periodic Payments)

Page 7, line 3:

replace "100,000" with "500,000"

Section 14. Okay.

Section 15. Okay.

Section 16. (Collateral Benefits) Out.

Section 17. (Apportionment of Fault)

Alternative 1:

Page 9, line 23 following the word "action" insert:

"so long as any such other responsible person is identified^{to the 11} within 120 days of service of the complaint"

Alternative 2:

Page 9, line 23 after the word "employer" insert:

"unless the person was identified as a potentially responsible person and the parties had a sufficient opportunity to join that person but chose not to."

Section 18. Okay.

Section 19. Okay.

Section 20. Okay.

Section 21. (Expert Witnesses) Add last year's language.

Section 22: (Offer of Judgment)

Page 11, line 16 change "5" percent to "10" percent

Page 11, line 25 change "100" to "75"

Page 11, line 30 change "75" to "50"

Page 12, line 2 change "50" to "30"

Section 23: (Offer of Judgment)

Page 12, lines 16-18 delete.

Section 24: Okay.

Section 25: (Prejudgment Interest)

Page 12, line 28 change "subsection" to "subsections"

OK.

Page 12, after line 30 insert:

"(d) prejudgment interest may not be awarded for more than two years before the commencement of an action."

Sections 26-37: Okay.

Section 38: (Damages from Commission of Felony)

Page 18, line 13 insert after the word "if":

"the defendant by clear and convincing evidence proves the violation of AS 28.35.030 and that the conduct substantially contributed to the personal injury or death."

Section 39-48. Okay.

Section 49. (Rule 95)

Page 23, line 11:

Change "10,000" to "50,000".

Section 50-54. Okay.

Section 55. (Income Tax) Delete.

Section 56-58. Okay.

Section 59. (Allocation of Fault) Needs to be changed depending upon which alternative is adopted.

Section 60-65. Okay.

Additional thoughts:

1. I am concerned that the exception we are trying to carve out in the statute of repose for birth injuries may not pass constitutional muster.

2. With respect to Charles Cole's proposals, I would recommend not changing the jurisdictional limits of the district court. As I explained to Jim, in Southeastern Alaska for example, we have five superior court judges, but only two district court judges. If we were to increase the jurisdictional limit of district court, we would greatly overburden the existing system. You can easily give Charlie part of what he is asking for by simply adopting the procedural changes which I have set forth as follows:

District Court Civil Rule 1(a)(1) is amended to read:

(1) The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable. However, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Rule 26(a) and to the taking by each party of the deposition of one or more opposing parties and of one additional person who is not a party.

District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum.

3. Discuss the offer of judgment provision when multiple parties are involved.
4. Discuss prejudgment interest issues.
5. Discuss punitive damage issues.
6. Discuss participation at Friday night session.
7. Discuss task force makeup as an issue.

to: Mike Ford 2029 FK
Fr: Tim Bourne 3727

AMENDMENT

OFFERED IN THE SENATE RULES COMMITTEE

1. Page 4, line 4:
delete "fraudulent" after "fraud or"
2. Page 4, line 15:
delete " the minor or" after "of reasonable care by"
3. Page 8, lines 29-31 and page 9, lines 1-5:
This should read as follows:

"responsible person, the person is not a person protected from a civil action under AS 09.10.055 and the parties had a sufficient opportunity to join that person in the action but chose not to. "Sufficient opportunity to join" means the person is:

- (A) within the jurisdiction of the court;
- (B) not precluded from being joined by law or court rule; or
- (C) reasonably locatable [UNDER AS 09.16.040].

4. Page 10, line 14:
insert after "of this section do not apply": "if a board does not exist that ~~could certify the~~ witness in the particular field or matter at issue."

Delete: "to a person who is testifying on the appropriate standard of care in a profession that is not licensed in this state, and who the court determines is qualified as an expert witness."

5. Page 18, line 10:
delete "defending" after "fees paid by"

insert after "fees paid by": "or owed by all"
6. Page 18, line 10:
delete "defending" after "fees paid by"

insert after "fees paid by": "or owed by all"

- ~~7. Page 23, line 2:
insert after "In cases involving": "personal injury or property damage"~~

Need
before
5 pm

Per Mike L.

she state was not
recognized A Board
that certified
the

8. Page 22, line 31:

insert after "to a civil action" : "involving personal injuries or ~~death~~"

*property
damage*

9. Page 25, line 31:

delete "a pilot" after "legislation to create

10. "

insert "an" after "legislation to create"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056Z, Dated 4/14/97)

1 Page 23, line 2:

2 Delete "cases"

3 Insert "a civil action for personal injury, [death] or property damage"

4 Page 24, line 10, following "However,":

5 Insert "in a civil action for personal injury [death] or property damage,"

6 Page 24, line 17:

7 Delete "Unless"

8 Insert "In a civil action for personal injury, [death] or property damage, unless"

*add sum for
pg 23 En. 31*

CONFIDENTIALTort Reform / Areas of Substantial Agreement (4/10/97 meeting)No objection

§ 1 intent
§ 2 banking interest rate
§ 3 and § 4: S/L
§ 6 S/L

§ 20

Substantial Agreement

§ 12: reductn by taxes (??)
§ 16: collateral benefits (??)
§ 20: fault includes intentional
(same as Task Force) (??)
§ 21: Expert Witnesses (??)

§ 25: no prejudgmentt interest
for future economic, non-economic
and punitive damages
§ 26: change in interest rate
also applies in judgments against
the State
§ 27: prejudmmt interest in
condemnation cases
§ 28: corrective
§ 29: expert advis. panel includes
governmental entities
§ 30 - 32: re. expert advs. panel
§ 33 - 34: health care providers
and definitions of professional
negligence and services
§ 36: civ. liab. of electric utility

§ 38: dmgs from felony (???)

§ 39: settlement data
§ 40: insurance data

§ 41 - 42: independent counsel
insurance cases

§ 43 - 44: ???

§ 45 - 48: civil procedures
§ 51 - 65: procedure and rules changes
and effective dates

No Agreement to Date

§ 5 - Statute of Repose
§ 7, 8 - untolling of minority statute
§ 9 - noneconomic damages
§ 10, 11 - punitive damages
§ 13 - 15: periodic payments

CONFIDENTIAL

- § 17 - 19: allocation of fault
- § 22 - 23: offers of judgment
(GV and JF to make recmdtn)
- § 24: prejudgment interest
(Jim S. checking on what the difference
is between the two different indexes)
- § 35: contingent fee agreements
- § 37: emergency rm physicians (non-employee)
- § 49 -50: sanctions for attys and parties

**Add On Issue: District Court jurisdiction and streamlined
procedures**

PROPOSED AMENDMENTS

Section 1.

Page 2, following line 26:

Insert a new paragraph to read:

"(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska)."

Section 2. Okay.

Section 3. Okay.

Section 4. Okay.

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delete:

"Notwithstanding the disability of minority described under AS 09.10.140(a),"

Section 6. Okay.

Section 7. Okay.

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Replace lines 28-31 with a new paragraph to read:

"(c) notwithstanding the disability of minority, a person may not bring an action for an injury which occurred during birth unless the action is commenced by the time the person reaches 8 years of age."

Section 9: (Noneconomic Damages)

Page 5, line 9:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$5,000.00 or"

Page 5, line 11:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$7,000.00 or"

Page 5, line 14:

following the word "loss" add: — ?

"of use"

✓ Section 10. (Punitive Damages)

add Parnell language.

Section 11. (Punitive Damage Limit--Discuss)

Section 12. (Income Taxes) Out.

✓ Section 13. (Periodic Payments)

Page 7, line 3:

replace "100,000" with "500,000"

Section 14. Okay.

Section 15. Okay.

Section 16. (Collateral Benefits) Out.

① Better to raise caps.
① Need language to
punish people who
don't test or
test to state
throw away?

Section 17. (Apportionment of Fault)

Alternative 1:

Page 9, line 23 following the word "action" insert:

"so long as any such other responsible person is identified within 120 days of service of the complaint"

Alternative 2:

Page 9, line 23 after the word "employer" insert:

"unless the person was identified as a potentially responsible person and the parties had a sufficient opportunity to join that person but chose not to."

Section 18. Okay.

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Page 11, line 16 change "5" percent to "10" percent

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Page 11, line 30 change "75" to "50"

Page 12, line 2 change "50" to "30"

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Page 12, lines 16-18 delete.

Section 24: Okay.

Section 25: (Prejudgment Interest)

Page 12, line 28 change "subsection" to "subsections"

Page 12, after line 30 insert:

"(d) prejudgment interest may not be awarded for more than two years before the commencement of an action."

Sections 26-37:

Okay.

? See it.

Section 38: (Damages from Commission of Felony)

Page 18, line 13 insert after the word "if":

"the defendant by clear and convincing evidence proves the violation of AS 28.35.030 and that the conduct substantially contributed to the personal injury or death."

Section 39-48.

Okay.

? CFKS. — See line 16.
From

Section 49. (Rule 95)

Page 23, line 11:

Change "10,000" to "50,000".

Section 50-54.

Okay.

Section 55. (Income Tax) Delete.

Section 56-58.

Okay.

Section 59. (Allocation of Fault) Needs to be changed depending upon which alternative is adopted.

Section 60-65.

Okay.

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)

Attorney fees & costs paid
incurred by Δ.

not needed
if a real
s/depose.

Additional thoughts:

1. I am concerned that the exception we are trying to carve out in the statute of repose for birth injuries may not pass constitutional muster.

2. With respect to Charles Cole's proposals, I would recommend not changing the jurisdictional limits of the district court. As I explained to Jim, in Southeastern Alaska for example, we have five superior court judges, but only two district court judges. If we were to increase the jurisdictional limit of district court, we would greatly overburden the existing system. You can easily give Charlie part of what he is asking for by simply adopting the procedural changes which I have set forth as follows:

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District Court Civil Rule 4 is amended by adding a new subsection to read:

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3. Discuss the offer of judgment provision when multiple parties are involved.
4. Discuss prejudgment interest issues.
5. Discuss punitive damage issues.
6. Discuss participation at Friday night session.
7. Discuss task force makeup as an issue.

the memorandum shall include a certificate that each party has reviewed the information provided in Rule 26(a) of the
Add TRIM 30-30 days after
go to Rule 26(a) within 20 days of filing suit to move forward.
and may state after the court satisfies itself that the information in Rule 26(a)

MEMORANDUM

TO: Jim S.
Rep. Brian Porter

FROM: Geoff Bullock
ASMA Lobbyist

DATE: April 9, 1997

RE: HB 58 Language

Here is the language we would like to see added to HB 58:

Page 17, Line 5;

after ... "least \$500,000 for each incident"

insert "and \$1,500,000 for all incidents in a year"

If you have any questions please don't hesitate to contact me. Also, if you have the language yet for the statute of repose section (dealing with OB's) please fax it to me at 586-5048. ASMA is very anxious to look at this.

Thanks.

LAW OFFICES OF
CHARLES E. COLE
 406 CUSHMAN STREET
 FAIRBANKS, ALASKA 99701

DATE

4

MEMORANDUM TO:

Brian Porter

My position on amendments
 to District Court jurisdiction
 and procedure is:

1. Adopt the annexed § 27.
2. Adopt the annexed § 28,
 but omit the last sentence
 if necessary § 19
3. Use your judgment on § 19
 the jurisdiction limit / 50,000

FOR
 Mrs
 Lester
 Friedman S.

0-GH0020.A

part
(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 AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.150;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

* Sec. 19. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$100,000 [\$50,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$100,000 [\$50,000];

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

(5) for establishing the fact of death or cause and manner of death of any person in the manner prescribed in AS 09.55.020 - 09.55.069;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.100 when the value of the arrears and damage to the property does not exceed \$100,000 [\$50,000];

(7) for the foreclosure of a lien when the amount in controversy does

1 not exceed \$100,000 [\$50,000]:

2 (8) for the recovery of money or damages in motor vehicle tort cases
3 when the amount claimed exclusive of costs, interest, and attorney fees does not
4 exceed \$100,000 [\$50,000];

5 (9) over civil actions for taking utility service and for damages to or
6 interference with a utility line filed under AS 42.20.030;

7 (10) over cases involving protective orders for domestic violence under
8 AS 18.66.100 - 18.66.180.

9 * Sec. 20. AS 21.06 is amended by adding a new section to read:

10 Sec. 21.06.057. Insurance report. (a) The director shall require reporting of
11 and shall compile information necessary to evaluate

12 (1) the impact of the measures enacted in this Act on the availability
13 and cost of insurance in the state; and

14 (2) the financial health and profitability of insurers doing business in
15 the state.

16 (b) Information described in (a) of this section shall be provided by all insurers
17 doing business in this state in the format specified by the director and shall include
18 factual information stating premiums, claims, expenses, and an allocation of investment
19 profits or losses by line of business within in this state. Information shall be compiled
20 by the division in a way that protects the identity of individual insureds.

21 (c) The director shall adopt regulations to implement and interpret this section,
22 including requiring insurers doing business in the state to provide information
23 necessary for the division of insurance to carry out its responsibilities under (a) and
24 (b) of this section.

25 (d) Beginning June 1, 1999, the information compiled under (a) of this section
26 shall be reported to the governor and the legislature annually.

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

30 Sec. 21. Alaska Rule of Civil Procedure 16.1(c) is amended to read:

31 (c) Motion to Set Trial and Certificate. Unless otherwise ordered by the

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award shall be increased by 50 percent;

(B) if the offer was served more than 30 days after both parties made the disclosures required by Rule 26(a)(1), but more than 90 days before the trial began, the attorney's fees award shall be increased by 30 percent;

(C) if the offer was served 90 days or less but more than 10 days before the trial began, the attorney's fees award shall be increased by 20 percent.

(d) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made 90 days or less but more than 10 days before trial begins, if it is served not less than 10 days before the commencement of hearings to determine the amount or extent of liability.

* Sec. 25. Alaska Rule of Civil Procedure 72.1(g) is amended to read:

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

* Sec. 26. Alaska Rule of Civil Procedure 95(b) is amended to read:

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

* Sec. 27. District Court Civil Rule 1(a)(1) is amended to read:

(1) The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable. However, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Rule 26(a) and to the taking by each party of the deposition of one or more opposing

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HB 60

~~NEW TEXT UNDERLINED (DELETED TEXT BRACKETED)~~

0-GH0020.A

~~parties and of one additional person who is not a party.~~

* Sec. 28. District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum. [The court shall set the trial to commence on a date no less than 30 and no more than 90 days after the filing of the memorandum to set the case for trial, unless a continuance is granted by the court pursuant to Civil Rule 40(e).] **omit if necessary**

~~Sec. 29. Alaska Rule of Appellate Procedure 911 is amended by adding a subsection to read:~~

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

* Sec. 30. Alaska Rule of Civil Procedure 16.1(k)(4) is repealed.

* Sec. 31. AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 6 of this Act, have the effect of amending

(1) Alaska Rule of Civil Procedure 49 by requiring the jury to conduct a separate proceeding for the determination of a punitive damages award after it has determined that punitive damages are allowed in a case; and

(2) Alaska Rule of Civil Procedure 26(b) and (d) by affecting the scope, limits, timing, and sequence of discovery allowed in a case.

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HB0060a

~~NEW TEXT UNDERLINED (DELETED TEXT BRACKETED)~~

To: Jeff

Fm: Jim

Re: Tort reform language

1. Adopt HB 60 sections 27 and 28, except section 28 should read:

Section 28. District Court Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. **The memorandum shall contain a certification that each party has exchanged the information described in Civil Rule 26(a) and may state their separate positions if they do not agree concerning information or estimates to be provided in the memorandum.** ~~After the court satisfies itself that the information described in Civil Rule 26(a) has been exchanged, the court shall set the trial date to commence on a date no less than 30 nor more than 90 days after the filing of the memorandum to set the case for trial, unless a continuance is granted by the court pursuant to Civil Rule 40(e).~~

after a
reasonable
time.

To: Jeff

Fm: Jim

Re: Tort reform language

1. Adopt HB 60 sections 27 and 28, except section 28 should read:

Section 28. District Court Rule 4 is amended by adding a new subsection to read:

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LAW OFFICES OF
CHARLES E. COLE
406 CUSHMAN STREET
FAIRBANKS, ALASKA 99701

TELEPHONE 452-1124

DATE

4

MEMORANDUM TO:

Brian Porter

My position on amendments
to District Court jurisdiction
and procedure is:

1. Adopt the annexes 27.
2. Adopt the annexes 28,
but omit the last sentence
if necessary § 19
3. Use your judgment on
the jurisdiction limits / 56.00

Is this OK?
If leave at
50K?

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part:

(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 AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.150;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

* Sec. 19. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$100,000 [\$50,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$100,000 [\$50,000];

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

(5) for establishing the fact of death or cause and manner of death of any person in the manner prescribed in AS 09.55.020 - 09.55.069;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the property does not exceed \$100,000 [\$50,000];

(7) for the foreclosure of a lien when the amount in controversy does

1 not exceed \$100,000 [\$50,000]:

2 (8) for the recovery of money or damages in motor vehicle tort cases
3 when the amount claimed exclusive of costs, interest, and attorney fees does not
4 exceed \$100,000 [\$50,000];

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6 interference with a utility line filed under AS 42.20.030;

7 (10) over cases involving protective orders for domestic violence under
8 AS 18.66.100 - 18.66.180.

9 * Sec. 20. AS 21.06 is amended by adding a new section to read:

10 Sec. 21.06.057. Insurance report. (a) The director shall require reporting of
11 and shall compile information necessary to evaluate

12 (1) the impact of the measures enacted in this Act on the availability
13 and cost of insurance in the state; and

14 (2) the financial health and profitability of insurers doing business in
15 the state.

16 (b) Information described in (a) of this section shall be provided by all insurers
17 doing business in this state in the format specified by the director and shall include
18 factual information stating premiums, claims, expenses, and an allocation of investment
19 profits or losses by line of business within in this state. Information shall be compiled
20 by the division in a way that protects the identity of individual insureds.

21 (c) The director shall adopt regulations to implement and interpret this section,
22 including requiring insurers doing business in the state to provide information
23 necessary for the division of insurance to carry out its responsibilities under (a) and
24 (b) of this section.

25 (d) Beginning June 1, 1999, the information compiled under (a) of this section
26 shall be reported to the governor and the legislature annually.

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

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1 award shall be increased by 50 percent;

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3 made the disclosures required by Rule 26(a)(1), but more than 90 days before
4 the trial began, the attorney's fees award shall be increased by 30 percent;

5 (C) if the offer was served 90 days or less but more than 10
6 days before the trial began, the attorney's fees award shall be increased by 20
7 percent.

8 (d) When the liability of one party to another has been determined by verdict
9 or order or judgment, but the amount or extent of the liability remains to be
10 determined by further proceedings, the party adjudged liable may make an offer of
11 judgment, which shall have the same effect as an offer made 90 days or less but more
12 than 10 days before trial begins, if it is served not less than 10 days before the
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26 (1) The procedure in civil actions and proceedings before district judges
27 and magistrates shall be governed by the rules governing the procedure in the superior
28 court to the extent that such rules are applicable. However, unless otherwise agreed
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30 cause shown, discovery shall be limited to the disclosures required under Rule
31 26(a) and to the taking by each party of the deposition of one or more opposing

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~~THEY TALKED TOGETHER~~ (DELETED TEXT BRACKETED)

parties and of one additional person who is not a party.

* Sec. 28. District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum. The court shall set the trial to commence on a date no less than 30 and no more than 90 days after the filing of the memorandum to set the case for trial, unless a continuance is granted by the court pursuant to Civil Rule 40(e). **Unit 4 necessary**

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~~REPEALED TEXT BRACKETED~~