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SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(RLS) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Amended: 4/16/97

Offered: 4/16/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

SENATORS Pearce, Sharp, Kelly, Miller

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 26, 41, 49,
3 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and
4 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of
5 Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

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

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

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

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

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

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

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

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

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

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

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

30 (11) ensure that this Act does not apply to or in any way have an effect on
31 existing litigation or a civil cause of action that accrues before the effective date of this Act;

1 it is the specific intent of the legislature that this Act not apply to or in any way have an
 2 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
 3 now or in the future.

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

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

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

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

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

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

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

18 **Sec. 09.10.055. Statute of repose of 10 years.** (a) Notwithstanding the
 19 disability of minority described under AS 09.10.140(a), a person may not bring an
 20 action for personal injury, death, or property damage unless commenced within 10
 21 years of the earlier of the date of

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

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

31 (b) This section does not apply if

- (1) the personal injury, death, or property damage resulted from
- (A) prolonged exposure to hazardous waste;
 - (B) an intentional act or gross negligence;
 - (C) fraud or misrepresentation;
 - (D) breach of an express warranty or guarantee;
 - (E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce; or
 - (F) breach of trust or fiduciary duty;

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

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

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

(5) the facts that would constitute accrual of a cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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

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

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

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

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

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

9 (c) In an action for personal injury of a person who was under the age of eight
10 years at the time of the injury, the time period before the person's eighth birthday is
11 not a part of the time limit imposed under AS 09.10.070(a) for commencing the civil
12 action.

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

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

19 (b) Except as provided under (c) of this section, the damages awarded by a
20 court or a jury under (a) of this section for all claims, including a loss of consortium
21 claim, arising out of a single injury or death may not exceed \$400,000 or the injured
22 person's life expectancy in years multiplied by \$8,000, whichever is greater.

23 (c) In an action for personal injury, the damages awarded by a court or jury
24 that are described under (b) of this section may not exceed \$1,000,000 or the person's
25 life expectancy in years multiplied by \$25,000, whichever is greater, when the damages
26 are awarded for severe permanent physical impairment or severe disfigurement.

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

29 * Sec. 10. AS 09.17.020 is repealed and reenacted to read:

30 **Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of
31 punitive damages is presented to the fact finder, the fact finder shall determine,

1 concurrently with all other issues presented, whether punitive damages shall be allowed
2 by using the standards set out in (b) of this section. If punitive damages are allowed,
3 a separate proceeding under (c) of this section shall be conducted before the same fact
4 finder to determine the amount of punitive damages to be awarded.

5 (b) The fact finder may make an award of punitive damages only if the
6 plaintiff proves by clear and convincing evidence that the defendant's conduct

7 (1) was outrageous, including acts done with malice or bad motives;
8 or

9 (2) evidenced reckless indifference to the interest of another person.

10 (c) At the separate proceeding to determine the amount of punitive damages
11 to be awarded, the fact finder may consider

12 (1) the likelihood at the time of the conduct that serious harm would
13 arise from the defendant's conduct;

14 (2) the degree of the defendant's awareness of the likelihood described
15 in (1) of this subsection;

16 (3) the amount of financial gain the defendant gained or expected to
17 gain as a result of the defendant's conduct;

18 (4) the duration of the conduct and any intentional concealment of the
19 conduct;

20 (5) the attitude and conduct of the defendant upon discovery of the
21 conduct;

22 (6) the financial condition of the defendant; and

23 (7) the total deterrence of other damages and punishment imposed on
24 the defendant as a result of the conduct, including compensatory and punitive damages
25 awards to persons in situations similar to those of the plaintiff and the severity of the
26 criminal penalties to which the defendant has been or may be subjected.

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

30 (e) Unless that evidence is relevant to another issue in the case, discovery of
31 evidence that is relevant to the amount of punitive damages to be determined under

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

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

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

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

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

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

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

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

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

27 (1) \$200,000 if the employer has less than 100 employees in this state;

28 (2) \$300,000 if the employer has 100 or more but less than 200
29 employees in this state;

30 (3) \$400,000 if the employer has 200 or more but less than 500
31 employees in this state; and

1 (4) \$500,000 if the employer has 500 or more employees in this state.

2 (i) Subsection (h) of this section may not be construed to allow an award of
3 punitive damages against the state or a person immune under another provision of law.

4 In (h) of this section, "employees" means persons employed in each of 20 or more
5 calendar weeks in the current or preceding calendar year.

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

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

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

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

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

25 (A) within the jurisdiction of the court;

26 (B) not precluded from being joined by law or court rule;

27 and

28 (C) reasonably locatable [UNDER AS 09.16.040].

29 * Sec. 12. AS 09.17.080(b) is amended to read:

30 (b) In determining the percentages of fault, the trier of fact shall consider both
31 the nature of the conduct of each person [PARTY] at fault, and the extent of the

1 causal relation between the conduct and the damages claimed. [THE TRIER OF
2 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
3 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE
4 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
5 PERSON CANNOT BE DISTINGUISHED.]

6 *Sec. 13. AS 09.17.080(c) is amended to read:

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

18 *Sec. 14. AS 09.17.900 is amended to read:

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

27 *Sec. 15. AS 09.20 is amended by adding a new section to read:

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

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

country;

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

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

(b) The provisions of (a) of this section do not apply if the state has not recognized a board that has certified the witness in the particular field or matter at issue.

* Sec. 16. AS 09.30.065 is amended to read:

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

(1) if the offer was served no later than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE

1 REDUCED BY FIVE PERCENT A YEAR];

2 (2) if the offer was served more than 60 days after both parties
 3 made the disclosures required by the Alaska Rules of Civil Procedure but more
 4 than 90 days before the trial began, the offeree shall pay 50 percent of the
 5 offeror's reasonable actual attorney fees;

6 (3) if the offer was served 90 days or less but more than 10 days
 7 before the trial began, the offeree shall pay 30 percent of the offeror's reasonable
 8 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
 9 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
 10 YEAR].

11 * Sec. 17. AS 09.30.065 is amended by adding a new subsection to read:

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

21 * Sec. 18. AS 09.30.070(a) is amended to read:

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

30 * Sec. 19. AS 09.30.070 is amended by adding a new subsection to read:

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or punitive damages.

2 * **Sec. 20.** AS 09.50.280 is amended to read:

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

7 * **Sec. 21.** AS 09.55.440(a) is amended to read:

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

18 * **Sec. 22.** AS 09.55.536(a) is amended to read:

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

28 * **Sec. 23.** AS 09.55.536(c) is amended to read:

29 (c) Not more than 30 days after selection of the panel, the panel [IT] shall
30 make a written report to the parties and to the court, answering the following questions
31 and other questions submitted to the panel by the court in sufficient detail to explain

- 1 **the case and the reasons for the panel's answers:**
- 2 (1) **Why did the claimant seek** [WHAT WAS THE DISORDER FOR
- 3 WHICH THE PLAINTIFF CAME TO] medical care?
- 4 (2) **Was a correct diagnosis made? If not, what was incorrect**
- 5 **about the diagnosis** [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME
- 6 WITHOUT MEDICAL CARE]?
- 7 (3) Was the treatment **or lack of treatment** [SELECTED] appropriate?
- 8 **If not, what was inappropriate about the treatment or lack of treatment** [FOR
- 9 THE CASE]?
- 10 (4) **Was the claimant injured during the course of evaluation or**
- 11 **treatment or by failure to diagnose or treat** [DID AN INJURY ARISE FROM THE
- 12 MEDICAL CARE]?
- 13 (5) **If the answer to question 4 is "yes," what** [WHAT] is the nature
- 14 and extent of the medical injury?
- 15 (6) What specifically caused the medical injury?
- 16 (7) Was the medical injury caused by unskillful care? **Explain.**
- 17 (8) If a medical injury had not occurred, **what would have been the**
- 18 **likely outcome of the medical case** [HOW WOULD THE PLAINTIFF'S
- 19 CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?
- 20 * Sec. 24. AS 09.55.536(f) is amended to read:
- 21 (f) Discovery may not be undertaken in a case until the report of the expert
- 22 advisory panel is received **or 60 days after selection of the panel, whichever occurs**
- 23 **first.** However, the court may relax this prohibition upon a showing of good cause by
- 24 any party. If the panel has not completed its report within the 30-day period
- 25 prescribed in (c) of this section, the court may, upon application, grant **the panel** [IT]
- 26 an additional 30 days.
- 27 * Sec. 25. AS 09.55.536 is amended by adding a new subsection to read:
- 28 (i) This section applies regardless of whether a party in the action or the health
- 29 care provider whose professional services are the subject of the action is a
- 30 governmental entity or in the public or private sector.
- 31 * Sec. 26. AS 09.55.560(1) is amended to read:

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

* Sec. 27. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

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

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

* Sec. 29. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.085. Civil liability of electric utility. (a) A utility offering

1 electrical service to the public for compensation under a certificate of public
 2 convenience and necessity issued by the Alaska Public Utilities Commission under
 3 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
 4 injury resulting from an act or omission of the utility relating to the production,
 5 delivery, or sale of electricity.

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

8 * **Sec. 30.** AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 10 hospital is not liable for civil damages as a result of an act or omission by an
 11 emergency room physician who is not an employee or actual agent of the hospital if
 12 the hospital provides notice that the emergency room physician is an independent
 13 contractor and the emergency room physician is insured as described under (c) of this
 14 section. The hospital is responsible for exercising reasonable care in granting
 15 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 16 and for taking appropriate steps to revoke or restrict privileges in appropriate
 17 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 18 emergency room physician who is an independent contractor. The notice required by
 19 this subsection must (1) be posted conspicuously in all admitting areas of the hospital;
 20 (2) consist of a sign at least two feet high and two feet wide, with print at least two
 21 inches high; (3) be published at least annually in a newspaper of general circulation
 22 in the area; and (4) be in substantially the following form:

23 Notice to Hospital Users and

24 Notice of Limited Liability

25 (Name of hospital) may not be responsible for the actions of
 26 emergency room physicians in (name of hospital's emergency
 27 room). The following emergency room physicians are
 28 independent contractors and are not employees of the hospital:
 29 (List specific emergency room physicians)

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

1 (c) A hospital is not immune from liability under (a) of this section for an act
 2 or omission of an emergency room physician who is an independent contractor unless
 3 the emergency room physician has liability insurance coverage in the amount of at
 4 least \$500,000 for each incident and \$1,500,000 for all incidents in a year, and the
 5 coverage is in effect and applicable to those health care services offered by the
 6 emergency room physician that the hospital is required to provide by law or by
 7 accreditation requirements.

8 (d) In this section,

9 (1) "emergency room physician" means a physician who does not have
 10 an ongoing physician-patient relationship with the emergency room patient and who
 11 provides emergency health care services in a hospital emergency room;

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

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

17 * Sec. 31. AS 09.65.210 is repealed and reenacted to read:

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

23 (1) engaged in the commission of a felony, the person has been
 24 convicted of the felony, including conviction based on a guilty plea or plea of nolo
 25 contendere, and the party defending against the claim proves by clear and convincing
 26 evidence that the felony substantially contributed to the personal injury or death;

27 (2) engaged in conduct that would constitute the commission of an
 28 unclassified felony, a class A, or a class B felony for which the person was not
 29 convicted and the party defending against the claim proves by clear and convincing
 30 evidence

31 (A) the felonious conduct; and

1 (B) that the felonious conduct substantially contributed to the
2 personal injury or death;

3 (3) fleeing after the commission, by that person, of conduct that would
4 constitute an unclassified felony, a class A felony, or a class B felony or being
5 apprehended for conduct that would constitute an unclassified felony, a class A felony,
6 or a class B felony if the party defending against the claim proves by clear and
7 convincing evidence

8 (A) the felonious conduct; and

9 (B) that the conduct during the flight or apprehension
10 substantially contributed to the injury or death;

11 (4) operating a vehicle, aircraft, or watercraft while under the influence
12 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
13 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
14 the party defending against the claim proves by clear and convincing evidence that the
15 conduct substantially contributed to the personal injury or death; or

16 (5) engaged in conduct that would constitute a violation of
17 AS 28.35.030 for which the person was not convicted if the party defending against
18 the claim proves by clear and convincing evidence

19 (A) the violation of AS 28.35.030; and

20 (B) that the conduct substantially contributed to the personal
21 injury or death.

22 * Sec. 32. AS 09.68 is amended by adding a new section to read:

23 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
24 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
25 information relating to the compromise or other resolution of all civil litigation. The
26 information shall be collected on a form developed by the council for that purpose and
27 must include

28 (1) the case name and file number;

29 (2) a general description of the claims being settled;

30 (3) if the case is resolved by way of settlement,

31 (A) the gross dollar amount of the settlement;

1 (B) to whom the settlement was paid;

2 (C) the dollar amount of advanced costs and attorney fees that
3 were deducted from the gross dollar amount of the settlement before
4 disbursement to the claimant;

5 (D) the net amount actually disbursed to the claimant;

6 (E) the total costs and attorney fees paid by or owed by all
7 parties; and

8 (F) any nonmonetary terms, including whether the attorney fees
9 incurred by the claimant were based on a contingent fee agreement or upon an
10 hourly rate; if a contingent fee was paid, the percentage of the total settlement
11 represented by the fee must be included; or, if an hourly rate, the hourly rate
12 paid;

13 (4) if the case is resolved by dismissal, summary judgment, trial, or
14 otherwise,

15 (A) the gross dollar amount of the judgment;

16 (B) the amount of attorney fees awarded and to which party;

17 (C) the amount of costs awarded and to which party;

18 (D) the net amount, after deduction of (B) and (C) of this
19 paragraph, for which the prevailing party has judgment;

20 (E) the dollar amount of advanced costs and attorney fees that
21 were deducted from the gross dollar amount of the judgment before distribution
22 to the claimant;

23 (F) the total costs and attorney fees paid by defending parties;
24 and

25 (G) any nonmonetary terms, including whether the attorney fees
26 incurred by the claimant were based on a contingent fee agreement or upon an
27 hourly rate; if a contingent fee was paid, the percentage of the total settlement
28 represented by the fee must be included; or, if an hourly rate, the hourly rate
29 paid.

30 (b) The information received by the council under (a) of this section is
31 confidential. This restriction does not prevent the disclosure of summaries and

1 statistics in a manner that does not allow the identification of particular cases or
2 parties.

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

5 (1) divorce and dissolution;

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

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

9 (4) domestic violence protective orders under AS 18.66.100 -
10 18.66.180;

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

12 (6) small claims under AS 22.15.040.

13 * **Sec. 33.** AS 21.06 is amended by adding a new section to read:

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

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

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

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

30 (e) The division may consult with the Alaska Judicial Council when
31 determining what information to require to be reported under (a) - (c) of this section

1 and when implementing the compilation required under (a) of this section.

2 * Sec. 34. AS 21.89.100(d) is amended to read:

3 (d) If the insured selects independent counsel at the insurer's expense, the
 4 insurer may require that the independent counsel have at least four years of experience
 5 in civil litigation, including defense experience in the general subject area at issue in
 6 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 7 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 8 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 9 course of business in the defense of a similar civil action in the community in which
 10 the claim arose or is being defended. In providing independent counsel, the insurer
 11 is not responsible for the fees and costs of defending an allegation for which
 12 coverage is properly denied and shall be responsible only for the fees and costs
 13 to defend those allegations for which the insurer either reserves its position as to
 14 coverage or accepts coverage. The independent counsel shall keep detailed
 15 records allocating fees and costs accordingly. A dispute between the insurer and
 16 insured regarding attorney fees that is not resolved by the insurance policy or this
 17 section shall be resolved by arbitration under AS 09.43.

18 * Sec. 35. AS 21.89.100 is amended by adding a new subsection to read:

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

24 * Sec. 36. AS 23.30.015(g) is amended to read:

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

under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080(c).

***Sec. 37.** AS 44.77.015(a) is amended to read:

(a) For the purposes of filing claims for medical services provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1) within six months after the date of service, or as provided in (b) of this section, if there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

***Sec. 38.** Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

- (1) That the issues in the case have actually been joined;
- (2) That all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;
- (3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- (4) Whether trial by jury has been timely demanded;
- (5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;
- (6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;
- (7) Which, if any, statute or rule entitles the case to preference on the trial calendar;
- (8) That the parties have complied with [PARAGRAPH] (k) of this rule.

1 * **Sec. 39.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

2 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
3 soon as practicable after the exchange of initial disclosures required under Rule
4 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
5 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
6 their claims and defenses and the possibilities for a prompt settlement of the case and
7 to develop a proposed discovery plan. The attorneys of record and all unrepresented
8 parties that have appeared in the case are jointly responsible for arranging and being
9 present or represented at the meeting, for attempting in good faith to agree on the
10 proposed discovery plan, and for submitting to the court within 10 days after the
11 meeting a written report outlining the proposed discovery plan. The proposed
12 discovery plan shall indicate the parties' views and proposals concerning

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

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

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

21 (4) whether a scheduling conference is unnecessary;

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

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

27 * **Sec. 40.** Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new
28 subsection to read:

29 (g) **Limited Discovery; Expedited Calendaring.** In a civil action for personal
30 injury or property damage involving less than \$100,000 in claims the parties shall limit
31 discovery to that allowed under Rule 1(a)(1), District Court Rules, and shall avail

1 themselves of the expedited calendaring procedures allowed under Rule 4, District
2 Court Rules.

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

5 (3) **Settlement Information.** If a voluntary dismissal under this rule
6 is the result of compromise or other settlement of the parties, the parties shall submit
7 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
8 of dismissal made under (1)[a] of this subsection must be accompanied by a
9 certification signed by or on behalf of the plaintiff that the information required under
10 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
11 dismissal made under (1)[b] of this subsection must be accompanied by a certification
12 signed by or on behalf of all parties who have appeared in the action. The
13 requirements of this paragraph do not apply to the types of cases listed in
14 AS 09.68.130(c).

15 * **Sec. 42.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

20 * **Sec. 43.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

21 (b) In addition to its authority under (a) of this rule and its power to punish
22 for contempt, a court may, after reasonable notice and an opportunity to show cause
23 to the contrary, and after hearing by the court, if requested, impose a fine not to
24 exceed \$50,000.00 [\$1,000.00] against any attorney who practices before it for failure
25 to comply with these rules or any rules promulgated by the supreme court.

26 * **Sec. 44.** Rule 1(a)(1), District Court Rules of Civil Procedure, is amended to read:

27 (1) The procedure in civil actions and proceedings before district judges
28 and magistrates shall be governed by the rules governing the procedure in the superior
29 court to the extent that such rules are applicable. However, in a civil action for
30 personal injury or property damage, unless otherwise agreed by all parties or
31 mitted by order of the court in exceptional cases and for good cause shown,

1 discovery shall be limited to the disclosures required under Civil Rule 26(a) and
2 to the taking by each party of the deposition of one or more opposing parties and
3 of one additional person who is not a party.

4 * Sec. 45. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
5 subsection to read:

6 (b) In a civil action for personal injury or property damage, unless otherwise
7 permitted by order of the court in exceptional cases and for good cause shown, all
8 parties shall file a memorandum to set the case for trial, as set out in Civil Rule 40(b),
9 no later than 180 days after service of the complaint on all parties to the case. The
10 memorandum shall contain a certification that each party has exchanged the
11 information described in Rule 26(a), Alaska Rules of Civil Procedure, and may state
12 their separate positions if they do not agree concerning information or estimates to be
13 provided in the memorandum. After the court satisfies itself that the information
14 described in Rule 26(a), Alaska Rules of Civil Procedure, has been disclosed, the court
15 shall set the case for trial as soon as practicable, but no sooner than 30 days after the
16 court makes the determination regarding disclosure.

17 * Sec. 46. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
18 subsection to read:

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

29 * Sec. 47. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

30 * Sec. 48. AS 09.17.020(e), as enacted in sec. 10 of this Act, has the effect of amending
31 Rule 26, Alaska Rules of Civil Procedure, by limiting discovery in certain actions.

1 * **Sec. 49.** AS 09.17.020(j), as enacted by sec. 10 of this Act, has the effect of amending
 2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
 3 percentage of an award of punitive damages be deposited into the general fund.

4 * **Sec. 50.** AS 09.17.080(a), as amended by sec. 11 of this Act, has the effect of amending
 5 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
 6 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
 7 among the claimants, defendants, third-party defendants, persons who have been released from
 8 liability, or other person who is potentially responsible for the damages.

9 * **Sec. 51.** AS 09.20.185, enacted by sec. 15 of this Act, has the effect of amending
 10 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
 11 testifying as an expert witness.

12 * **Sec. 52.** AS 09.30.065, as amended by secs. 16 and 17 of this Act, has the effect of
 13 amending Rules 68 and 82, Alaska Rules of Civil Procedure, by requiring the offeree to pay
 14 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
 15 eliminating provisions relating to interest and by changing provisions related to attorney fee
 16 awards.

17 * **Sec. 53.** AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending
 18 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
 19 awarded for future economic or noneconomic damages or punitive damages.

20 * **Sec. 54.** **ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
 21 legislation to create an alternative dispute resolution procedure within the existing civil
 22 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
 23 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
 24 alternative dispute resolution procedure not later than July 1, 1998.

25 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
 26 Association, review court sanctioned alternative dispute resolution programs in other states and
 27 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
 28 System regarding the establishment of a program for alternative dispute resolution within the
 29 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
 30 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
 31 or rule change and report must include specific types of programs, specific types of cases

1 within each program that are amenable to alternative dispute resolution, the cost to the parties
2 and to the Alaska Court System under these programs, and the qualifications of the neutral
3 parties, including nonlawyers, who will provide dispute resolution services under the program.
4 The work required under this section shall be completed for the amount of money appearing
5 on the fiscal note submitted by the Alaska Judicial Council dated March 17, 1997.
6 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
7 and early neutral evaluation.

8 * Sec. 55. APPLICABILITY. This Act applies to all causes of action accruing on or after
9 the effective date of this Act.

10 * Sec. 56. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
11 application of a provision of this Act to any person or circumstance is held invalid, the
12 remainder of this Act and the application to other persons shall not be affected.

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(RLS)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY THE SENATE RULES COMMITTEE****Offered: 4/16/97****Referred: Calendar****Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 26, 41, 49,
3 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and
4 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of
5 Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

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

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

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

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

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

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

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

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

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

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

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

30 (11) ensure that this Act does not apply to or in any way have an effect on
31 existing litigation or a civil cause of action that accrues before the effective date of this Act;

1 it is the specific intent of the legislature that this Act not apply to or in any way have an
2 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
3 now or in the future.

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

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

8 * Sec. 3. AS 09.10.05^c is repealed and reenacted to read:

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

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

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

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

18 **Sec. 09.10.055. Statute of repose of 10 years.** (a) Notwithstanding the
19 disability of minority described under AS 09.10.140(a), a person may not bring an
20 action for personal injury, death, or property damage unless commenced within 10
21 years of the earlier of the date of

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

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

31 (b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or misrepresentation;

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

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

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

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

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

(5) the facts that would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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

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

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

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

(a) Except as provided under (c) of this section, if [IF] a person entitled to

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

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

(c) In an action for personal injury 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~~ ^{\$2,000,000} or the injured person's life expectancy in years multiplied by ~~\$10,000~~ ^{\$30,000}, 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~~ ^{\$1,000,000} or the person's life expectancy in years multiplied by ~~\$30,000~~ ^{\$25,000}, whichever is greater, when the injured person, as a result of the injury, ^{lawyer are}

(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.

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

* Sec. 10. AS 09.17.020 is repealed and reenacted to read:

Sec. 09.17.020. Punitive damages. (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine, concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

(1) was outrageous, including acts done with malice or bad motives;

or

(2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

(1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;

(2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;

(3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;

(4) the duration of the conduct and any intentional concealment of the conduct;

(5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

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

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

5 * Sec. 12. AS 09.17.080(b) is amended to read:

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

13 * Sec. 13. AS 09.17.080(c) is amended to read:

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

25 * Sec. 14. AS 09.17.900 is amended to read:

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

1 Legal requirements of causal relation apply both to fault as the basis for liability and
2 to contributory fault.

3 * **Sec. 15.** AS 09.20 is amended by adding a new section to read:

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

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

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

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

13 (b) The provisions of (a) of this section do not apply if the state has not
14 recognized a board that has certified the witness in the particular field or matter at
15 issue.

16 * **Sec. 16.** AS 09.30.065 is amended to read:

17 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
18 the trial begins, either the party making a claim or the party defending against a claim
19 may serve upon the adverse party an offer to allow judgment to be entered in complete
20 satisfaction of the claim for the money or property or to the effect specified in the
21 offer, with costs then accrued. If within 10 days after the service of the offer the
22 adverse party serves written notice that the offer is accepted, either party may then file
23 the offer and notice of acceptance together with proof of service, and the clerk shall
24 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
25 evidence of that offer is not admissible except in a proceeding to determine the form
26 of judgment after verdict. If the judgment finally entered on the claim as to which an
27 offer has been made under this section is at least five percent less [NOT MORE]
28 favorable to the offeree than the offer, or if there are multiple defendants at least
29 10 percent less favorable to the offeree than the offer, the offeree, whether the
30 party making the claim or defending against the claim, shall pay all costs as
31 allowed under the Alaska Rules of Civil Procedure and shall pay reasonable

1 actual attorney fees incurred by the offeror from the date the offer was made,
 2 [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE
 3 DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

4 (1) if the offer was served no later than 60 days after both parties
 5 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
 6 shall pay 75 percent of the offeror's reasonable actual attorney fees [OFFEREE
 7 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
 8 REDUCED BY FIVE PERCENT A YEAR];

9 (2) if the offer was served more than 60 days after both parties
 10 made the disclosures required by the Alaska Rules of Civil Procedure but more
 11 than 90 days before the trial began, the offeree shall pay 50 percent of the
 12 offeror's reasonable actual attorney fees;

13 (3) if the offer was served 90 days or less but more than 10 days
 14 before the trial began, the offeree shall pay 30 percent of the offeror's reasonable
 15 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
 16 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
 17 YEAR].

18 * Sec. 17. AS 09.30.065 is amended by adding a new subsection to read:

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

28 * Sec. 18. AS 09.30.070(a) is amended to read:

29 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
 30 and decrees for the payment of money, including prejudgment interest, is three
 31 percentage points above the 12th Federal Reserve District discount rate in effect

1 on January 2 of the year in which the judgment or decree is entered [10.5
2 PERCENT A YEAR], except that a judgment or decree founded on a contract in
3 writing, providing for the payment of interest until paid at a specified rate not
4 exceeding the legal rate of interest for that type of contract, bears interest at the rate
5 specified in the contract if the interest rate is set out in the judgment or decree.

6 * Sec. 19. AS 09.30.070 is amended by adding a new subsection to read:

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

9 * Sec. 20. AS 09.50.280 is amended to read:

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

14 * Sec. 21. AS 09.55.440(a) is amended to read:

15 (a) Upon the filing of the declaration of taking and the deposit with the court
16 of the amount of the estimated compensation stated in the declaration, title to the estate
17 as specified in the declaration vests in the plaintiff, and that property is condemned
18 and taken for the use of the plaintiff, and the right to just compensation for it vests in
19 the persons entitled to it. The compensation shall be ascertained and awarded in the
20 proceeding and established by judgment. The judgment must include interest at the
21 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
22 awarded that [WHICH] exceeds the amount paid into court under the declaration of
23 taking. The interest runs from the date title vests to the date of payment of the
24 judgment.

25 * Sec. 22. AS 09.55.536(a) is amended to read:

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

1 for a decision in the case. When the action is filed, the court shall, by order,
 2 determine the professions or specialties to be represented on the expert advisory panel,
 3 giving the parties the opportunity to object or make suggestions.

4 * Sec. 23. AS 09.55.536(c) is amended to read:

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

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

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

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

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

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

22 (6) What specifically caused the medical injury?

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

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

27 * Sec. 24. AS 09.55.536(f) is amended to read:

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

1 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
2 an additional 30 days.

3 * Sec. 25. AS 09.55.536 is amended by adding a new subsection to read:

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

7 * Sec. 26. AS 09.55.560(1) is amended to read:

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

23 * Sec. 27. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

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

31 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or

collects a contingency fee in connection with an action for personal injury, death, or property damage and the damages awarded by a court or jury include an award of punitive damages, the contingent fee due the attorney shall be calculated after that portion of punitive damages due the state under AS 09.17.020(j) has been deducted from the total award of damages.

* **Sec. 29.** AS 09.65 is amended by adding a new section to read:

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

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

* **Sec. 30.** AS 09.65 is amended by adding a new section to read:

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

Notice of Limited Liability

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

(List specific emergency room physicians)

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

(c) A hospital is not immune from liability under (a) of this section for an act or omission of an emergency room physician who is an independent contractor unless the emergency room physician has liability insurance coverage in the amount of at least \$500,000 for each incident and \$1,500,000 for all incidents in a year, and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

(d) In this section,

(1) "emergency room physician" means a physician who does not have an ongoing physician-patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room;

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

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

* Sec. 31. AS 09.65.210 is repealed and reenacted to read:

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

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the felony substantially contributed to the personal injury or death;

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

1 convicted and the party defending against the claim proves by clear and convincing
2 evidence

3 (A) the felonious conduct; and

4 (B) that the felonious conduct substantially contributed to the
5 personal injury or death;

6 (3) fleeing after the commission, by that person, of conduct that would
7 constitute an unclassified felony, a class A felony, or a class B felony or being
8 apprehended for conduct that would constitute an unclassified felony, a class A felony,
9 or a class B felony if the party defending against the claim proves by clear and
10 convincing evidence

11 (A) the felonious conduct; and

12 (B) that the conduct during the flight or apprehension
13 substantially contributed to the injury or death;

14 (4) operating a vehicle, aircraft, or watercraft while under the influence
15 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
16 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
17 the party defending against the claim proves by clear and convincing evidence that the
18 conduct substantially contributed to the personal injury or death; or

19 (5) engaged in conduct that would constitute a violation of
20 AS 28.35.030 for which the person was not convicted if the party defending against
21 the claim proves by clear and convincing evidence

22 (A) the violation of AS 28.35.030; and

23 (B) that the conduct substantially contributed to the personal
24 injury or death.

25 * Sec. 32. AS 09.68 is amended by adding a new section to read:

26 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
27 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
28 information relating to the compromise or other resolution of all civil litigation. The
29 information shall be collected on a form developed by the council for that purpose and
30 must include

31 (1) the case name and file number;

- 1 (2) a general description of the claims being settled;
2 (3) if the case is resolved by way of settlement,
3 (A) the gross dollar amount of the settlement;
4 (B) to whom the settlement was paid;
5 (C) the dollar amount of advanced costs and attorney fees that
6 were deducted from the gross dollar amount of the settlement before
7 disbursement to the claimant;
8 (D) the net amount actually disbursed to the claimant;
9 (E) the total costs and attorney fees paid by or owed by all
10 parties; and
11 (F) any nonmonetary terms, including whether the attorney fees
12 incurred by the claimant were based on a contingent fee agreement or upon an
13 hourly rate; if a contingent fee was paid, the percentage of the total settlement
14 represented by the fee must be included; or, if an hourly rate, the hourly rate
15 paid;
16 (4) if the case is resolved by dismissal, summary judgment, trial, or
17 otherwise,
18 (A) the gross dollar amount of the judgment;
19 (B) the amount of attorney fees awarded and to which party;
20 (C) the amount of costs awarded and to which party;
21 (D) the net amount, after deduction of (B) and (C) of this
22 paragraph, for which the prevailing party has judgment;
23 (E) the dollar amount of advanced costs and attorney fees that
24 were deducted from the gross dollar amount of the judgment before distribution
25 to the claimant;
26 (F) the total costs and attorney fees paid by defending parties;
27 and
28 (G) any nonmonetary terms, including whether the attorney fees
29 incurred by the claimant were based on a contingent fee agreement or upon an
30 hourly rate; if a contingent fee was paid, the percentage of the total settlement
31 represented by the fee must be included; or, if an hourly rate, the hourly rate

1 paid.

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

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

8 (1) divorce and dissolution;

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

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

12 (4) domestic violence protective orders under AS 18.66.100 -
13 18.66.180;

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

15 (6) small claims under AS 22.15.040.

16 * Sec. 33. AS 21.06 is amended by adding a new section to read:

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

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

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

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

1 of the legislature.

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

5 * Sec. 34. AS 21.89.100(d) is amended to read:

6 (d) If the insured selects independent counsel at the insurer's expense, the
7 insurer may require that the independent counsel have at least four years of experience
8 in civil litigation, including defense experience in the general subject area at issue in
9 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
10 policy, the obligation of the insurer to pay the fee charged by the independent counsel
11 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
12 course of business in the defense of a similar civil action in the community in which
13 the claim arose or is being defended. In providing independent counsel, the insurer
14 is not responsible for the fees and costs of defending an allegation for which
15 coverage is properly denied and shall be responsible only for the fees and costs
16 to defend those allegations for which the insurer either reserves its position as to
17 coverage or accepts coverage. The independent counsel shall keep detailed
18 records allocating fees and costs accordingly. A dispute between the insurer and
19 insured regarding attorney fees that is not resolved by the insurance policy or this
20 section shall be resolved by arbitration under AS 09.43.

21 * Sec. 35. AS 21.89.100 is amended by adding a new subsection to read:

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

27 * Sec. 36. AS 23.30.015(g) is amended to read:

28 (g) If the employee or the employee's representative recovers damages from
29 the third person, the employee or representative shall promptly pay to the employer the
30 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
31 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs

1 and expenses. Any excess recovery by the employee or representative shall be
 2 credited against any amount payable by the employer thereafter. If the employer is
 3 allocated a percentage of fault under AS 09.17.080, the amount due the employer
 4 under this subsection shall be reduced by an amount equal to the employer's
 5 equitable share of damages assessed under AS 09.17.080(c).

6 * Sec. 37. AS 44.77.015(a) is amended to read:

7 (a) For the purposes of filing claims for medical services provided under
 8 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
 9 within six months after the date of service, or as provided in (b) of this section, if
 10 there is no third-party claim, or (2) within 12 months after the date of service if there
 11 is a third-party claim. Except as provided in (c) of this section, a claim may not be
 12 paid if it is not filed promptly; an inference to the contrary may not be drawn from
 13 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

14 * Sec. 38. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

- 21 (1) That the issues in the case have actually been joined;
- 22 (2) That all parties have completed discovery or have a reasonable
 23 opportunity to do so within the next 60 days;
- 24 (3) That the procedure for listing witnesses and exhibits and providing
 25 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- 26 (4) Whether trial by jury has been timely demanded;
- 27 (5) The estimated number of days for the trial, including estimates for
 28 each party's case and for jury selection;
- 29 (6) The names, addresses and telephone numbers of all attorneys and
 30 pro se parties who are responsible for the conduct of the litigation;
- 31 (7) Which, if any, statute or rule entitles the case to preference on the

1 trial calendar;

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

4 * **Sec. 39.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

5 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
6 soon as practicable after the exchange of initial disclosures required under Rule
7 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
8 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
9 their claims and defenses and the possibilities for a prompt settlement of the case and
10 to develop a proposed discovery plan. The attorneys of record and all unrepresented
11 parties that have appeared in the case are jointly responsible for arranging and being
12 present or represented at the meeting, for attempting in good faith to agree on the
13 proposed discovery plan, and for submitting to the court within 10 days after the
14 meeting a written report outlining the proposed discovery plan. The proposed
15 discovery plan shall indicate the parties' views and proposals concerning

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

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

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

24 (4) whether a scheduling conference is unnecessary;

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

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

30 * **Sec. 40.** Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new
31 subsection to read:

1 (g) **Limited Discovery; Expedited Calendaring.** In a civil action for personal
2 injury or property damage involving less than \$100,000 in claims the parties shall limit
3 discovery to that allowed under Rule 1(a)(1), District Court Rules, and shall avail
4 themselves of the expedited calendaring procedures allowed under Rule 4, District
5 Court Rules.

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

8 (3) **Settlement Information.** If a voluntary dismissal under this rule
9 is the result of compromise or other settlement of the parties, the parties shall submit
10 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
11 of dismissal made under (1)[a] of this subsection must be accompanied by a
12 certification signed by or on behalf of the plaintiff that the information required under
13 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
14 dismissal made under (1)[b] of this subsection must be accompanied by a certification
15 signed by or on behalf of all parties who have appeared in the action. The
16 requirements of this paragraph do not apply to the types of cases listed in
17 AS 09.68.130(c).

18 * **Sec. 42.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

23 * **Sec. 43.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

24 (b) In addition to its authority under (a) of this rule and its power to punish
25 for contempt, a court may, after reasonable notice and an opportunity to show cause
26 to the contrary, and after hearing by the court, if requested, impose a fine not to
27 exceed \$50,000.00 [\$1,000.00] against any attorney who practices before it for failure
28 to comply with these rules or any rules promulgated by the supreme court.

29 * **Sec. 44.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
30 subsection to read:

31 (c) If the trier of fact determines that a party to a civil action involving

1 personal injury or property damage has intentionally made a false statement of a
2 material fact in connection with the prosecution or defense of a civil action, the court
3 shall enter judgment against the party making the false statement on the issue to which
4 the false statement relates. If the civil action involves multiple claims and the false
5 statement does not apply to all claims, the judgment required under this subsection
6 shall apply only to those claims to which the false statement relates.

7 * Sec. 45. Rule 1(a)(1), District Court Rules of Civil Procedure, is amended to read:

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

16 * Sec. 46. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
17 subsection to read:

18 (b) In a civil action for personal injury or property damage, unless otherwise
19 permitted by order of the court in exceptional cases and for good cause shown, all
20 parties shall file a memorandum to set the case for trial, as set out in Civil Rule 40(b),
21 no later than 180 days after service of the complaint on all parties to the case. The
22 memorandum shall contain a certification that each party has exchanged the
23 information described in Rule 26(a), Alaska Rules of Civil Procedure, and may state
24 their separate positions if they do not agree concerning information or estimates to be
25 provided in the memorandum. After the court satisfies itself that the information
26 described in Rule 26(a), Alaska Rules of Civil Procedure, has been disclosed, the court
27 shall set the case for trial as soon as practicable, but no sooner than 30 days after the
28 court makes the determination regarding disclosure.

29 * Sec. 47. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
30 subsection to read:

31 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the

1 result of compromise or other settlement between the parties, the parties shall submit
2 to the Alaska Judicial Council the information required under AS 09.68.130. A
3 dismissal by agreement under (a) of this rule must be accompanied by a certification
4 signed by the attorneys of record for all parties that the information required under
5 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
6 appellant or petitioner made under (b) of this rule must be accompanied by a
7 certification signed by the appellant's or petitioner's attorney of record. The
8 requirements of this subsection do not apply to the types of cases listed in
9 AS 09.68.130(c).

10 * **Sec. 48.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

11 * **Sec. 49.** AS 09.17.020(e), as enacted in sec. 10 of this Act, has the effect of amending
12 Rule 26, Alaska Rules of Civil Procedure, by limiting discovery in certain actions.

13 * **Sec. 50.** AS 09.17.020(j), as enacted by sec. 10 of this Act, has the effect of amending
14 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
15 percentage of an award of punitive damages be deposited into the general fund.

16 * **Sec. 51.** AS 09.17.080(a), as amended by sec. 11 of this Act, has the effect of amending
17 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
18 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
19 among the claimants, defendants, third-party defendants, persons who have been released from
20 liability, or other person who is potentially responsible for the damages.

21 * **Sec. 52.** AS 09.20.185, enacted by sec. 15 of this Act, has the effect of amending
22 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
23 testifying as an expert witness.

24 * **Sec. 53.** AS 09.30.065, as amended by secs. 16 and 17 of this Act, has the effect of
25 amending Rules 68 and 82, Alaska Rules of Civil Procedure, by requiring the offeree to pay
26 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
27 eliminating provisions relating to interest and by changing provisions related to attorney fee
28 awards.

29 * **Sec. 54.** AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending
30 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
31 awarded for future economic or noneconomic damages or punitive damages.

1 * **Sec. 55. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
 2 legislation to create an alternative dispute resolution procedure within the existing civil
 3 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
 4 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
 5 alternative dispute resolution procedure not later than July 1, 1998.

6 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
 7 Association, review court sanctioned alternative dispute resolution programs in other states and
 8 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
 9 System regarding the establishment of a program for alternative dispute resolution within the
 10 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
 11 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
 12 or rule change and report must include specific types of programs, specific types of cases
 13 within each program that are amenable to alternative dispute resolution, the cost to the parties
 14 and to the Alaska Court System under these programs, and the qualifications of the neutral
 15 parties, including nonlawyers, who will provide dispute resolution services under the program.
 16 The work required under this section shall be completed for the amount of money appearing
 17 on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

20 * **Sec. 56. APPLICABILITY.** This Act applies to all causes of action accruing on or after
 21 the effective date of this Act.

22 * **Sec. 57. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
 23 application of a provision of this Act to any person or circumstance is held invalid, the
 24 remainder of this Act and the application to other persons shall not be affected.

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 3/18/97

Offered: 3/17/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) This section does not apply if

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

25 (A) prolonged exposure to hazardous waste;

26 (B) an intentional act or gross negligence;

27 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 or

19 (4) is totally blind.

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

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

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

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

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

1 is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Notice of Limited Liability**

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

30 (List specific emergency room physicians)

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

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

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

8 (d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) divorce and dissolution;

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

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

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

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

6 (6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 12 (1) That the issues in the case have actually been joined;
- 13 (2) That all parties have completed discovery or have a reasonable
14 opportunity to do so within the next 60 days;
- 15 (3) That the procedure for listing witnesses and exhibits and providing
16 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- 17 (4) Whether trial by jury has been timely demanded;
- 18 (5) The estimated number of days for the trial, including estimates for
19 each party's case and for jury selection;
- 20 (6) The names, addresses and telephone numbers of all attorneys and
21 pro se parties who are responsible for the conduct of the litigation;
- 22 (7) Which, if any, statute or rule entitles the case to preference on the
23 trial calendar;
- 24 (8) That the parties have complied with [PARAGRAPH] (k) of this
25 rule.

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

27 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
28 soon as practicable after the exchange of initial disclosures required under Rule
29 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
30 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
31 their claims and defenses and the possibilities for a prompt settlement of the case and

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

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

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

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

15 (4) whether a scheduling conference is unnecessary;

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

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

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

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

1 AS 09.68.130(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 prior offers.

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

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

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

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

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

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

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 3/18/97

Offered: 3/17/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) This section does not apply if

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

25 (A) prolonged exposure to hazardous waste;

26 (B) an intentional act or gross negligence;

27 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

11 (a) Except as otherwise provided by law, a [A] person may not bring an
12 action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2)
13 [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights
14 of another not arising on contract and not specifically provided otherwise; (3) for
15 taking, detaining, or injuring personal property, including an action for its
16 specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or
17 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless
18 the action is commenced within two years of the accrual of the cause of action.

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

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

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

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

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

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

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

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

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

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

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

19 (4) is totally blind.

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

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

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

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

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

1 is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Notice of Limited Liability**

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

30 (List specific emergency room physicians)

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

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

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

(d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) divorce and dissolution;

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

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

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

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

6 (6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
 28 soon as practicable after the exchange of initial disclosures required under Rule
 29 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
 30 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
 31 their claims and defenses and the possibilities for a prompt settlement of the case and

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

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

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

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

15 (4) whether a scheduling conference is unnecessary;

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

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

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

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

1 AS 09.68.130(c).

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

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

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

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

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

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

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

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

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

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

4 * Sec. 53. AS 09.55.548 is repealed.

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

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

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

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

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

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

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

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

1 prior offers.

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

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

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

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

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

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

DRAFT #2: SUBJECT TO REVIEW AND REVISION

April 16, 1997

Sectional Summary
of
SENATE CS FOR CS FOR SS FOR HB 58 ()

An Act Relating to Civil Actions

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

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

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

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

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

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

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to ten, although the ten years may be waived by contract. The national average among the many states which have a statute of repose is 6 years.

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

In medical malpractice cases involving children, the statute of repose does not apply if the facts that would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

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

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

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

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

Section 8. Disabilities of minority and incompetency. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of eight years at the time of the injury, until the minor's eighth birthday. This means the minor may bring an action for birth trauma injuries, or other injuries sustained before the age of eight, anytime before the minor's tenth birthday. This is consistent with the operation of the statute of repose.

Section 9. Noneconomic damages. This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places caps on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought. Under existing

law, there are no caps on noneconomic damages for "disfigurement or severe physical impairment."

This section leaves intact the existing recovery cap of \$500,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage. However, it now takes into consideration injuries to children and young adults by allowing the greater of \$500,000 or the injured person's life expectancy in years multiplied by \$10,000. These caps are per occurrence, and not per claimant.

In more serious cases, such as loss of, or loss of functional use of one or more limbs, or permanent brain damage, or third degree burns over one-half or more of the claimant's body, or total deafness or total blindness, the recovery cap is substantially raised from previous versions of the bill to \$1,500,000. Again, in the case of injuries to children or young adults, the cap now is the greater of \$1,500,000 or the injured person's life expectancy in years multiplied by \$30,000. These caps are per occurrence, and not per claimant.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts, including reckless conduct. Under existing law, there are no quantifiable caps on punitive damages.

Subsections (a) through (f) are substantially identical to the language recommended by the Governor's task force.

Subsection (f) generally imposes a cap on punitive damages of the greater of three times compensatory damages or \$500,000.

Subsection (g) places a higher cap on punitive damages in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be the greater of four times compensatory damages or \$3,000,000.

Subsection (h) caps punitive damages in unlawful employment practice cases. It is generally taken from SB 15, except that it takes into consideration small businesses in this state. The amount of the caps varies in five categories, depending upon the number of employees in the state. Where employers have fewer than 15 employees, the punitive damage is capped at \$50,000. Where employers have 500 or more employees, the punitive damage cap is \$500,000.

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

Section 11. Apportionment of damages.

Under present law, fault can be allocated only to parties who are present in the lawsuit. This section would allow allocation of fault to a person who is **not** a party to the action, if the person has been identified as a potentially responsible person, but (a) the person is outside the jurisdiction of the court; or, (b) the person is precluded from being joined by law or court rule; or (c) is a person who is not reasonably locatable. The rationale is that if a person is identified as a potentially responsible party, and is available to be joined, but the defendant chose not to, it would be unfair to the defendant to allocate fault to an "empty chair" he or she has created by not joining that person. Under this section, fault cannot be allocated to a person who cannot be joined because of the statute of repose.

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

Section 12. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

Section 13. Apportionment of damages; worker's compensation lien. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

Section 14. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 15. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

This section does not apply if the state has not recognized a board that has certified the witness in the particular field or matter in issue.

Section 16. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer (or at least 10% less favorable if there are multiple defendants), whether the offer is tendered by the party making the claim, or the party defending against the claim.

The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees imposed, based on how soon after the commencement of the action the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 75% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 17. Offers of judgment. This subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

Section 18. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the Alaska usury statute, AS 45.45.010(b).

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

Section 19. **Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 20. **Judgment for plaintiff; punitive damages.** This section contains a consistency change that applies the Section 19 interest rate to judgments against the State of Alaska.

Section 21. **Interest in condemnation proceedings.** This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 19.

Section 22. **Medical advisory panels.** This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 23. **Expert advisory panel; panel questions.** This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 24. **Expert advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 25. **Expert advisory panel; public sector provider.** This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 26. **Definitions; health care provider.** This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 27. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 28. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery.

Section 29. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 30. Civil liability of hospitals for certain physicians. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room independent contractor physicians. Current law allows a claimant to sue only the hospital rather than the emergency room physician who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident, and \$1,500,000 for all incidents in a year.

Section 31. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

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

conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section requires clear and convincing evidence that the claimant's conduct substantially contributed to the personal injury or death.

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

Section 32. Collection of settlement information. This approach of this section is generally taken from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle, or otherwise dispose of cases, to file information about the settlements or judgments, including the amounts received by the attorneys on both sides. This data will be essential in assessing the efficiency of the civil justice system in the future.

Section 33. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 34. Appointment of independent counsel; conflicts of interest.

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

Section 35. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 36. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 19 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 37. Claims against the state for medical claims. This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 38. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 39. Alaska Rule of Civil Procedure 16.1(n). This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 40. Limited Discovery; Expedited Calendaring. This section applies the District Court streamlined provisions found in sections 45 and 46 of this bill to Superior Court personal injury and property damage cases involving \$100,000 in claims or less.

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

Section 42. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 43. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$50,000 against attorneys, increased from \$1,000 under the existing rule.

Section 44. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 45. District Court; Deposition limitation. This section requires that in District Court personal injury and property damage cases depositions be limited to two for each side, unless the parties otherwise agree, or the court for good cause otherwise directs.

Section 46. District Court; Expedited Trials. This section requires that in District Court personal injury and property damage cases, all parties must file

a memorandum to set the case for trial within six months after service of the complaint, and that the court shall set the case for trial "as soon as practicable" after confirming that all parties have exchanged the discovery materials required by Rule 26(a).

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 48. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 39.

Sections 49-54. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 55. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. It is further directed to work with the Alaska Supreme Court to prepare proposed rules and statutes to implement such a program, and submit the proposal in time for the second term of this 20th Legislature. The intent is to have and alternative dispute resolution program in effect by July 1, 1998.

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

Section 56. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 57. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE



DISTRICT 20

SESSION:
STATE CAPITOL ROOM 216
JUNEAU, ALASKA 99501-1182
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 360
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

SPONSOR STATEMENT OF SSHB 58 (JUD): Tort Reform Bill

Many individuals and businesses have already experienced the nightmare of litigation that drags on for years and the high legal costs that go with them. Lawsuits in this country have proliferated. Litigation has become an industry. Contingent fee contracts give up to 40% of injured victims' damage recoveries to trial lawyers. The incentives to create the most litigious society on earth are firmly in place. As a consequence, the cost of liability insurance has become unaffordable to many. In some areas of this state, there are no domestic insurance companies which will write a liability insurance policy for any price. Across the country, and throughout Alaska, there is an outcry for reforming our civil justice system. Ordinary people and businesses of all sizes seek relief from a flawed system. Consistent with the foregoing, a more efficient and fair method of compensating wrongly injured victims must be crafted and maintained.

Tillinghast, a consulting actuarial firm reported in 1992 that only about 50% of damage awards of some \$132 billion nationwide went to the injured party. The remaining 50% went to the cost of litigation and attorney fees. From the foregoing, it is apparent that if the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient because only about half of the cost goes toward any form of compensation for victims. It is unfair because many injured victims receive insufficient compensation to no compensation at all.

In contrast with the foregoing deficiencies, the workers' compensation system returns about 70% of the workers' compensation insurance premium dollars to the injured party. The efficiencies enjoyed in the health insurance industry are even higher, with about 85% of health insurance premium dollars being returned to the beneficiary. The most efficient of them all is Social Security, with 99% of social security taxes collected being returned to the beneficiaries of that system. The relative certainty of recovery, and the certainty in the amount of recovery under these systems, stands in stark contrast to the uncertainties inherent in the litigation of claims and defenses. The absence of uncertainty and high costs of litigation in these alternative

systems makes clear that there is a compelling need for substantial reforms in the civil justice system.

A more specific statement of legislative intent is found in Section 1 of the Act. This Act addresses many of the areas which must be reformed if we are to create an environment which is conducive to rational economic development, a positive business climate, the creation of jobs, and a higher standard of living for all Alaskans. We are all personally responsible for the attainment of these goals, and we are all personally accountable if we fail.

0-LS0056Z
Ford/Utermohle
4/14/97

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 26, 41, 49,
3 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and
4 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of
5 Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

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

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

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

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

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

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

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

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

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

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

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

30 (11) ensure that this Act does not apply to or in any way have an effect on
31 existing litigation or a civil cause of action that accrues before the effective date of this Act;

1 it is the specific intent of the legislature that this Act not apply to or in any way have an
2 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
3 now or in the future.

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

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

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

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

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

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

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

18 Sec. 09.10.055. Statute of repose of 10 years. (a) Notwithstanding the
19 disability of minority described under AS 09.10.140(a), a person may not bring an
20 action for personal injury, death, or property damage unless commenced within 10
21 years of the earlier of the date of

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

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

31 (b) This section does not apply if

(1) the personal injury, death, or property damage resulted from
② (A) prolonged exposure to hazardous waste;
① (B) an intentional act or gross negligence;
(C) fraud or fraudulent misrepresentation;
(D) breach of an express warranty or guarantee; or
(E) a defective product; in this subparagraph, "product" means
an object that has intrinsic value, is capable of delivery as an assembled whole
or as a component part, and is introduced into trade or commerce;

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

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

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

(5) the facts that would ~~give notice of a potential cause of action of a~~
minor are not discoverable in the exercise of reasonable care by the minor or the
minor's parent or guardian.

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

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

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

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

(a) Except as provided under (c) of this section, if [IF] a person entitled to

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

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

(c) In an action for personal injury 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.

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

* Sec. 10. AS 09.17.020 is repealed and reenacted to read:

Sec. 09.17.020. Punitive damages. (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine, concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

(1) was outrageous, including acts done with malice or bad motives;

or

(2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

(1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;

(2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;

(3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;

(4) the duration of the conduct and any intentional concealment of the conduct;

(5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

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) \$50,000 if the employer has less than 15 employees in this state;

(2) \$100,000 if the employer has 15 or more but less than 100 employees in this state;

(3) \$300,000 if the employer has 100 or more but less than 200 employees in this state;

(4) \$400,000 if the employer has 200 or more but less than 500 employees in this state; and

(5) \$500,000 if the employer has 500 or more employees in this state.

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

(j) If a person receives an award of punitive damages, the court shall require that 50 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 punitive damages.

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

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

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

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

1 and is

2 (A) within the jurisdiction of the court;

3 (B) not precluded from being joined by law or court rule;

4 or

5 (C) reasonably locatable [UNDER AS 09.16.040].

6 * Sec. 12. AS 09.17.080(b) is amended to read:

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

14 * Sec. 13. AS 09.17.080(c) is amended to read:

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

26 * Sec. 14. AS 09.17.900 is amended to read:

27 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
28 that are in any measure negligent, [OR] reckless, or intentional toward the person or
29 property of the actor or others, or that subject a person to strict tort liability. The term
30 also includes breach of warranty, unreasonable assumption of risk not constituting an
31 enforceable express consent, misuse of a product for which the defendant otherwise

1 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
2 Legal requirements of causal relation apply both to fault as the basis for liability and
3 to contributory fault.

4 * Sec. 15. AS 09.20 is amended by adding a new section to read:

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

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

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

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

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

17 * Sec. 16. AS 09.30.065 is amended to read:

18 Sec. 09.30.065. Offers of judgment. At any time more than 10 days before
19 the trial begins, either the party making a claim or the party defending against a claim
20 may serve upon the adverse party an offer to allow judgment to be entered in complete
21 satisfaction of the claim for the money or property or to the effect specified in the
22 offer, with costs then accrued. If within 10 days after the service of the offer the
23 adverse party serves written notice that the offer is accepted, either party may then file
24 the offer and notice of acceptance together with proof of service, and the clerk shall
25 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
26 evidence of that offer is not admissible except in a proceeding to determine the form
27 of judgment after verdict. If the judgment finally entered on the claim as to which an
28 offer has been made under this section is at least five percent less [NOT MORE]
29 favorable to the offeree than the offer, or if there are multiple defendants at least
30 10 percent less favorable to the offeree than the offer, the offeree, whether the
31 party making the claim or defending against the claim, shall pay all costs as

1 allowed under the Alaska Rules of Civil Procedure and shall pay reasonable
2 actual attorney fees incurred by the offeror from the date the offer was made.
3 [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE
4 DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

5 (1) if the offer was served no later than 60 days after both parties
6 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
7 shall pay 75 percent of the offeror's reasonable actual attorney fees [OFFEREE
8 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
9 REDUCED BY FIVE PERCENT A YEAR];

10 (2) if the offer was served more than 60 days after both parties
11 made the disclosures required by the Alaska Rules of Civil Procedure but more
12 than 90 days before the trial began, the offeree shall pay 50 percent of the
13 offeror's reasonable actual attorney fees;

14 (3) if the offer was served 90 days or less but more than 10 days
15 before the trial began, the offeree shall pay 30 percent of the offeror's reasonable
16 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
17 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
18 YEAR].

19 * Sec. 17. AS 09.30.065 is amended by adding a new subsection to read:

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

29 * Sec. 18. AS 09.30.070(a) is amended to read:

30 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
31 and decrees for the payment of money, including prejudgment interest, is three

1 percentage points above the 12th Federal Reserve District discount rate in effect
2 on January 2 of the year in which the judgment or decree is entered [10.5
3 PERCENT A YEAR], except that a judgment or decree founded on a contract in
4 writing, providing for the payment of interest until paid at a specified rate not
5 exceeding the legal rate of interest for that type of contract, bears interest at the rate
6 specified in the contract if the interest rate is set out in the judgment or decree.

7 * Sec. 19. AS 09.30.070 is amended by adding a new subsection to read:

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

10 * Sec. 20. AS 09.50.280 is amended to read:

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

15 * Sec. 21. AS 09.55.440(a) is amended to read:

16 (a) Upon the filing of the declaration of taking and the deposit with the court
17 of the amount of the estimated compensation stated in the declaration, title to the estate
18 as specified in the declaration vests in the plaintiff, and that property is condemned
19 and taken for the use of the plaintiff, and the right to just compensation for it vests in
20 the persons entitled to it. The compensation shall be ascertained and awarded in the
21 proceeding and established by judgment. The judgment must include interest at the
22 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
23 awarded that [WHICH] exceeds the amount paid into court under the declaration of
24 taking. The interest runs from the date title vests to the date of payment of the
25 judgment.

26 * Sec. 22. AS 09.55.536(a) is amended to read:

27 (a) In an action for damages due to personal injury or death based upon the
28 provision of professional services by a health care provider, including a person
29 providing services on behalf of a governmental entity, when the parties have not
30 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
31 20 days after filing of answer to a summons and complaint a three-person expert

1 advisory panel unless the court decides that an expert advisory opinion is not necessary
2 for a decision in the case. When the action is filed, the court shall, by order,
3 determine the professions or specialties to be represented on the expert advisory panel,
4 giving the parties the opportunity to object or make suggestions.

5 * Sec. 23. AS 09.55.536(c) is amended to read:

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

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

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

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

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

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

23 (6) What specifically caused the medical injury?

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

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

28 * Sec. 24. AS 09.55.536(f) is amended to read:

29 (f) Discovery may not be undertaken in a case until the report of the expert
30 advisory panel is received or 60 days after selection of the panel, whichever occurs
31 first. However, the court may relax this prohibition upon a showing of good cause by

any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant the panel [IT] an additional 30 days.

* Sec. 25. AS 09.55.536 is amended by adding a new subsection to read:

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

* Sec. 26. AS 09.55.560(1) is amended to read:

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.58; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; [AND] a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; [AND] an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including a health maintenance organization, individual practice association, integrated delivery system, preferred provider organization or arrangement, and a physical hospital organization.

* Sec. 27. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

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

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

7 * Sec. 29. AS 09.65 is amended by adding a new section to read:

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

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

16 * Sec. 30. AS 09.65 is amended by adding a new section to read:

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

30 **Notice of Limited Liability**

31 The following emergency room physicians are independent

1 contractors and are not employees of the hospital:

2 (List specific emergency room physicians)

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

5 (c) A hospital is not immune from liability under (a) of this section for an act
6 or omission of an emergency room physician who is an independent contractor unless
7 the emergency room physician has liability insurance coverage in the amount of at
8 least \$500,000 for each incident and \$1,500,000 for all incidents in a year, and the
9 coverage is in effect and applicable to those health care services offered by the
10 emergency room physician that the hospital is required to provide by law or by
11 accreditation requirements.

12 (d) In this section,

13 (1) "emergency room physician" means a physician who does not have
14 an ongoing physician-patient relationship with the emergency room patient and who
15 provides emergency health care services in a hospital emergency room;

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

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

21 * Sec. 31. AS 09.65.210 is repealed and reenacted to read:

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

27 (1) engaged in the commission of a felony, the person has been
28 convicted of the felony, including conviction based on a guilty plea or plea of nolo
29 contendere, and the party defending against the claim proves by clear and convincing
30 evidence that the felony substantially contributed to the personal injury or death;

31 (2) engaged in conduct that would constitute the commission of an

1 unclassified felony, a class A, or a class B felony for which the person was not
2 convicted and the party defending against the claim proves by clear and convincing
3 evidence

4 (A) the felonious conduct; and

5 (B) that the felonious conduct substantially contributed to the
6 personal injury or death;

7 (3) fleeing after the commission, by that person, of conduct that would
8 constitute an unclassified felony, a class A felony, or a class B felony or being
9 apprehended for conduct that would constitute an unclassified felony, a class A felony,
10 or a class B felony if the party defending against the claim proves by clear and
11 convincing evidence

12 (A) the felonious conduct; and

13 (B) that the conduct during the flight or apprehension
14 substantially contributed to the injury or death;

15 (4) operating a vehicle, aircraft, or watercraft while under the influence
16 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
17 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
18 the party defending against the claim proves by clear and convincing evidence that the
19 conduct substantially contributed to the personal injury or death; or

20 (5) engaged in conduct that would constitute a violation of
21 AS 28.35.030 for which the person was not convicted if the party defending against
22 the claim proves by clear and convincing evidence

23 (A) the violation of AS 28.35.030; and

24 (B) that the conduct substantially contributed to the personal
25 injury or death.

26 * Sec. 32. AS 09.68 is amended by adding a new section to read:

27 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
28 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
29 information relating to the compromise or other resolution of all civil litigation. The
30 information shall be collected on a form developed by the council for that purpose and
31 must include

- 1 (1) the case name and file number;
2 (2) a general description of the claims being settled;
3 (3) if the case is resolved by way of settlement,
4 (A) the gross dollar amount of the settlement;
5 (B) to whom the settlement was paid;
6 (C) the dollar amount of advanced costs and attorney fees that
7 were deducted from the gross dollar amount of the settlement before
8 disbursement to the claimant;
9 (D) the net amount actually disbursed to the claimant;
10 (E) the total costs and attorney fees paid by defending parties;
11 and
12 (F) any nonmonetary terms, including whether the attorney fees
13 incurred by the claimant were based on a contingent fee agreement or upon an
14 hourly rate; if a contingent fee was paid, the percentage of the total settlement
15 represented by the fee must be included; or, if an hourly rate, the hourly rate
16 paid;
17 (4) if the case is resolved by dismissal, summary judgment, trial, or
18 otherwise,
19 (A) the gross dollar amount of the judgment;
20 (B) the amount of attorney fees awarded and to which party;
21 (C) the amount of costs awarded and to which party;
22 (D) the net amount, after deduction of (B) and (C) of this
23 paragraph, for which the prevailing party has judgment;
24 (E) the dollar amount of advanced costs and attorney fees that
25 were deducted from the gross dollar amount of the judgment before distribution
26 to the claimant;
27 (F) the total costs and attorney fees paid by defending parties;
28 and
29 (G) any nonmonetary terms, including whether the attorney fees
30 incurred by the claimant were based on a contingent fee agreement or upon an
31 hourly rate; if a contingent fee was paid, the percentage of the total settlement

represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

(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.

* Sec. 33. AS 21.06 is amended by adding a new section to read:

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

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

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

(d) Beginning June 1, 2000, the information compiled under (a) of this section

1 shall be reported annually to the governor and the judiciary committees of both houses
2 of the legislature.

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

6 * Sec. 34. AS 21.89.100(d) is amended to read:

7 (d) If the insured selects independent counsel at the insurer's expense, the
8 insurer may require that the independent counsel have at least four years of experience
9 in civil litigation, including defense experience in the general subject area at issue in
10 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
11 policy, the obligation of the insurer to pay the fee charged by the independent counsel
12 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
13 course of business in the defense of a similar civil action in the community in which
14 the claim arose or is being defended. In providing independent counsel, the insurer
15 is not responsible for the fees and costs of defending an allegation for which
16 coverage is properly denied and shall be responsible only for the fees and costs
17 to defend those allegations for which the insurer either reserves its position as to
18 coverage or accepts coverage. The independent counsel shall keep detailed
19 records allocating fees and costs accordingly. A dispute between the insurer and
20 insured regarding attorney fees that is not resolved by the insurance policy or this
21 section shall be resolved by arbitration under AS 09.43.

22 * Sec. 35. AS 21.89.100 is amended by adding a new subsection to read:

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

28 * Sec. 36. AS 23.30.015(g) is amended to read:

29 (g) If the employee or the employee's representative recovers damages from
30 the third person, the employee or representative shall promptly pay to the employer the
31 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]

1 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
2 and expenses. Any excess recovery by the employee or representative shall be
3 credited against any amount payable by the employer thereafter. If the employer is
4 allocated a percentage of fault under AS 09.17.080, the amount due the employer
5 under this subsection shall be reduced by an amount equal to the employer's
6 equitable share of damages assessed under AS 09.17.080(c).

7 * Sec. 37. AS 44.77.015(a) is amended to read:

8 (a) For the purposes of filing claims for medical services provided under
9 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
10 within six months after the date of service, or as provided in (b) of this section, if
11 there is no third-party claim, or (2) within 12 months after the date of service if there
12 is a third-party claim. Except as provided in (c) of this section, a claim may not be
13 paid if it is not filed promptly; an inference to the contrary may not be drawn from
14 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

15 * Sec. 38. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

- 22 (1) That the issues in the case have actually been joined;
23 (2) That all parties have completed discovery or have a reasonable
24 opportunity to do so within the next 60 days;
25 (3) That the procedure for listing witnesses and exhibits and providing
26 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
27 (4) Whether trial by jury has been timely demanded;
28 (5) The estimated number of days for the trial, including estimates for
29 each party's case and for jury selection;
30 (6) The names, addresses and telephone numbers of all attorneys and
31 pro se parties who are responsible for the conduct of the litigation;

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

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

* Sec. 39. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

(n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and to develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the proposed discovery plan. The proposed discovery plan shall indicate the parties' views and proposals concerning

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

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

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

(4) whether a scheduling conference is unnecessary;

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

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

* Sec. 40. Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new

subsection to read:

(g) **Limited Discovery; Expedited Calendaring.** In cases involving less than \$100,000 in claims the parties shall limit discovery to that allowed under Rule 1(a)(1), District Court Rules, and shall avail themselves of the expedited calendaring procedures allowed under Rule 4, District Court Rules.

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

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

* Sec. 42. Rule 72.1(g), Alaska Rules of Civil Procedure, 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 [80] days after selection of the Panel [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. 43. Rule 95(b), Alaska Rules of Civil Procedure, 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 \$50,000.00 [\$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. 44. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new subsection to read:

(c) If the trier of fact determines that a party to a civil action has intentionally

1 made a false statement of a material fact in connection with the prosecution or defense
2 of a civil action, the court shall enter judgment against the party making the false
3 statement on the issue to which the false statement relates. If the civil action involves
4 multiple claims and the false statement does not apply to all claims, the judgment
5 required under this subsection shall apply only to those claims to which the false
6 statement relates.

7 * Sec. 45. Rule 1(a)(1), District Court Rules of Civil Procedure, is amended to read:

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

15 * Sec. 46. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
16 subsection to read:

17 (b) Unless otherwise permitted by order of the court in exceptional cases and
18 for good cause shown, all parties shall file a memorandum to set the case for trial, as
19 set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all
20 parties to the case. The memorandum shall contain a certification that each party has
21 exchanged the information described in Rule 26(a), Alaska Rules of Civil Procedure,
22 and may state their separate positions if they do not agree concerning information or
23 estimates to be provided in the memorandum. After the court satisfies itself that the
24 information described in Rule 26(a), Alaska Rules of Civil Procedure, has been
25 disclosed, the court shall set the case for trial as soon as practicable, but no sooner
26 than 30 days after the court makes the determination regarding disclosure.

27 * Sec. 47. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
28 subsection to read:

29 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
30 result of compromise or other settlement between the parties, the parties shall submit
31 to the Alaska Judicial Council the information required under AS 09.68.130. A

1 dismissal by agreement under (a) of this rule must be accompanied by a certification
2 signed by the attorneys of record for all parties that the information required under
3 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
4 appellant or petitioner made under (b) of this rule must be accompanied by a
5 certification signed by the appellant's or petitioner's attorney of record. The
6 requirements of this subsection do not apply to the types of cases listed in
7 AS 09.68.130(c).

8 * Sec. 48. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

9 * Sec. 49. AS 09.17.020(e), as enacted in sec. 10 of this Act, has the effect of amending
10 Rule 26, Alaska Rules of Civil Procedure, by limiting discovery in certain actions.

11 * Sec. 50. AS 09.17.020(j), as enacted by sec. 10 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
13 percentage of an award of punitive damages be deposited into the general fund.

14 * Sec. 51. AS 09.17.080(a), as amended by sec. 11 of this Act, has the effect of amending
15 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
16 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
17 among the claimants, defendants, third-party defendants, persons who have been released from
18 liability, or other person who is potentially responsible for the damages.

19 * Sec. 52. AS 09.20.185, enacted by sec. 15 of this Act, has the effect of amending
20 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
21 testifying as an expert witness.

22 * Sec. 53. AS 09.30.065, as amended by secs. 16 and 17 of this Act, has the effect of
23 amending Rules 68 and 82, Alaska Rules of Civil Procedure, by requiring the offeree to pay
24 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
25 eliminating provisions relating to interest and by changing provisions related to attorney fee
26 awards.

27 * Sec. 54. AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending
28 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
29 awarded for future economic or noneconomic damages or punitive damages.

30 * Sec. 55. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
31 legislation to create a pilot alternative dispute resolution procedure within the existing civil

1 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
2 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
3 alternative dispute resolution procedure not later than July 1, 1998.

4 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
5 Association, review court sanctioned alternative dispute resolution programs in other states and
6 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
7 System regarding the establishment of a program for alternative dispute resolution within the
8 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
9 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
10 or rule change and report must include specific types of programs, specific types of cases
11 within each program that are amenable to alternative dispute resolution, the cost to the parties
12 and to the Alaska Court System under these programs, and the qualifications of the neutral
13 parties, including nonlawyers, who will provide dispute resolution services under the program.
14 The work required under this section shall be completed for the amount of money appearing
15 on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

18 * Sec. 56. APPLICABILITY. This Act applies to all causes of action accruing on or after
19 the effective date of this Act.

20 * Sec. 57. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
21 application of a provision of this Act to any person or circumstance is held invalid, the
22 remainder of this Act and the application to other persons shall not be affected.

COMPARISON

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58</u> <u>(WORK DRAFT Z AS AMENDED)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 1.</u> <u>INTENT</u>	Same.	Same.
<u>SECTION 2.</u> <u>LIQUIDATION OF A STATE</u> <u>BANK</u>	Same.	Same.
<u>SECTION 3.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 4.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 5.</u> <u>STATUTE OF REPOSE</u>	* Increased to 10 years. * Excepts from the statute of repose the situation where the facts which would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.	*8 years.
<u>SECTION 6.</u> <u>STATUTE OF</u> <u>LIMITATIONS FOR TORT</u> <u>AND OTHER CLAIMS</u>	Same.	Same.
<u>SECTION 7.</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.
<u>SECTION 8.</u> <u>ADDITION TO</u> <u>DISABILITY OF</u> <u>MINORITY</u>	* 8 years	* 6 years.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 9.</u> <u>NON-ECONOMIC</u> <u>DAMAGES</u>	* Lower limit increases to \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater. * Upper limit increases to \$1.5 million or the person's life expectancy multiplied by \$30,000, whichever is greater. *Provides that these limits are the maximum amount that can be recovered for all claims arising out of a single injury.	*Lower limit of \$300,000. *Upper limit of \$500,000.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 10.</u> <u>PUNITIVE DAMAGES</u>	*Adopts the Task Force recommendations for subsections a through e. *Retains the three times compensatory damage limit contained in the Senate Finance CS, but increases that limit to a maximum of \$500,000. *Increases the secondary limit to four times compensatory or \$3 million, whichever is greater. *Adds additional limits for punitive damages against an employer for violation of an unlawful employment practices prohibited by AS 18.80.220. *Limits are \$50,000 if the employer has less than fifteen employees; \$100,000 if fifteen or more but less than one hundred employees, \$300,000 if one hundred or more but less than two hundred employees; \$400,000 if 200 or more but less than five hundred employees; \$500,000 if more than 500 employees.	*Limit for most cases is three times compensatory damages or \$300,000, whichever is greater. *Secondary limit is four times compensatory damages or \$600,000, whichever is greater.
	Deleted.	Section 12. (Income taxes)
	Deleted.	Sections 13-15 (Periodic payments)
	Deleted.	Section 16 (Collateral benefits)

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 11.</u> <u>ALLOCATION OF FAULT</u>	*Requires the person to be joined in order to allocate fault unless the person is not within the jurisdiction of the court, or is precluded from being joined by law or court rules or is cannot be reasonably located.	*Appears as section 17 in the Senate Finance CS. *Provides that fault would be allocated to all persons, regardless of whether they are joined as a party unless they cannot be sued because of the statute of repose.
<u>SECTION 12.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 18 in Senate Finance CS.
<u>SECTION 13.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 19 of Senate Finance CS.
<u>SECTION 14.</u> <u>INTENTIONAL CONDUCT</u>	No change.	*Appears as section 20 of Senate Finance CS.
<u>SECTION 15.</u> <u>EXPERT WITNESS QUALIFICATION</u>	*Substantially the same as section 21 of Senate Finance CS.	*Appears as section 21 of Senate Finance CS.
<u>SECTION 16.</u> <u>OFFERS OF JUDGMENT</u>	* Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer. * Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made.	*Appears as section 22 in Senate Finance CS.
<u>SECTION 17.</u> <u>OFFERS OF JUDGMENT</u>	Same.	* Appears as section 23 of Senate Finance CS

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 18.</u> <u>PREJUDGMENT</u> <u>INTEREST</u>	Same.	* Appears as section 24 of Senate Finance CS.
<u>SECTION 19.</u> <u>PREJUDGMENT</u> <u>INTEREST ON FUTURE</u> <u>DAMAGES</u>	Same.	* Appears as Senate Finance CS Section 25.
<u>SECTION 20.</u> <u>JUDGMENT FOR</u> <u>PLAINTIFF</u>	Same.	* Appears as section 26 of Senate Finance CS.
<u>SECTION 21.</u> <u>CONDEMNATION</u>	Same.	* Appears as section 27 of Senate Finance CS.
<u>SECTIONS 22 - 29.</u>	Same.	* Appears as sections 29-36 of Senate Finance CS.
<u>SECTION 30.</u> <u>CIVIL LIABILITY OF</u> <u>HOSPITALS</u>	* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year." * Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.	* Appears as section 37 in Senate Finance CS.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 31.</u> <u>DAMAGES FROM</u> <u>COMMISSION OF FELONY</u>	* Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death.	* Appears as section 38 in Senate Finance CS.
<u>SECTION 32.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	* Adds collection of attorney fees and costs information.	* Appears as section 39 in the Senate Finance CS.
<u>SECTION 33.</u> <u>INSURANCE REPORT</u>	Same.	* Appears as section 40 of Senate Finance CS.
<u>SECTIONS 34-39.</u>	Same.	* Appears as sections 41- 46.
<u>SECTION 40 (NEW)</u> <u>LIMITED DISCOVERY</u>	* Provides for limited discovery in personal injury or property damage claims of less than \$100,000.	* Not present.
<u>SECTION 41.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Includes attorney fee information.	* Appears as section 47 of Senate Finance CS.
<u>SECTION 42.</u> <u>DISCOVERY IN MEDICAL</u> <u>MALPRACTICE</u>	Same.	*Appears as section 48 of Senate Finance CS.
<u>SECTION 43.</u> <u>RULE 95</u>	*Increases sanctions to \$50,000.	* Appears as section 49 of Senate Finance CS. * Sanctions remain \$1,000.
<u>SECTION 44</u> <u>TRUTH PROVISION</u>	*Limited to Personal Injury and Property Damage cases.	* Appears as section 50 of Senate Finance CS. * Unlimited.
<u>SECTION 45-46.</u> <u>DISTRICT COURT</u> <u>PROCEDURES</u>	*Provides for expedited procedure in certain cases.	*Not present.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 47</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Same as section 51 of Senate Finance CS, except that it includes attorney fee information.	* Appears as section 51 of Senate Finance CS.
<u>SECTION 48-54</u> <u>RULES CHANGES</u>	*Substantially the same.	*Appears as section 52-62 Repealers of Senate Finance CS.
<u>SECTION 55</u> <u>ALTERNATIVE DISPUTE</u> <u>RESOLUTION</u>	*Substantially the same.	*Appears as section 63 of Senate Finance CS.
<u>SECTION 56.</u>	Same.	*Appears as section 64 of Senate Finance CS.
<u>SECTION 57.</u>	Same.	*Appears as section 65 of Senate Finance CS.

much work

COMPARISON

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<u>SECTION 6.</u> <u>STATUTE OF</u> <u>LIMITATIONS FOR TORT</u> <u>AND OTHER CLAIMS</u>	Same.	Same.
<u>SECTION 7.</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.
<u>SECTION 8.</u> <u>ADDITION TO</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same. <i>8 yrs</i>	Same. <i>6 yrs</i>

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
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<u>SECTION 14.</u> <u>INTENTIONAL CONDUCT</u>	No change.	*Appears as section 20 of Senate Finance CS.
<u>SECTION 15.</u> <u>EXPERT WITNESS QUALIFICATION</u>	*Substantially the same as section 21 of Senate Finance CS.	*Appears as section 21 of Senate Finance CS. *Substantially the same.
<u>SECTION 16.</u> <u>OFFERS OF JUDGMENT</u>	* Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer. * Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made.	*Appears as section 22 in Senate Finance CS.
<u>SECTION 17.</u> <u>OFFERS OF JUDGMENT</u>	Same.	* Appears as section 23 of Senate Finance CS

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<u>SECTION 19.</u> <u>PREJUDGMENT</u> <u>INTEREST ON FUTURE</u> <u>DAMAGES</u>	Same.	* Appears as Senate Finance CS Section 25.
<u>SECTION 20.</u> <u>JUDGMENT FOR</u> <u>PLAINTIFF</u>	Same.	* Appears as section 26 of Senate Finance CS.
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<u>SECTION 30.</u> <u>CIVIL LIABILITY OF</u> <u>HOSPITALS</u>	* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year." * Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.	* Appears as section 37 in Senate Finance CS.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 31.</u> <u>DAMAGES FROM</u> <u>COMMISSION OF FELONY</u>	* Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death.	* Appears as section 38 in Senate Finance CS.
<u>SECTION 32.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	* Adds collection of attorney fees and costs information.	* Appears as section 39 in the Senate Finance CS.
<u>SECTION 33.</u> <u>INSURANCE REPORT</u>	Same.	* Appears as section 40 of Senate Finance CS.
<u>SECTIONS 34-39.</u>	Same.	* Appears as sections 41- 46.
<u>SECTION 40 (NEW)</u> <u>LIMITED DISCOVERY</u>	* Provides for limited discovery.	* Not present.
<u>SECTION 41.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Includes attorney fee information.	* Appears as section 47 of Senate Finance CS.
<u>SECTION 42.</u> <u>DISCOVERY IN MEDICAL</u> <u>MALPRACTICE</u>	Same.	* Appears as section 48 of Senate Finance CS.
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<u>SECTION 48-54</u> <u>RULES CHANGES</u>	*Substantially the same.	*Appears as section 52-62 Repealers of Senate Finance CS.
<u>SECTION 55</u> <u>ALTERNATIVE DISPUTE</u> <u>RESOLUTION</u>	*Substantially the same.	*Appears as section 63 of Senate Finance CS.
<u>SECTION 56.</u>	Same.	*Appears as section 64 of Senate Finance CS.
<u>SECTION 57.</u>	Same.	*Appears as section 65 of Senate Finance CS.

DRAFT: SUBJECT TO REVISION

April 15, 1997

Sectional Summary
of
SENATE CS FOR CS FOR SS FOR HB 58 ()

An Act Relating to Civil Actions

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

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

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

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

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

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

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to ten, although the ten years may be waived by contract. The national average among the many states which have a statute of repose is 6 years.

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

In medical malpractice cases involving children, the statute of repose does not apply if the facts that would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

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

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

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

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

Section 8. Disabilities of minority and incompetency. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of eight years at the time of the injury, until the minor's eighth birthday. This means the minor may bring an action for birth trauma injuries, or other injuries sustained before the age of eight, anytime before the minor's tenth birthday. This is consistent with the operation of the statute of repose.

Section 9. Noneconomic damages. This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places caps on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought. Under existing

law, there are no caps on noneconomic damages for "disfigurement or severe physical impairment."

This section leaves intact the existing recovery cap of \$500,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage. However, it now takes into consideration injuries to children and young adults by allowing the greater of \$500,000 or the injured person's life expectancy in years multiplied by \$10,000. These caps are per occurrence, and not per claimant.

In more serious cases, such as loss of, or loss of functional use of one or more limbs, or permanent brain damage, or third degree burns over one-half or more of the claimant's body, or total deafness or total blindness, the recovery cap is substantially raised from previous versions of the bill to \$1,500,000. Again, in the case of injuries to children or young adults, the cap now is the greater of \$1,500,000 or the injured person's life expectancy in years multiplied by \$30,000. These caps are per occurrence, and not per claimant.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts, including reckless conduct. Under existing law, there are no quantifiable caps on punitive damages.

Subsections (a) through (f) are substantially identical to the language recommended by the Governor's task force.

Subsection (f) generally imposes a cap on punitive damages of the greater of three times compensatory damages or \$500,000.

Subsection (g) places a higher cap on punitive damages in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be the greater of four times compensatory damages or \$3,000,000.

Subsection (h) caps punitive damages in unlawful employment practice cases. It is generally taken from SB 15, except that it takes into consideration small businesses in this state. The amount of the caps varies in five categories, depending upon the number of employees in the state. Where employers have fewer than 15 employees, the punitive damage is capped at \$50,000. Where employers have 500 or more employees, the punitive damage cap is \$500,000.

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

Section 11. Apportionment of damages.

Under present law, fault can be allocated only to parties who are present in the lawsuit. By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby partially overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, consistent with the 1988 voters' initiative, this section generally requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit, ~~if the person is~~

This section would allow allocation of fault to a person who is not a party to the action, however, ~~unless~~ the person has been identified as a potentially responsible person, ~~and~~ (a) the person is outside the jurisdiction of the court; or, (b) the person is precluded from being joined by law or court rule; or (c) is a person who is not reasonably locatable. The rationale is that if a person is identified as a potentially responsible party, and is available to be joined, but the defendant chose not to, it would be unfair to the injured plaintiff to allocate fault to an "empty chair" he or she has created by not joining the that person. *Under this §, fault cannot be allocated to a person who cannot be joined bec of the SR.*

~~However~~, under this section if someone were identified as a potentially responsible person who could not be named a party to the lawsuit because the statute of repose had run, thereby granting immunity from suit, fault may not be allocated to that person.

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

Section 12. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

Section 13. Apportionment of damages; worker's compensation lien. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

Section 14. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 15. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

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

If there is a profession that does not require licensing in this state, this section does not apply.

Section 16. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer (or at least 10% less favorable if there are multiple defendants), whether the offer is tendered by the party making the claim, or the party defending against the claim.

The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees imposed, based on how soon after the commencement of the action the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 75% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 17. Offers of judgment. This subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

Section 18. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the Alaska usury statute, AS 45.45.010(b).

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

Section 19. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 20. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 19 interest rate to judgments against the State of Alaska.

Section 21. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 19.

Section 22. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 23. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 24. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 25. Expert advisory panel; public sector provider. This section

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

Section 26. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 27. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 28. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery.

Section 29. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 30. Civil liability of hospitals for certain physicians. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room independent contractor physicians. Current law allows a claimant to sue only the hospital rather than the emergency room physician who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident, and \$1,500,000 for all incidents in a year.

Section 31. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

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

This section requires clear and convincing evidence that the claimant's conduct substantially contributed to the personal injury or death.

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

Section 32. Collection of settlement information. This approach of this section is generally taken from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle, or otherwise dispose of cases, to file information about the settlements or judgments, including the amounts received by the attorneys on both sides. This data will be essential in assessing the efficiency of the civil justice system in the future.

Section 33. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 34. Appointment of independent counsel; conflicts of interest.

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

Section 35. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 36. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 19 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 37. Claims against the state for medical claims. This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 38. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 39. Alaska Rule of Civil Procedure 16.1(n). This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 40. Limited Discovery; Expedited Calendaring. This section applies the District Court streamlined provisions found in sections 45 and 46 of this bill to Superior Court personal injury and property damage cases involving \$100,000 in claims or less.

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

Section 42. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 43. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$50,000 against attorneys, increased from \$1,000 under the existing rule.

Section 44. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 45. District Court; Deposition limitation. This section requires that in District Court personal injury and property damage cases depositions be limited to two for each side, unless the parties otherwise agree, or the court for good cause otherwise directs.

Section 46. District Court; Expedited Trials. This section requires that all parties must file a memorandum to set the case for trial within six months after service of the complaint, and that the court shall set the case for trial "as soon as practicable" after confirming that all parties have exchanged the discovery materials required by Rule 26(a).

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 48. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 39.

Sections 49-54. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 55. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. It is further directed to work with the Alaska Supreme Court to prepare proposed rules and statutes to implement such a program, and submit the proposal in time for the second term of this 20th Legislature. The intent is to have an alternative dispute resolution program in effect by July 1, 1998.

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

Section 56. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 57. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

To: Senator Tim Kelly

Fm: Jim Sourant. aide to
Brian Porter

April 13, 1997

Dear Senator Kelly:

1. We should have your committee substitute out of Mike Ford's hands by the time this memo is delivered to Tim B. Obviously, this is the important one.
2. As to the bill which passed out of Senate Finance Committee, copy attached, I make the following comments regarding the amendments made by that committee:
 - a. Page 1, lines 8-12 : This makes clear that the tort bill has absolutely no effect on the pending Exxon Valdez litigation, and that it will not apply to any future such admiralty disasters.
 - b. Page 5, lines 30-31: This makes clear that reckless conduct is enough to sustain a claim of punitive damages.
 - c. Page 7, lines 5-6: This makes clear that periodic payments are not mandatory on the parties, but available to the injured plaintiff if desired
 - d. Page 24, line 21: Consistency change for "c" above.
 - e. Don't get hung up on this version. It doesn't matter. It is your committee substitute that will matter.

ATTN -
Your
copy of
HB 58 (FIN)

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

13 (2) encourage the efficiency of the civil justice system by discouraging
14 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without

Am #1
(amended)

1 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
2 compensation for tortious injuries caused by others;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) This section does not apply if

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

30 (A) prolonged exposure to hazardous waste;

31 (B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) is totally blind.

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

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

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

Am#20

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

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

6 (c) The amount of punitive damages awarded by a court or jury under (a) of
7 this section may not exceed four times the amount of compensatory damages awarded,
8 or \$600,000, whichever amount is greater, if

9 (1) the wrongful conduct or omission arose in connection with a
10 commercial activity motivated by financial gain; and

11 (2) the likelihood of death or serious bodily injury from the commercial
12 activity was previously known by the person responsible for making policy decisions
13 relating to the commercial activity and the knowledge was gained from previous
14 instances of death or serious bodily injury arising from the same wrongful conduct or
15 omission, regardless of where the previous wrongful conduct or omission occurred.

16 (d) If a person receives an award of punitive damages, the court shall require
17 that 50 percent of the award be deposited into the general fund of the state. This
18 subsection does not grant the state the right to file or join a civil action to recover
19 punitive damages.

20 * Sec. 12. AS 09.17.040(a) is amended to read:

21 (a) In every case where damages for personal injury or death are awarded by
22 the court or jury,

23 ~~(1)~~ the verdict shall be itemized between economic loss and
24 noneconomic loss, if any, as follows:

25 (A) [(1)] past economic loss;

26 (B) [(2)] past noneconomic loss;

27 (C) [(3)] future economic loss;

28 (D) [(4)] future noneconomic loss; [AND]

29 (E) [(5)] punitive damages; and

30 (2) the amount of damages awarded shall be reduced by the
31 amount of federal and state income tax that would have been paid on damages

1 contained in the verdict under tax rates in effect on the date of the injury or
2 death: this paragraph does not apply to an award of damages if the damages are
3 taxable under federal or state law.

4 * Sec. 13. AS 09.17.040(d) is amended to read:

5 (d) In an action to recover damages, the court shall, at the request of an
6 injured party, enter judgment ordering that amounts awarded a judgment creditor for
7 future damages that exceed \$100,000 be paid to the maximum extent feasible by
8 periodic payments rather than by a lump-sum payment. If a portion of the judgment
9 awarded is owed to an attorney under a contingent fee agreement, that portion
10 of the judgment shall be reduced to present value, if necessary, and paid in a
11 lump sum, and the remaining portion of the judgment shall be paid as provided
12 under this subsection.

13 * Sec. 14. AS 09.17.040(e) is amended to read:

14 (e) Except as provided in this subsection, if a judgment is paid by
15 structured settlement type periodic payments, the [THE] court shall [MAY] require
16 security be posted in the form of United States government obligations [,] in order
17 to ensure that funds are available as periodic payments become due. The court may
18 not require security to be posted if the state, a self-insured municipality, or an
19 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
20 obligation to discharge the judgment, provided that an authorized insurer must be
21 rated by two nationally recognized independent rating agencies to be in the two
22 highest categories of quality and financial soundness. If a judgment is paid by
23 annuity type period payments, the court shall require the annuity be purchased
24 from an authorized insurer that is rated by two nationally recognized independent
25 rating agencies to be in the two highest categories of quality and financial
26 soundness. The injured party shall determine whether a structured settlement or
27 an annuity is the source of the periodic payments. The injured party may not be
28 required to accept a structured settlement or annuity from the defendant's or
29 other party's insurer or from any affiliated companies of the insurer.

30 * Sec. 15. AS 09.17.040(f) is amended to read:

31 (f) A judgment ordering payment of future damages for personal injury or

1 death by periodic payment shall specify the recipient, the dollar amount of the
 2 payments, including any increases in future payments for anticipated inflation, the
 3 interval between payments, and the number of payments or the period of time over
 4 which payments shall be made. Payments may be modified only in the event of the
 5 death of the judgment creditor, in which case payments may not be reduced or
 6 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 7 of support, as provided by law, immediately before death. In the event the judgment
 8 creditor owed no duty of support to dependents at the time of the judgment creditor's
 9 death, the money remaining shall be distributed in accordance with a will of the
 10 deceased judgment creditor accepted into probate or under the intestate laws of the
 11 state if the deceased had no will. In this subsection, "inflation" means the change
 12 in the consumer price index for United States city average, all urban consumers,
 13 all items indices, compiled by the Bureau of Labor Statistics, United States
 14 Department of Labor.

15 * Sec. 16. AS 09.17.070 is repealed and reenacted to read:

16 Sec. 09.17.070. Collateral benefits. (a) A claimant in an action for personal
 17 injury or death may only recover damages that exceed amounts received by the
 18 claimant, or that with reasonable probability will be received in the future by the
 19 claimant, as compensation for the injuries from collateral sources, whether private,
 20 group, or governmental, and whether contributory or noncontributory, except when

21 (1) the collateral source is a federally funded program that by law must
 22 seek subrogation;

23 (2) the collateral source has a right of subrogation under federal law;

24 (3) the collateral source is the payment of a dependent child's medical
 25 bills by the injured child's parent that does not result from insurance coverage;

26 (4) the benefit consists of death benefits paid under life insurance; or

27 (5) the benefit consists of workers' compensation benefits received
 28 under AS 23.30.

29 (b) A person defending a claim may introduce into evidence at trial an amount
 30 paid or payable as a benefit to the claimant as a result of the personal injury or death
 31 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,

1 sickness, disability, accident, or income-disability insurance; insurance that provides
2 health benefits or income-disability coverage; and a contract or agreement of a group,
3 organization, partnership, or corporation, or other collateral source, to provide, pay for,
4 or reimburse the cost of medical, hospital, dental, or other health care services,
5 disability, or lost wages. However, evidence of a collateral source described under
6 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
7 defending a claim elects to introduce evidence described in this subsection, the
8 claimant may introduce evidence of the amount that the claimant has paid or
9 contributed to secure the claimant's right to the collateral benefit, including the cost
10 to the claimant resulting from depleted or exhausted coverage.

11 (c) A person who provides a collateral benefit admissible under (b) of this
12 section may not recover an amount against the claimant as reimbursement for those
13 benefits and may not be subrogated to the rights of a claimant against a person
14 defending a claim.

15 * Sec. 17. AS 09.17.080(a) is amended to read:

16 (a) In all actions involving fault of more than one person [PARTY TO THE
17 ACTION], including third-party defendants and persons who have been released
18 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
19 the jury to answer special interrogatories or, if there is no jury, shall make findings,
20 indicating

21 (1) the amount of damages each claimant would be entitled to recover
22 if contributory fault is disregarded; and

23 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
24 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
25 [AND] person who has been released from liability, or other person responsible for
26 the damages to each claimant regardless of whether the other person, including
27 an employer, is or could have been named as a party to the action; in this
28 paragraph, "other persons responsible" does not include a person protected from
29 a civil action under AS 09.10.055 [UNDER AS 09.16.040].

30 * Sec. 18. AS 09.17.080(b) is amended to read:

31 (b) In determining the percentages of fault, the trier of fact shall consider both

1 the nature of the conduct of each person [PARTY] at fault, and the extent of the
2 causal relation between the conduct and the damages claimed. [THE TRIER OF
3 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
4 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE
5 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
6 PERSON CANNOT BE DISTINGUISHED.]

7 * Sec. 19. AS 09.17.080(c) is amended to read:

8 (c) The court shall determine the award of damages to each claimant in
9 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
10 AS 09.16.040,] and enter judgment against each party liable. The court also shall
11 determine and state in the judgment each party's equitable share of the obligation to
12 each claimant in accordance with the respective percentages of fault as determined
13 under (a) of this section. Except as provided under AS 23.30.015(g), an
14 assessment of a percentage of fault against a person who is not a party may only
15 be used as a measure for accurately determining the percentages of fault of a
16 named party. Assessment of a percentage of fault against a person who is not a
17 party does not subject that person to civil liability in that action and may not be
18 used as evidence of civil liability in another action.

19 * Sec. 20. AS 09.17.900 is amended to read:

20 Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions
21 that are in any measure negligent, [OR] reckless, or intentional toward the person or
22 property of the actor or others, or that subject a person to strict tort liability. The term
23 also includes breach of warranty, unreasonable assumption of risk not constituting an
24 enforceable express consent, misuse of a product for which the defendant otherwise
25 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
26 Legal requirements of causal relation apply both to fault as the basis for liability and
27 to contributory fault.

28 * Sec. 21. AS 09.20 is amended by adding a new section to read:

29 Sec. 09.20.185. Expert witness qualification. (a) In an action based on
30 professional negligence, a person may not testify as an expert witness on the issue of
31 the appropriate standard of care unless the witness is

1 (1) a professional who is licensed in this state or in another state or
2 country;

3 (2) trained and experienced in the same discipline or school of practice
4 as the defendant or in an area directly related to a matter at issue; and

5 (3) certified by a board recognized by the state as having acknowledged
6 expertise and training directly related to the particular field or matter at issue; however,
7 this paragraph does not apply if a board does not exist that could certify the witness
8 in the particular field or matter at issue.

9 * Sec. 22. AS 09.30.065 is amended to read:

10 Sec. 09.30.065. Offers of judgment. At any time more than 10 days before
11 the trial begins, either the party making a claim or the party defending against a claim
12 may serve upon the adverse party an offer to allow judgment to be entered in complete
13 satisfaction of the claim for the money or property or to the effect specified in the
14 offer, with costs then accrued. If within 10 days after the service of the offer the
15 adverse party serves written notice that the offer is accepted, either party may then file
16 the offer and notice of acceptance together with proof of service, and the clerk shall
17 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
18 evidence of that offer is not admissible except in a proceeding to determine the form
19 of judgment after verdict. If the judgment finally entered on the claim as to which an
20 offer has been made under this section is at least five percent less [NOT MORE]
21 favorable to the offeree than the offer, the offeree, whether the party making the
22 claim or defending against the claim, shall pay all costs as allowed under the
23 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
24 incurred by the offeror from the date the offer was made, [THE INTEREST
25 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
26 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

27 (1) if the offer was served no later than 60 days after both parties
28 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
29 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
30 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
31 REDUCED BY FIVE PERCENT A YEAR];

(2) if the offer was served more than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure but more than 90 days before the trial began, the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A YEAR].

* Sec. 23. AS 09.30.065 is amended by adding new subsections to read:

(b) If an offeror receives costs and reasonable actual attorney fees under (a) of this section, that offeror shall be considered the prevailing party for purposes of an award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska Rules of Civil Procedure is greater than a party would receive under (a) of this section, the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of this section. A party who receives attorney fees under this section may not also receive attorney fees under the Alaska Rules of Civil Procedure.

(c) ~~If an offeror makes more than one offer of judgment, the last offer served on the adverse party shall be considered to be a revocation of any prior offer of judgment.~~

* Sec. 24. AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

1 * Sec. 25. AS 09.30.070 is amended by adding a new subsection to read:

2 (c) Prejudgment interest may not be awarded for future economic damages,
3 future noneconomic damages, or punitive damages.

4 * Sec. 26. AS 09.50.280 is amended to read:

5 Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is
6 rendered for the plaintiff, it shall be for the legal amount found due from the state with
7 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME
8 DUE] and without punitive damages.

9 * Sec. 27. AS 09.55.440(a) is amended to read:

10 (a) Upon the filing of the declaration of taking and the deposit with the court
11 of the amount of the estimated compensation stated in the declaration, title to the estate
12 as specified in the declaration vests in the plaintiff, and that property is condemned
13 and taken for the use of the plaintiff, and the right to just compensation for it vests in
14 the persons entitled to it. The compensation shall be ascertained and awarded in the
15 proceeding and established by judgment. The judgment must include interest at the
16 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
17 awarded that [WHICH] exceeds the amount paid into court under the declaration of
18 taking. The interest runs from the date title vests to the date of payment of the
19 judgment.

20 * Sec. 28. AS 09.55.535(k) is amended to read:

21 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
22 apply to arbitrations under this section if they do not conflict with the provisions of
23 this section; arbitrations under this section shall be conducted in accordance with
24 procedures established by any rules of court which may be adopted and according to
25 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
26 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

27 * Sec. 29. AS 09.55.536(a) is amended to read:

28 (a) In an action for damages due to personal injury or death based upon
29 the provision of professional services by a health care provider, including a person
30 providing services on behalf of a governmental entity, when the parties have not
31 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within

20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

* Sec. 30. AS 09.55.536(c) is amended to read:

(c) Not more than 30 days after selection of the panel, the panel [IT] shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court in sufficient detail to explain the case and the reasons for the panel's answers:

(1) Why did the claimant seek [WHAT WAS THE DISORDER FOR WHICH THE PLAINTIFF CAME TO] medical care?

(2) Was a correct diagnosis made? If not, what was incorrect about the diagnosis [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME WITHOUT MEDICAL CARE]?

(3) Was the treatment or lack of treatment [SELECTED] appropriate? If not, what was inappropriate about the treatment or lack of treatment [FOR THE CASE]?

(4) Was the claimant injured during the course of evaluation or treatment or by failure to diagnose or treat [DID AN INJURY ARISE FROM THE MEDICAL CARE]?

(5) If the answer to question 4 is "yes," what [WHAT] is the nature and extent of the medical injury?

(6) What specifically caused the medical injury?

(7) Was the medical injury caused by unskillful care? Explain.

(8) If a medical injury had not occurred, what would have been the likely outcome of the medical case [HOW WOULD THE PLAINTIFF'S CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

* Sec. 31. AS 09.55.536(f) is amended to read:

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received or 60 days after selection of the panel, whichever occurs

1 first. However, the court may relax this prohibition upon a showing of good cause by
2 any party. If the panel has not completed its report within the 30-day period
3 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
4 an additional 30 days.

5 * Sec. 32. AS 09.55.536 is amended by adding a new subsection to read:

6 (i) This section applies regardless of whether a party in the action or the health
7 care provider whose professional services are the subject of the action is a
8 governmental entity or in the public or private sector.

9 * Sec. 33. AS 09.55.560(1) is amended to read:

10 (1) "health care provider" means an acupuncturist licensed under
11 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
12 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
13 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
14 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
15 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
16 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
17 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
18 hospital as defined in AS 18.20.130, including a governmentally owned or operated
19 hospital; [AND] an employee of a health care provider acting within the course and
20 scope of employment; an ambulatory surgical facility and other organizations
21 whose primary purpose is the delivery of health care, including a health
22 maintenance organization, individual practice association, integrated delivery
23 system, preferred provider organization or arrangement, and a physical hospital
24 organization.

25 * Sec. 34. AS 09.55.560 is amended by adding new paragraphs to read:

26 (4) "professional negligence" means a negligent act or omission by a
27 health care provider in rendering professional services;

28 (5) "professional services" means service provided by a health care
29 provider that is within the scope of services for which the health care provider is
30 licensed and that is not prohibited under the health care provider's license or by a
31 facility in which the health care provider practices.

1 * **Sec. 35.** AS 09.60 is amended by adding a new section to read:

2 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
3 collects a contingency fee in connection with an action for personal injury, death, or
4 property damage and the damages awarded by a court or jury include an award of
5 punitive damages, the contingent fee due the attorney shall be calculated after that
6 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
7 from the total award of damages.

8 * **Sec. 36.** AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
10 electrical service to the public for compensation under a certificate of public
11 convenience and necessity issued by the Alaska Public Utilities Commission under
12 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
13 injury resulting from an act or omission of the utility relating to the production,
14 delivery, or sale of electricity.

15 (b) This section does not preclude liability for civil damages that are the result
16 of an intentional, reckless, or negligent act or omission.

17 * **Sec. 37.** AS 09.65 is amended by adding a new section to read:

18 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
19 hospital is not liable for civil damages as a result of an act or omission by an
20 emergency room physician who is not an employee or actual agent of the hospital if
21 the hospital provides notice that the emergency room physician is an independent
22 contractor and the emergency room physician is insured as described under (c) of this
23 section. The hospital is responsible for exercising reasonable care in granting
24 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
25 and for taking appropriate steps to revoke or restrict privileges in appropriate
26 circumstances. The hospital is not otherwise liable for the acts or omissions of an
27 emergency room physician who is an independent contractor. The notice required by
28 this subsection must (1) be posted conspicuously in all admitting areas of the hospital;
29 (2) consist of a sign at least four feet high and two feet wide, with print at least two
30 inches high; (3) be published at least annually in a newspaper of general circulation
31 in the area; and (4) be in substantially the following form:

Article
amended

Notice to Hospital Users and
Notice of Limited Liability

(Name of hospital) may not be responsible for the actions of emergency room physicians in (name of hospital's emergency room). The following emergency room physicians are independent contractors and are not employees of the hospital:

(List specific emergency room physicians)

(b) This section does not preclude liability for civil damages that are the proximate result of the hospital's negligence or intentional misconduct.

(c) A hospital is not immune from liability under (a) of this section for an act or omission of an emergency room physician who is an independent contractor unless the emergency room physician has liability insurance coverage in the amount of at least \$500,000 for each incident and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

(d) In this section,

(1) "emergency room physician" means a physician who provides health care services in a hospital emergency room;

(2) "hospital" has the meaning given in AS 18.20.130 and includes a governmentally owned or operated hospital;

(3) "independent contractor" means an emergency room physician who is not an employee or actual agent of the hospital in connection with the rendition of the health care services.

* Sec. 38. AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs. A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo

Am #6
Amended

1 contendere, and the felony substantially contributed to the personal injury or death;

2 (2) engaged in conduct that would constitute the commission of an
3 unclassified felony, a class A, or a class B felony for which the person was not
4 convicted and the conduct

5 (A) substantially contributed to the personal injury or death; and

6 (B) is proven by the defendant in the civil trial by clear and
7 convincing evidence;

8 (3) fleeing after the commission, by that person, of conduct that would
9 constitute an unclassified felony, a class A felony, or a class B felony or being
10 apprehended for conduct that would constitute an unclassified felony, a class A felony,
11 or a class B felony if the conduct

12 (A) during the flight or apprehension substantially contributed
13 to the injury or death; and

14 (B) is proven by the defendant in the civil trial by clear and
15 convincing evidence;

16 (4) operating a vehicle, aircraft, or watercraft while under the influence
17 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
18 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
19 the conduct substantially contributed to the personal injury or death; or

20 (5) engaged in conduct that would constitute a violation of
21 AS 28.35.030 for which the person was not convicted if the conduct substantially
22 contributed to the personal injury or death and the conduct is proven by the defendant
23 in the civil trial by clear and convincing evidence.

24 * Sec. 39. AS 09.68 is amended by adding a new section to read:

25 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
26 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
27 information relating to the compromise or other settlement of all civil litigation. The
28 information, including the case name and file number, a general description of the
29 claims being settled, the dollar amount of the settlement, to whom the settlement was
30 paid, and any nonmonetary terms, shall be collected on a form developed by the
31 council for that purpose.

1 (b) The information received by the council under (a) of this section is
2 confidential. This restriction does not prevent the disclosure of summaries and
3 statistics in a manner that does not allow the identification of particular cases or
4 parties.

5 (c) The requirements of (a) of this section do not apply to the following types
6 of cases:

- 7 (1) divorce and dissolution;
8 (2) adoption, custody, support, visitation, and emancipation of children;
9 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
10 cases under 47.12;
11 (4) domestic violence protective orders under AS 18.66.100 -
12 18.66.180;
13 (5) estate, guardianship, and trust cases filed under AS 13;
14 (6) small claims under AS 22.15.040.

15 * Sec. 40. AS 21.06 is amended by adding a new section to read:

16 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
17 and shall compile information necessary to evaluate the effect of the measures enacted
18 in this Act on the availability and cost of insurance in the state.

19 (b) Information described in (a) of this section shall be provided by all insurers
20 doing business in this state in the format specified by the director and must include
21 factual information stating premiums, claims, losses, expenses, and solvency of the
22 company as a whole. Information shall be compiled by the division in a way that
23 protects the identity of individual insureds.

24 (c) The director shall adopt regulations to implement and interpret this section,
25 including requiring insurers doing business in the state to provide information
26 necessary for the division to carry out its responsibilities under (a) and (b) of this
27 section. If there are indications of market disruption, the director may waive all or
28 part of the reporting requirements in this section.

29 (d) Beginning June 1, 2000, the information compiled under (a) of this section
30 shall be reported annually to the governor and the judiciary committees of both houses
31 of the legislature.

1 (e) The division may consult with the Alaska Judicial Council when
2 determining what information to require to be reported under (a) - (c) of this section
3 and when implementing the compilation required under (a) of this section.

4 * Sec. 41. AS 21.89.100(d) is amended to read:

5 (d) If the insured selects independent counsel at the insurer's expense, the
6 insurer may require that the independent counsel have at least four years of experience
7 in civil litigation, including defense experience in the general subject area at issue in
8 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
9 policy, the obligation of the insurer to pay the fee charged by the independent counsel
10 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
11 course of business in the defense of a similar civil action in the community in which
12 the claim arose or is being defended. In providing independent counsel, the insurer
13 is not responsible for the fees and costs of defending an allegation for which
14 coverage is properly denied and shall be responsible only for the fees and costs
15 to defend those allegations for which the insurer either reserves its position as to
16 coverage or accepts coverage. The independent counsel shall keep detailed
17 records allocating fees and costs accordingly. A dispute between the insurer and
18 insured regarding attorney fees that is not resolved by the insurance policy or this
19 section shall be resolved by arbitration under AS 09.43.

20 * Sec. 42. AS 21.89.100 is amended by adding a new subsection to read:

21 (h) When an insured is represented by independent counsel, the insurer may
22 settle directly with the plaintiff if the settlement includes all claims based upon the
23 allegations for which the insurer previously reserved its position as to coverage or
24 accepted coverage, regardless of whether the settlement extinguishes all claims against
25 the insured.

26 * Sec. 43. AS 23.30.015(g) is amended to read:

27 (g) If the employee or the employee's representative recovers damages from
28 the third person, the employee or representative shall promptly pay to the employer the
29 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
30 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
31 and expenses. Any excess recovery by the employee or representative shall be

1 credited against any amount payable by the employer thereafter. If the employer is
2 allocated a percentage of fault under AS 09.17.080, the amount due the employer
3 under this subsection shall be reduced by an amount equal to the employer's
4 equitable share of damages assessed under AS 09.17.080(c).

5 * Sec. 44. AS 44.77.015(a) is amended to read:

6 (a) For the purposes of filing claims for medical services provided under
7 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
8 within six months after the date of service, or as provided in (b) of this section, if
9 there is no third-party claim, or (2) within 12 months after the date of service if there
10 is a third-party claim. Except as provided in (c) of this section, a claim may not be
11 paid if it is not filed promptly; an inference to the contrary may not be drawn from
12 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

13 * Sec. 45. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

14 (c) **Motion to Set Trial and Certificate.** Unless otherwise ordered by the
15 court, a [A] motion to set trial may not be filed until after the meeting of parties
16 under (n) of this rule has occurred and the scheduling order under Rule 16(b) has
17 been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND
18 COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to
19 set trial together with a certificate, signed by counsel, stating:

- 20 (1) That the issues in the case have actually been joined;
21 (2) That all parties have completed discovery or have a reasonable
22 opportunity to do so within the next 60 days;
23 (3) That the procedure for listing witnesses and exhibits and providing
24 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
25 (4) Whether trial by jury has been timely demanded;
26 (5) The estimated number of days for the trial, including estimates for
27 each party's case and for jury selection;
28 (6) The names, addresses and telephone numbers of all attorneys and
29 pro se parties who are responsible for the conduct of the litigation;
30 (7) Which, if any, statute or rule entitles the case to preference on the
31 trial calendar;

(8) That the parties have complied with [PARAGRAPH] (k) of this rule.

* Sec. 46. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

(n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and to develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the proposed discovery plan. The proposed discovery plan shall indicate the parties' views and proposals concerning

(1) what changes should be made in the timing or forms of subsequent disclosures under the rules, including a statement as to when the disclosures required under Rule 26(a) were made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(4) whether a scheduling conference is unnecessary;

(5) whether there will be dispositive or partially dispositive motions filed in the case and whether other deadlines should be set aside pending resolution of the dispositive or partially dispositive motions by the court; and

(6) any other orders that should be entered by the court under Civil Rule 16(b) and (c).

* Sec. 47. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new paragraph to read:

(3) **Settlement Information.** If a voluntary dismissal under this rule

1 is the result of compromise or other settlement of the parties, the parties shall submit
2 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
3 of dismissal made under (1)[a] of this subsection must be accompanied by a
4 certification signed by or on behalf of the plaintiff that the information required under
5 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
6 dismissal made under (1)[b] of this subsection must be accompanied by a certification
7 signed by or on behalf of all parties who have appeared in the action. The
8 requirements of this paragraph do not apply to the types of cases listed in
9 AS 09.68.130(c).

10 * Sec. 48. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

11 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
12 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
13 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
14 to occur, unless discovery is further stayed for good cause by order of the court.

15 * Sec. 49. Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

16 (b) In addition to its authority under (a) of this rule and its power to punish
17 for contempt, a court may, after reasonable notice and an opportunity to show cause
18 to the contrary, and after hearing by the court, if requested, impose a fine not to
19 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
20 to comply with these rules or any rules promulgated by the supreme court.

21 * Sec. 50. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
22 subsection to read:

23 (c) If the trier of fact determines that a party to a civil action has intentionally
24 made a false statement of a material fact in connection with the prosecution or defense
25 of a civil action, the court shall enter judgment against the party making the false
26 statement on the issue to which the false statement relates. If the civil action involves
27 multiple claims and the false statement does not apply to all claims, the judgment
28 required under this subsection shall apply only to those claims to which the false
29 statement relates.

30 * Sec. 51. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
31 subsection to read:

1 **(e) Settlement Information.** If a dismissal under (a) or (b) of this rule is the
2 result of compromise or other settlement between the parties, the parties shall submit
3 to the Alaska Judicial Council the information required under AS 09.68.130. A
4 dismissal by agreement under (a) of this rule must be accompanied by a certification
5 signed by the attorneys of record for all parties that the information required under
6 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
7 appellant or petitioner made under (b) of this rule must be accompanied by a
8 certification signed by the appellant's or petitioner's attorney of record. The
9 requirements of this subsection do not apply to the types of cases listed in
10 AS 09.68.130(c).

11 * Sec. 52. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

12 * Sec. 53. AS 09.55.548 is repealed.

13 * Sec. 54. AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending
14 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
15 percentage of an award of punitive damages be deposited into the general fund.

16 * Sec. 55. AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending
17 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
18 damages by certain tax rates in effect on the date of injury or death if taxable.

19 * Sec. 56. AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending
20 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
21 periodically if requested by an injured party, with a lump sum payment for certain attorney
22 fees. Am#19

23 * Sec. 57. AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending
24 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
25 is paid by periodic payments.

26 * Sec. 58. AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending
27 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
28 increases for future inflation.

29 * Sec. 59. AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending
30 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
31 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated

1 among the claimants, defendants, third-party defendants, persons who have been released from
2 liability, or other person who is responsible for the damages.

3 * Sec. 60. AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending
4 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
5 testifying as an expert witness.

6 * Sec. 61. AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of
7 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
8 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
9 eliminating provisions relating to interest and by providing that a subsequent offer revokes
10 prior offers.

11 * Sec. 62. AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
13 awarded for future economic or noneconomic damages.

14 * Sec. 63. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
15 legislation to create a pilot alternative dispute resolution procedure within the existing civil
16 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
17 disputes.

18 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
19 Association, review court sanctioned alternative dispute resolution programs in other states and
20 in the federal court system, and make recommendations to assist the legislature and the Alaska
21 Court System in the establishment of a pilot program for alternative dispute resolution within
22 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
23 legislature and to the Alaska Supreme Court within six months after the effective date of this
24 Act. The report must include specific types of programs, specific types of cases within each
25 program that are amenable to alternative dispute resolution, the cost to the parties and to the
26 Alaska Court System under these programs, and the qualifications of the neutral parties,
27 including nonlawyers, who will provide dispute resolution services under the program.

28 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
29 and early neutral evaluation.

30 * Sec. 64. APPLICABILITY. This Act applies to all causes of action accruing on or after
31 the effective date of this Act.

- 1 * **Sec. 65. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
2 application of a provision of this Act to any person or circumstance is held invalid, the
3 remainder of this Act and the application to other persons shall not be affected.

To: Senator Drue Pearce,
Co-chair, Senate Finance Committee

Fm: Representative Brian Porter
House Majority Leader

March 19, 1997

Re: House Bill 58: Tort Reform Act

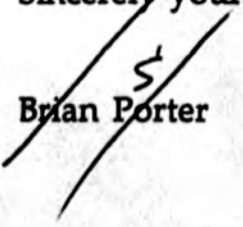
Please be advised that HB 58 passed out of the House of Representatives on March 18, 1997, and withstood a motion for reconsideration the following day by a vote of 28-11. It is our understanding that this bill has been assigned to the Senate Finance Committee.

In order to assist you in the process of having this bill processed in an expeditious manner, please find enclosed the following documents:

1. The bill in its final form as passed by the House of Representatives.
2. The sponsor statement.
3. The most recent sectional analysis, which contains the amendments made on the floor of the House.
4. Letters of support from 25 groups and individuals.

Please set this matter on for hearing before your committee at the earliest possible time.

Sincerely yours,


Brian Porter

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER



SESSION:
STATE CAPITOL ROOM 216
JUNEAU, ALASKA 99901-1182
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 360
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE

DISTRICT 20

SPONSOR STATEMENT OF SSHB 58 (JUD): Tort Reform Bill

Many individuals and businesses have already experienced the nightmare of litigation that drags on for years and the high legal costs that go with them. Lawsuits in this country have proliferated. Litigation has become an industry. Contingent fee contracts give up to 40% of injured victims' damage recoveries to trial lawyers. The incentives to create the most litigious society on earth are firmly in place. As a consequence, the cost of liability insurance has become unaffordable to many. In some areas of this state, there are no domestic insurance companies which will write a liability insurance policy for any price. Across the country, and throughout Alaska, there is an outcry for reforming our civil justice system. Ordinary people and businesses of all sizes seek relief from a flawed system. Consistent with the foregoing, a more efficient and fair method of compensating wrongly injured victims must be crafted and maintained.

Tilinghast, a consulting actuarial firm reported in 1992 that only about 50% of damage awards of some \$132 billion nationwide went to the injured party. The remaining 50% went to the cost of litigation and attorney fees. From the foregoing, it is apparent that if the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient because only about half of the cost goes toward any form of compensation for victims. It is unfair because many injured victims receive insufficient compensation to no compensation at all.

In contrast with the foregoing deficiencies, the workers' compensation system returns about 70% of the workers' compensation insurance premium dollars to the injured party. The efficiencies enjoyed in the health insurance industry are even higher, with about 85% of health insurance premium dollars being returned to the beneficiary. The most efficient of them all is Social Security, with 99% of social security taxes collected being returned to the beneficiaries of that system. The relative certainty of recovery, and the certainty in the amount of recovery under these systems, stands in stark contrast to the uncertainties inherent in the litigation of claims and defenses. The absence of uncertainty and high costs of litigation in these alternative

systems makes clear that there is a compelling need for substantial reforms in the civil justice system.

A more specific statement of legislative intent is found in Section 1 of the Act. This Act addresses many of the areas which must be reformed if we are to create an environment which is conducive to rational economic development, a positive business climate, the creation of jobs, and a higher standard of living for all Alaskans. We are all personally responsible for the attainment of these goals, and we are all personally accountable if we fail.

Alaska State Legislature



Official Business

House Majority Leader

March 18, 1997

State Capitol
Juneau, AK 99801-1182
(907) 465-3718

Sectional Summary
of
CS of SSHB 58 (FIN) Am H

An Act Relating to Civil Actions

Section 1. Legislative intent. This section generally sets forth the legislative intent of this Act.

Section 2. Minor consistency change. This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

Section 3. Certain property actions to be brought in six years. This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

Section 4. Contract actions to be brought in three years. This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

Section 5. Statute of repose of eight years. This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

This section does not apply if the cause of action resulted from:

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

Section 6. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS 09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

Section 7. Disabilities of minority and incompetency. This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

Section 8. Disabilities of minority and incompetency. This new subsection was added by amendment by the House Finance Committee. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of six years at the time of the injury or death, until the minor's sixth birthday. This means the minor may bring an action for birth trauma injuries anytime before the minor's eighth birthday.

Section 9. Non economic damages. This new section replaces an earlier version of this statute pertaining to non economic damages. This section generally places more stringent limits on the amounts which may be awarded for non economic damages. It also specifically adds loss of consortium to the list of items for which non economic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadriplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

On the floor of the House, this section was amended to include total blindness and third degree burns over one half of the injured person's body to the category of injuries having a \$500,000 cap.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

Section 11. Punitive damages. This section relates to new subsections which are added to the preceding section in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 12. Award of damages; tax reductions. This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 13. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced

to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

This subsection was amended in the House Judiciary Committee to leave the word "future" in the existing language of the statute to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be immediately available to the injured person for the payment of such obligations.

Section 14. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 15. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

This section was amended at the House Judiciary Committee by changing the inflation index from "Anchorage" to the "United States city average". The former is updated annually, while the latter is updated monthly. An injured person should have the benefit of establishing an inflation baseline as close as possible to the date of judgment.

Section 16. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much

the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

Section 17. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

On the floor of the House, this section was amended to exclude persons protected by the statute of repose from the operation of this section, with the result that fault of a person not present in the litigation because of the statute of repose is not attributable to that absent person.

Section 18. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

This subsection was amended at the House Judiciary Committee by deleting the last sentence as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

Section 19. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the

lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

Section 20. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 21. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

Section 22. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 23. Offers of judgment. The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

Section 24. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

Section 25. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 26. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 24 interest rate to judgments against the State of Alaska.

Section 27. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 24.

Section 28. Voluntary arbitration. This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

Section 29. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 30. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are

within the purview of the questions to be answered by the medical advisory panel.

Section 31. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 32. Expert advisory panel; public sector provider. This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 33. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 34. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 35. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 36. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 37. Civil liability of hospitals for non employees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room

physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident.

Section 38. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or water craft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section applies to survival and wrongful death actions which might otherwise have been brought by the personal representative of the perpetrator.

Section 39. Collection of settlement information. This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 40. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

The June 1, 2000 commencement date for the reports to the governor and legislature is suggested by the division of insurance as a realistic starting date considering existing regulatory reporting deadlines.

This section was amended in the House Judiciary Committee by inserting the phrase "fees and" in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that section.

Section 41. Appointment of independent counsel; conflicts of interest.

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

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Section 52. **Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 45.

Section 53. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 54 - Section 62. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 63. **Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first what the experience has been in other jurisdictions before putting any program into operation.

Section 64. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

[Section 65. **Effective date.** This section was deleted by amendment by the House Finance Committee. There is no effective date.]

March 19, 1997

TORT REFORM ROLLS ON

This session's tort reform bill passed the House of Representatives on March 18 by a vote of 22-12. There were over 10 hours of floor debate, and 83 submitted amendments. On March 19, the bill survived a vote for reconsideration by a margin of 28-11. This bill now goes to the Senate. It is 25 pages long, and contains 65 sections. Qualitatively, it contains much more beef than starch. Included are twelve sections taken verbatim from the recommendations of the Governor's Advisory Task Force on Civil Justice Reform, which was formed in the aftermath of the Governor's veto of last session's tort reform bill. Several other recommendations of the Task Force were included in one form or another.

To counter some of the misinformation that has found its way to the public, allow me to present the facts about what our bill does and does not do. Despite the misleading and sometimes totally false assertions contained in the tort lawyers' quarter page advertisements, there are two areas of potential awards or recovery which are not in any way reduced or affected by the bill.

First and foremost, this bill does not reduce any worker's compensation benefits. In fact, it enhances an injured workman's statutory recovery. Further, the bill does not limit economic damages, which cover all quantifiable lost past and future wages, past and future medical expenses, and any other actual costs or losses from the injury, damages or death. This type of damage recovery is fair and is required to place the injured person in the same position economically were it not for the accident.

This bill does, however, address the abuses which now occur. The mere threat of unlimited subjective damage claims, such as punitive damages and damages for "disfigurement or physical impairment", has the *in terrorem* (to turn around an ancient legal phrase) effect of extorting oversized settlements from partially at fault to totally innocent defendants.

Here is what the most significant portions of the tort reform bill will do:

- * Put a cap on punitive damages of the greater of \$300,000 or three times compensatory damages. In extreme cases, the cap is the greater of \$600,000 or four times compensatory damages.
- * Pay one half of punitive damage recoveries to the State of Alaska.
- * Put a cap on damages for non economic damages (pain, suffering, loss of enjoyment of life, disfigurement and physical impairment) of \$300,000, except that in aggravated cases the cap is \$500,000 per claim.

- * Require that "expert witnesses" in professional malpractice cases be licensed in the same profession anywhere in the world, in order to prevent egregiously slanted testimony from "hired gun" type of expert witness.

- * Allow a jury to know before it enters a verdict whether an injured person has realized a recovery for the same injury in another lawsuit or from another source.

- * Prevent lawyers from running up exorbitant fees (\$800,000 to more than \$1,000,000) as "independent counsel" for insured persons with respect to claims made which are unquestionably not covered by that person's insurance policy.

- * Punish lawyers with fines of up to \$10,000 for filing clearly frivolous lawsuits, or for falsifying material facts in a lawsuit.

- * Overrule an Alaska Supreme court decision which struck down the voter's initiative which directed that a person should only be held liable for damages in direct proportion to that person's degree of fault.

- * Establish a bar from filing lawsuits by persons who are injured while committing a felonious crime, or while operating a motor vehicle, aircraft or boat while under the influence of alcohol or illegal drugs .

- * Overrule another Alaska Supreme Court decision by granting immunity to hospitals from liability for negligence of independent contractor emergency room physicians, provided the physicians carry at least \$500,000 of liability insurance.

- * Reduce several statutes of limitations and the statute of repose to a reasonable length in order to prevent the assertion of stale or fraudulent claims which would be impossible to defend because 10 or 20 years have passed since the alleged negligent act.

- * Allow future damages to be paid to injured persons in periodic payments in order to protect injured persons from becoming wards of the state. Statistics show that about 25% to 30% of accident victims completely dissipate their judgments or settlements within two months of recovery, and 90% of them spend it all within 5 years.

- * Allow offers of judgment to be made by either party in order to encourage early settlement of litigation, by requiring the payment of actual attorney fees to the party making the offer to settle by those who fail to accept the offer of judgment when that offer is later proven at trial to have been virtually the same as the trial judgment.

- * Require collection of settlement information and insurance data in order to establish a data base from which to judge the effectiveness of tort reform.

- * Require a study and recommendations 10 months from now as to an alternative dispute resolution system, such as, for example, the mediation system that enjoys an 80% success rate in Seattle area federal courts.

The success of tort reform will be in the enactment of a package of reforms, such as the one in this bill, rather than going piecemeal. Getting this bill through both houses of this legislature will not be easy going. As noted in a February 27 editorial in the Wall Street Journal,

"the ABA [American Bar Association] has a long record of opposing any effort to improve the tort system....the ABA opposes a loser pays rule; opposes any limits on pain and suffering awards; opposes a "ceiling" on medical malpractice damages; and opposes product liability reform. In effect, then, the ABA wants to let plaintiffs' lawyers continue extorting billions from American Companies."

If we want an environment that is conducive to rational economic development, the creation of jobs, and a higher standard of living for all Alaskans, enactment of meaningful tort reform is paramount. Mere token reform, is not enough. Every Alaskan should thoroughly understand that the stakes are high, and the battle will not be easy, but that we can prevail.

Brian Porter

Alaska State Legislature



Official Business

House Majority Leader

March 18, 1997

State Capitol
Juneau, AK 99801-1182
(907) 465-3718

Sectional Summary
of
CS of SSHB 58 (FIN) Am H

An Act Relating to Civil Actions

Section 1. Legislative intent. This section generally sets forth the legislative intent of this Act.

Section 2. Minor consistency change. This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

Section 3. Certain property actions to be brought in six years. This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

Section 4. Contract actions to be brought in three years. This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

Section 5. Statute of repose of eight years. This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

This section does not apply if the cause of action resulted from:

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

Section 6. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS 09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

Section 7. Disabilities of minority and incompetency. This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

Section 8. Disabilities of minority and incompetency. This new subsection was added by amendment by the House Finance Committee. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of six years at the time of the injury or death, until the minor's sixth birthday. This means the minor may bring an action for birth trauma injuries anytime before the minor's eighth birthday.

Section 9. Non economic damages. This new section replaces an earlier version of this statute pertaining to non economic damages. This section generally places more stringent limits on the amounts which may be awarded for non economic damages. It also specifically adds loss of consortium to the list of items for which non economic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadriplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

On the floor of the House, this section was amended to include total blindness and third degree burns over one half of the injured person's body to the category of injuries having a \$500,000 cap.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

Section 11. Punitive damages. This section relates to new subsections which are added to the preceding section in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 12. Award of damages; tax reductions. This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 13. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced

to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

This subsection was amended in the House Judiciary Committee to leave the word "future" in the existing language of the statute to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be immediately available to the injured person for the payment of such obligations.

Section 14. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 15. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

This section was amended at the House Judiciary Committee by changing the inflation index from "Anchorage" to the "United States city average". The former is updated annually, while the latter is updated monthly. An injured person should have the benefit of establishing an inflation baseline as close as possible to the date of judgment.

Section 16. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much

the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

Section 17. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

On the floor of the House, this section was amended to exclude persons protected by the statute of repose from the operation of this section, with the result that fault of a person not present in the litigation because of the statute of repose is not attributable to that absent person.

Section 18. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

This subsection was amended at the House Judiciary Committee by deleting the last sentence as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

Section 19. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the

lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

Section 20. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 21. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

Section 22. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 23. Offers of judgment. The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

Section 24. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

Section 25. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 26. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 24 interest rate to judgments against the State of Alaska.

Section 27. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 24.

Section 28. Voluntary arbitration. This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

Section 29. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 30. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are

within the purview of the questions to be answered by the medical advisory panel.

Section 31. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 32. Expert advisory panel; public sector provider. This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 33. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 34. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 35. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 36. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 37. Civil liability of hospitals for non employees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room

physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident.

Section 38. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or water craft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section applies to survival and wrongful death actions which might otherwise have been brought by the personal representative of the perpetrator.

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Section 51. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 52. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 45.

Section 53. Collateral benefits. This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 54 - Section 62. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 63. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first what the experience has been in other jurisdictions before putting any program into operation.

Section 64. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

[Section 65. **Effective date.** This section was deleted by amendment by the House Finance Committee. There is no effective date.]

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 3/18/97

Offered: 3/17/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
 2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
 3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
 4 Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this
 7 legislature as a matter of public policy to

8 (1) encourage the efficiency of the civil justice system by discouraging
 9 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
 10 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
 11 compensation for tortious injuries caused by others;

12 (2) provide for reasonable, but not excessive, punitive damage awards against
 13 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
 14 hampering a positive business environment by allowing excessive penalties;

1 (3) encourage individual savings and economic growth by fostering an
 2 environment likely to control the increase of liability insurance rates to individuals and
 3 businesses resulting in a savings to the state, municipalities, and private businesses that are
 4 self-insured;

5 (4) encourage the traditionally recognized Alaska values of self-reliance and
 6 independence by underscoring the need for personal responsibility in making choices and
 7 personal accountability for the consequences of those choices;

8 (5) alleviate the high cost of malpractice insurance premiums that discourage
 9 physicians, architects, engineers, attorneys, and other professionals from rendering needed
 10 services to the public;

11 (6) ensure that hospitals that comply with the disclosure requirements set out
 12 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
 13 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

14 (7) ensure that one of several tortfeasors is not held responsible for the
 15 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
 16 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

17 (8) enact a statute of repose that meets the tests set out in Turner Construction
 18 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

19 (9) ensure that in actions involving the fault of more than one person, the fault
 20 of each claimant, defendant, third-party defendant, person who has been released from
 21 liability, or other person responsible for the damages be determined and awards be allocated
 22 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
 23 (Alaska 1994); and

24 (10) reduce the amount of litigation proceeding to trial by modifying the
 25 allocation of attorney fees and court costs based on the offer of judgment and the final court
 26 award, thereby providing a financial incentive to both parties to settle the dispute.

27 * Sec. 2. AS 06.05.473(h) is amended to read:

28 (h) After the payment of all other claims, including interest at the rate of 10.5
 29 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay
 30 claims that are otherwise valid but that were not filed within the time prescribed.

31 * Sec. 3. AS 09.10.050 is repealed and reenacted to read:

1 **Sec. 09.10.050. Certain property actions to be brought in six years.** Unless
2 the action is commenced within six years, a person may not bring an action for waste
3 or trespass upon real property.

4 * **Sec. 4.** AS 09.10 is amended by adding a new section to read:

5 **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the
6 action is commenced within three years, a person may not bring an action upon a
7 contract or liability, express or implied, except as provided in AS 09.10.040, the
8 provisions of this section may be waived by contract, or as otherwise provided by law.

9 * **Sec. 5.** AS 09.10.055 is repealed and reenacted to read:

10 **Sec. 09.10.055. Statute of repose of eight years.** (a) Notwithstanding the
11 disability of minority described under AS 09.10.140(a), a person may not bring an
12 action for personal injury, death, or property damage unless commenced within eight
13 years of the earlier of the date of

14 (1) substantial completion of the construction alleged to have caused
15 the personal injury, death, or property damage; however, the limitation of this
16 paragraph does not apply to a claim resulting from an intentional or reckless disregard
17 of specific project design plans and specifications or building codes; in this paragraph,
18 "substantial completion" means the date when construction is sufficiently completed
19 to allow the owner or a person authorized by the owner to occupy the improvement
20 or to use the improvement in the manner for which it was intended; or

21 (2) the last act alleged to have caused the personal injury, death, or
22 property damage.

23 (b) This section does not apply if

24 (1) the personal injury, death, or property damage resulted from

25 (A) prolonged exposure to hazardous waste;

26 (B) an intentional act or gross negligence;

27 (C) fraud or fraudulent misrepresentation;

28 (D) breach of an express warranty or guarantee; or

29 (E) a defective product; in this subparagraph, "product" means
30 an object that has intrinsic value, is capable of delivery as an assembled whole
31 or as a component part, and is introduced into trade or commerce;

(2) the facts that would give notice of a potential cause of action are intentionally concealed;

(3) a shorter period of time for bringing the action is imposed under another provision of law; or

(4) the provisions of this section are waived by contract.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

* Sec. 6. AS 09.10.070(a) is amended to read:

(a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

* Sec. 7. AS 09.10.140(a) is amended to read:

(a) Except as provided under (c) of this section, if [IF] a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

* Sec. 8. AS 09.10.140 is amended by adding a new subsection to read:

(c) In an action for personal injury or death of a person who was under the age of six years at the time of the injury or death, the time period before the person's sixth birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing the civil action.

1 * Sec. 9. AS 09.17.010 is repealed and reenacted to read:

2 **Sec. 09.17.010. Noneconomic damages.** (a) In an action to recover damages
3 for personal injury or wrongful death, all damage claims for noneconomic losses shall
4 be limited to compensation for pain, suffering, inconvenience, physical impairment,
5 disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary
6 damage.

7 (b) Except as provided under (c) of this section, the damages awarded by a
8 court or a jury under (a) of this section for all claims of a person, including a loss of
9 consortium claim, arising out of a single injury or death may not exceed \$300,000.

10 (c) In an action for personal injury, the damages awarded by a court or jury
11 that are described under (b) of this section may not exceed \$500,000 when the
12 claimant, as a result of the injury,

13 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent
14 functional loss of one or more limbs resulting from injury to the spine or spinal cord;

15 (2) has permanently impaired cognitive capacity and is incapable of
16 making independent, responsible decisions;

17 (3) has third degree burns over one half or more of the claimant's body;
18 or

19 (4) is totally blind.

20 (d) Multiple injuries sustained by one person as a result of a single incident
21 shall be treated as a single injury for purposes of this section.

22 * Sec. 10. AS 09.17.020 is amended to read:

23 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in
24 an action, whether in tort, contract, or otherwise, unless supported by clear and
25 convincing evidence of malice or conscious acts showing deliberate disregard of
26 another person's rights by the person from whom the punitive damages are
27 sought.

28 * Sec. 11. AS 09.17.020 is amended by adding new subsections to read:

29 (b) Except as provided under (c) of this section, the amount of punitive
30 damages awarded by a court or jury under (a) of this section may not exceed three
31 times the amount of compensatory damages awarded or \$300,000, whichever amount

1 is greater.

2 (c) The amount of punitive damages awarded by a court or jury under (a) of
3 this section may not exceed four times the amount of compensatory damages awarded
4 or \$600,000, whichever amount is greater, if

5 (1) the wrongful conduct or omission arose in connection with a
6 commercial activity motivated by financial gain; and

7 (2) the likelihood of death or serious bodily injury from the commercial
8 activity was previously known by the person responsible for making policy decisions
9 relating to the commercial activity and the knowledge was gained from previous
10 instances of death or serious bodily injury arising from the same wrongful conduct or
11 omission, regardless of where the previous wrongful conduct or omission occurred.

12 (d) If a person receives an award of punitive damages, the court shall require
13 that 50 percent of the award be deposited into the general fund of the state. This
14 subsection does not grant the state the right to file or join a civil action to recover
15 punitive damages.

16 * Sec. 12. AS 09.17.040(a) is amended to read:

17 (a) In every case where damages for personal injury or death are awarded by
18 the court or jury,

19 (1) the verdict shall be itemized between economic loss and
20 noneconomic loss, if any, as follows:

21 (A) [(1)] past economic loss;

22 (B) [(2)] past noneconomic loss;

23 (C) [(3)] future economic loss;

24 (D) [(4)] future noneconomic loss; [AND]

25 (E) [(5)] punitive damages; and

26 (2) the amount of damages awarded shall be reduced by the
27 amount of federal and state income tax that would have been paid on damages
28 contained in the verdict under tax rates in effect on the date of the injury or
29 death; this paragraph does not apply to an award of damages if the damages are
30 taxable under federal or state law.

31 * Sec. 13. AS 09.17.040(d) is amended to read:

1 (d) In an action to recover damages, the court shall, at the request of a [AN
 2 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
 3 for future damages that exceed \$100,000 be paid to the maximum extent feasible by
 4 periodic payments rather than by a lump-sum payment. If a portion of the judgment
 5 awarded is owed to an attorney under a contingent fee agreement, that portion
 6 of the judgment shall be reduced to present value, if necessary, and paid in a
 7 lump sum, and the remaining portion of the judgment shall be paid as provided
 8 under this subsection.

9 * Sec. 14. AS 09.17.040(e) is amended to read:

10 (e) Except as provided in this subsection, if a judgment is paid by
 11 structured settlement type periodic payments, the [THE] court shall [MAY] require
 12 security be posted in the form of United States government obligations [,] in order
 13 to ensure that funds are available as periodic payments become due. The court may
 14 not require security to be posted if the state, a self-insured municipality, or an
 15 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
 16 obligation to discharge the judgment, provided that an authorized insurer must be
 17 rated by two nationally recognized independent rating agencies to be in the two
 18 highest categories of quality and financial soundness. If a judgment is paid by
 19 annuity type period payments, the court shall require the annuity be purchased
 20 from an authorized insurer that is rated by two nationally recognized independent
 21 rating agencies to be in the two highest categories of quality and financial
 22 soundness. The injured party shall determine whether a structured settlement or
 23 an annuity is the source of the periodic payments. The injured party may not be
 24 required to accept a structured settlement or annuity from the defendant's or
 25 other party's insurer or from any affiliated companies of the insurer.

26 * Sec. 15. AS 09.17.040(f) is amended to read:

27 (f) A judgment ordering payment of future damages for personal injury or
 28 death by periodic payment shall specify the recipient, the dollar amount of the
 29 payments, including any increases in future payments for anticipated inflation, the
 30 interval between payments, and the number of payments or the period of time over
 31 which payments shall be made. Payments may be modified only in the event of the

1 death of the judgment creditor, in which case payments may not be reduced or
 2 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 3 of support, as provided by law, immediately before death. In the event the judgment
 4 creditor owed no duty of support to dependents at the time of the judgment creditor's
 5 death, the money remaining shall be distributed in accordance with a will of the
 6 deceased judgment creditor accepted into probate or under the intestate laws of the
 7 state if the deceased had no will. In this subsection, "inflation" means the change
 8 in the consumer price index for United States city average, all urban consumers,
 9 all items indices, compiled by the Bureau of Labor Statistics, United States
 10 Department of Labor.

11 * Sec. 16. AS 09.17.070 is repealed and reenacted to read:

12 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 13 injury or death may only recover damages that exceed amounts received by the
 14 claimant, or that with reasonable probability will be received in the future by the
 15 claimant, as compensation for the injuries from collateral sources, whether private,
 16 group, or governmental, and whether contributory or noncontributory, except when

17 (1) the collateral source is a federally funded program that by law must
 18 seek subrogation;

19 (2) the collateral source has a right of subrogation under federal law;

20 (3) the collateral source is the payment of a dependent child's medical
 21 bills by the injured child's parent that does not result from insurance coverage;

22 (4) the benefit consists of death benefits paid under life insurance; or

23 (5) the benefit consists of workers' compensation benefits received
 24 under AS 23.30.

25 (b) A person defending a claim may introduce into evidence at trial an amount
 26 paid or payable as a benefit to the claimant as a result of the personal injury or death
 27 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 28 sickness, disability, accident, or income-disability insurance; insurance that provides
 29 health benefits or income-disability coverage; and a contract or agreement of a group,
 30 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 31 or reimburse the cost of medical, hospital, dental, or other health care services,

1 disability, or lost wages. However, evidence of a collateral source described under
 2 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 3 defending a claim elects to introduce evidence described in this subsection, the
 4 claimant may introduce evidence of the amount that the claimant has paid or
 5 contributed to secure the claimant's right to the collateral benefit, including the cost
 6 to the claimant resulting from depleted or exhausted coverage.

7 (c) A person who provides a collateral benefit admissible under (b) of this
 8 section may not recover an amount against the claimant as reimbursement for those
 9 benefits and may not be subrogated to the rights of a claimant against a person
 10 defending a claim.

11 * Sec. 17. AS 09.17.080(a) is amended to read:

12 (a) In all actions involving fault of more than one person [PARTY TO THE
 13 ACTION], including third-party defendants and persons who have been released
 14 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
 15 the jury to answer special interrogatories or, if there is no jury, shall make findings,
 16 indicating

17 (1) the amount of damages each claimant would be entitled to recover
 18 if contributory fault is disregarded; and

19 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 20 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 21 [AND] person who has been released from liability, or other person responsible for
 22 the damages to each claimant regardless of whether the other person, including
 23 an employer, is or could have been named as a party to the action; in this
 24 paragraph, "other persons responsible" does not include a person protected
 25 from a civil action under AS 09.10.055 [UNDER AS 09.16.040].

26 * Sec. 18. AS 09.17.080(b) is amended to read:

27 (b) In determining the percentages of fault, the trier of fact shall consider both
 28 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 29 causal relation between the conduct and the damages claimed. [THE TRIER OF
 30 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
 31 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE

1 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
2 PERSON CANNOT BE DISTINGUISHED.]

3 * Sec. 19. AS 09.17.080(c) is amended to read:

4 (c) The court shall determine the award of damages to each claimant in
5 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
6 AS 09.16.040,] and enter judgment against each party liable. The court also shall
7 determine and state in the judgment each party's equitable share of the obligation to
8 each claimant in accordance with the respective percentages of fault as determined
9 under (a) of this section. Except as provided under AS 23.30.015(g), an
10 assessment of a percentage of fault against a person who is not a party may only
11 be used as a measure for accurately determining the percentages of fault of a
12 named party. Assessment of a percentage of fault against a person who is not a
13 party does not subject that person to civil liability in that action and may not be
14 used as evidence of civil liability in another action.

15 * Sec. 20. AS 09.17.900 is amended to read:

16 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
17 that are in any measure negligent, [OR] reckless, or intentional toward the person or
18 property of the actor or others, or that subject a person to strict tort liability. The term
19 also includes breach of warranty, unreasonable assumption of risk not constituting an
20 enforceable express consent, misuse of a product for which the defendant otherwise
21 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
22 Legal requirements of causal relation apply both to fault as the basis for liability and
23 to contributory fault.

24 * Sec. 21. AS 09.20 is amended by adding a new section to read:

25 **Sec. 09.20.185. Expert witness qualification.** (a) In an action based on
26 professional negligence, a person may not testify as an expert witness on the issue of
27 the appropriate standard of care unless the witness is

28 (1) a professional who is licensed in this state or in another state or
29 country;

30 (2) trained and experienced in the same discipline or school of practice
31 as the defendant or in an area directly related to a matter at issue; and

(3) certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue; however, this paragraph does not apply if a board does not exist that could certify the witness in the particular field or matter at issue.

* Sec. 22. AS 09.30.065 is amended to read:

Sec. 09.30.065. Offers of judgment. At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn, and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is at least five percent, less [NOT MORE] favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made, [THE INTEREST AWARDFD UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

(1) if the offer was served no later than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure the offeree shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR];

(2) if the offer was served more than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure but more than 90 days before the trial began, the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees;

1 (3) if the offer was served 90 days or less but more than 10 days
2 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
3 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
4 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
5 YEAR].

6 * Sec. 23. AS 09.30.065 is amended by adding new subsections to read:

7 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
8 of this section, that offeror shall be considered the prevailing party for purposes of an
9 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
10 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
11 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
12 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
13 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
14 this section. A party who receives attorney fees under this section may not also
15 receive attorney fees under the Alaska Rules of Civil Procedure.

16 (c) If an offeror makes more than one offer of judgment, the last offer served
17 on the adverse party shall be considered to be a revocation of any prior offer of
18 judgment.

19 * Sec. 24. AS 09.30.070(a) is amended to read:

20 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
21 and decrees for the payment of money, including prejudgment interest, is three
22 percentage points above the 12th Federal Reserve District discount rate in effect
23 on January 2 of the year in which the judgment or decree is entered [10.5
24 PERCENT A YEAR], except that a judgment or decree founded on a contract in
25 writing, providing for the payment of interest until paid at a specified rate not
26 exceeding the legal rate of interest for that type of contract, bears interest at the rate
27 specified in the contract if the interest rate is set out in the judgment or decree.

28 * Sec. 25. AS 09.30.070 is amended by adding a new subsection to read:

29 (c) Prejudgment interest may not be awarded for future economic damages,
30 future noneconomic damages, or punitive damages.

31 * Sec. 26. AS 09.50.280 is amended to read:

Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME DUE] and without punitive damages.

* **Sec. 27.** AS 09.55.440(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment must include interest at the rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally awarded that [WHICH] exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

* **Sec. 28.** 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, 09.55.554 - 09.55.560 [AS 09.55.540 - 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

* **Sec. 29.** AS 09.55.536(a) is amended to read:

(a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider, including a person providing services on behalf of a government¹ entity, when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel,

1 giving the parties the opportunity to object or make suggestions.

2 * Sec. 30. AS 09.55.536(c) is amended to read:

3 (c) Not more than 30 days after selection of the panel, the panel [IT] shall
4 make a written report to the parties and to the court, answering the following questions
5 and other questions submitted to the panel by the court in sufficient detail to explain
6 the case and the reasons for the panel's answers:

7 (1) Why did the claimant seek [WHAT WAS THE DISORDER FOR
8 WHICH THE PLAINTIFF CAME TO] medical care?

9 (2) Was a correct diagnosis made? If not, what was incorrect
10 about the diagnosis [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME
11 WITHOUT MEDICAL CARE]?

12 (3) Was the treatment or lack of treatment [SELECTED] appropriate?
13 If not, what was inappropriate about the treatment or lack of treatment [FOR
14 THE CASE]?

15 (4) Was the claimant injured during the course of evaluation or
16 treatment or by failure to diagnose or treat [DID AN INJURY ARISE FROM THE
17 MEDICAL CARE]?

18 (5) If the answer to question 4 is "yes," what [WHAT] is the nature
19 and extent of the medical injury?

20 (6) What specifically caused the medical injury?

21 (7) Was the medical injury caused by unskillful care? Explain.

22 (8) If a medical injury had not occurred, what would have been the
23 likely outcome of the medical case [HOW WOULD THE PLAINTIFF'S
24 CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

25 * Sec. 31. AS 09.55.536(f) is amended to read:

26 (f) Discovery may not be undertaken in a case until the report of the expert
27 advisory panel is received or 60 days after selection of the panel, whichever occurs
28 first. However, the court may relax this prohibition upon a showing of good cause by
29 any party. If the panel has not completed its report within the 30-day period
30 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
31 an additional 30 days.

1 * Sec. 32. AS 09.55.536 is amended by adding a new subsection to read:

2 (i) This section applies regardless of whether a party in the action or the health
3 care provider whose professional services are the subject of the action is a
4 governmental entity or in the public or private sector.

5 * Sec. 33. AS 09.55.560(1) is amended to read:

6 (1) "health care provider" means an acupuncturist licensed under
7 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
8 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
9 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
10 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
11 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
12 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
13 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
14 hospital as defined in AS 18.20.130, including a governmentally owned or operated
15 hospital; [AND] an employee of a health care provider acting within the course and
16 scope of employment; an ambulatory surgical facility and other organizations
17 whose primary purpose is the delivery of health care, including a health
18 maintenance organization, individual practice association, integrated delivery
19 system, preferred provider organization or arrangement, and a physical hospital
20 organization.

21 * Sec. 34. AS 09.55.560 is amended by adding new paragraphs to read:

22 (4) "professional negligence" means a negligent act or omission by a
23 health care provider in rendering professional services;

24 (5) "professional services" means service provided by a health care
25 provider that is within the scope of services for which the health care provider is
26 licensed and that is not prohibited under the health care provider's license or by a
27 facility in which the health care provider practices.

28 * Sec. 35. AS 09.60 is amended by adding a new section to read:

29 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
30 collects a contingency fee in connection with an action for personal injury, death, or
31 property damage and the damages awarded by a court or jury include an award of

1 punitive damages, the contingent fee due the attorney shall be calculated after that
 2 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
 3 from the total award of damages.

4 * Sec. 36. AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.035. Civil liability of electric utility.** (a) A utility offering
 6 electrical service to the public for compensation under a certificate of public
 7 convenience and necessity issued by the Alaska Public Utilities Commission under
 8 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
 9 injury resulting from an act or omission of the utility relating to the production,
 10 delivery, or sale of electricity.

11 (b) This section does not preclude liability for civil damages that are the result
 12 of an intentional, reckless, or negligent act or omission.

13 * Sec. 37. AS 09.65 is amended by adding a new section to read:

14 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 15 hospital is not liable for civil damages as a result of an act or omission by an
 16 emergency room physician who is not an employee or actual agent of the hospital if
 17 the hospital provides notice that the emergency room physician is an independent
 18 contractor and the emergency room physician is insured as described under (c) of this
 19 section. The hospital is responsible for exercising reasonable care in granting
 20 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 21 and for taking appropriate steps to revoke or restrict privileges in appropriate
 22 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 23 emergency room physician who is an independent contractor. The notice required by
 24 this subsection must be posted conspicuously in all admitting areas of the hospital,
 25 published at least annually in a newspaper of general circulation in the area, and must
 26 be in substantially the following form:

27 **Notice of Limited Liability**

28 The following emergency room physicians are independent
 29 contractors and are not employees of the hospital:

30 (List specific emergency room physicians)

31 (b) This section does not preclude liability for civil damages that are the

1 proximate result of the hospital's negligence or intentional misconduct.

2 (c) A hospital is not immune from liability under (a) of this section for an act
3 or omission of an emergency room physician who is an independent contractor unless
4 the emergency room physician has liability insurance coverage in the amount of at
5 least \$500,000 for each incident and the coverage is in effect and applicable to those
6 health care services offered by the emergency room physician that the hospital is
7 required to provide by law or by accreditation requirements.

8 (d) In this section,

9 (1) "emergency room physician" means a physician who provides health
10 care services in a hospital emergency room;

11 (2) "hospital" has the meaning given in AS 18.20.130 and includes a
12 governmentally owned or operated hospital;

13 (3) "independent contractor" means an emergency room physician who
14 is not an employee or actual agent of the hospital in connection with the rendition of
15 the health care services.

16 * Sec. 38. AS 09.65.210 is repealed and reenacted to read:

17 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
18 **under the influence of alcohol or drugs.** A person who suffers personal injury or
19 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
20 recover damages for the personal injury or death if the injury or death occurred while
21 the person was

22 (1) engaged in the commission of a felony, the person has been
23 convicted of the felony, including conviction based on a guilty plea or plea of nolo
24 contendere, and the felony substantially contributed to the personal injury or death;

25 (2) engaged in conduct that would constitute the commission of an
26 unclassified felony, a class A, or a class B felony for which the person was not
27 convicted and the conduct

28 (A) substantially contributed to the personal injury or death; and

29 (B) is proven by the defendant in the civil trial by clear and
30 convincing evidence;

31 (3) fleeing after the commission, by that person, of conduct that would

1 constitute an unclassified felony, a class A felony, or a class B felony or being
 2 apprehended for conduct that would constitute an unclassified felony, a class A felony,
 3 or a class B felony if the conduct

4 (A) during the flight or apprehension substantially contributed
 5 to the injury or death; and

6 (B) is proven by the defendant in the civil trial by clear and
 7 convincing evidence;

8 (4) operating a vehicle, aircraft, or watercraft while under the influence
 9 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
 10 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
 11 the conduct substantially contributed to the personal injury or death; or

12 (5) engaged in conduct that would constitute a violation of
 13 AS 28.35.030 for which the person was not convicted if the conduct substantially
 14 contributed to the personal injury or death and the conduct is proven by the defendant
 15 in the civil trial by clear and convincing evidence.

16 * Sec. 39. AS 09.68 is amended by adding a new section to read:

17 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
 18 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
 19 information relating to the compromise or other settlement of all civil litigation. The
 20 information, including the case name and file number, a general description of the
 21 claims being settled, the dollar amount of the settlement, to whom the settlement was
 22 paid, and any nonmonetary terms, shall be collected on a form developed by the
 23 council for that purpose.

24 (b) The information received by the council under (a) of this section is
 25 confidential. This restriction does not prevent the disclosure of summaries and
 26 statistics in a manner that does not allow the identification of particular cases or
 27 parties.

28 (c) The requirements of (a) of this section do not apply to the following types
 29 of cases:

30 (1) divorce and dissolution;

31 (2) adoption, custody, support, visitation, and emancipation of children;

1 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
2 cases under 47.12;

3 (4) domestic violence protective orders under AS 18.66.100 -
4 18.66.180;

5 (5) estate, guardianship, and trust cases filed under AS 13;

6 (6) small claims under AS 22.15.040.

7 * **Sec. 40.** AS 21.06 is amended by adding a new section to read:

8 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
9 and shall compile information necessary to evaluate the effect of the measures enacted
10 in this Act on the availability and cost of insurance in the state.

11 (b) Information described in (a) of this section shall be provided by all insurers
12 doing business in this state in the format specified by the director and must include
13 factual information stating premiums, claims, losses, expenses, and solvency of the
14 company as a whole. Information shall be compiled by the division in a way that
15 protects the identity of individual insureds.

16 (c) The director shall adopt regulations to implement and interpret this section,
17 including requiring insurers doing business in the state to provide information
18 necessary for the division to carry out its responsibilities under (a) and (b) of this
19 section. If there are indications of market disruption, the director may waive all or
20 part of the reporting requirements in this section.

21 (d) Beginning June 1, 2000, the information compiled under (a) of this section
22 shall be reported annually to the governor and the judiciary committees of both houses
23 of the legislature.

24 (e) The division may consult with the Alaska Judicial Council when
25 determining what information to require to be reported under (a) - (c) of this section
26 and when implementing the compilation required under (a) of this section.

27 * **Sec. 41.** AS 21.89.100(d) is amended to read:

28 (d) If the insured selects independent counsel at the insurer's expense, the
29 insurer may require that the independent counsel have at least four years of experience
30 in civil litigation, including defense experience in the general subject area at issue in
31 the civil action, and malpractice insurance. Unless otherwise provided in the insurance

policy, the obligation of the insurer to pay the fee charged by the independent counsel is limited to the rate that is actually paid by the insurer to an attorney in the ordinary course of business in the defense of a similar civil action in the community in which the claim arose or is being defended. In providing independent counsel, the insurer is not responsible for the fees and costs of defending an allegation for which coverage is properly denied and shall be responsible only for the fees and costs to defend those allegations for which the insurer either reserves its position as to coverage or accepts coverage. The independent counsel shall keep detailed records allocating fees and costs accordingly. A dispute between the insurer and insured regarding attorney fees that is not resolved by the insurance policy or this section shall be resolved by arbitration under AS 09.43.

* Sec. 42. AS 21.89.100 is amended by adding a new subsection to read:

(h) When an insured is represented by independent counsel, the insurer may settle directly with the plaintiff if the settlement includes all claims based upon the allegations for which the insurer previously reserved its position as to coverage or accepted coverage, regardless of whether the settlement extinguishes all claims against the insured.

* Sec. 43. AS 23.30.015(g) is amended to read:

(g) If the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)] of this section [,] insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter. If the employer is allocated a percentage of fault under AS 09.17.080, the amount due the employer under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080(c).

* Sec. 44. AS 44.77.015(a) is amended to read:

(a) For the purposes of filing claims for medical services provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1) within six months after the date of service, or as provided in (b) of this section, if

1 there is no third-party claim, or (2) within 12 months after the date of service if there
2 is a third-party claim. Except as provided in (c) of this section, a claim may not be
3 paid if it is not filed promptly; an inference to the contrary may not be drawn from
4 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

5 * **Sec. 45.** Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

6 (c) **Motion to Set Trial and Certificate.** Unless otherwise ordered by the
7 court, a [A] motion to set trial may not be filed until after the meeting of parties
8 under (n) of this rule has occurred and the scheduling order under Rule 16(b) has
9 been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND
10 COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to
11 set trial together with a certificate, signed by counsel, stating:

- 12 (1) That the issues in the case have actually been joined;
- 13 (2) That all parties have completed discovery or have a reasonable
14 opportunity to do so within the next 60 days;
- 15 (3) That the procedure for listing witnesses and exhibits and providing
16 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- 17 (4) Whether trial by jury has been timely demanded;
- 18 (5) The estimated number of days for the trial, including estimates for
19 each party's case and for jury selection;
- 20 (6) The names, addresses and telephone numbers of all attorneys and
21 pro se parties who are responsible for the conduct of the litigation;
- 22 (7) Which, if any, statute or rule entitles the case to preference on the
23 trial calendar;
- 24 (8) That the parties have complied with [PARAGRAPH] (k) of this
25 rule.

26 * **Sec. 46.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

27 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
28 soon as practicable after the exchange of initial disclosures required under Rule
29 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
30 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
31 their claims and defenses and the possibilities for a prompt settlement of the case and

1 to develop a proposed discovery plan. The attorneys of record and all unrepresented
 2 parties that have appeared in the case are jointly responsible for arranging and being
 3 present or represented at the meeting, for attempting in good faith to agree on the
 4 proposed discovery plan, and for submitting to the court within 10 days after the
 5 meeting a written report outlining the proposed discovery plan. The proposed
 6 discovery plan shall indicate the parties' views and proposals concerning

7 (1) what changes should be made in the timing or forms of subsequent
 8 disclosures under the rules, including a statement as to when the disclosures required
 9 under Rule 26(a) were made;

10 (2) the subjects on which discovery may be needed, when discovery
 11 should be completed, and whether discovery should be conducted in phases or be
 12 limited to or focused upon particular issues;

13 (3) what changes should be made in the limitations on discovery
 14 imposed under these rules and what other limitations should be imposed;

15 (4) whether a scheduling conference is unnecessary;

16 (5) whether there will be dispositive or partially dispositive motions
 17 filed in the case and whether other deadlines should be set aside pending resolution of
 18 the dispositive or partially dispositive motions by the court; and

19 (6) any other orders that should be entered by the court under Civil
 20 Rule 16(b) and (c).

21 * **Sec. 47.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
 22 paragraph to read:

23 (3) **Settlement Information.** If a voluntary dismissal under this rule
 24 is the result of compromise or other settlement of the parties, the parties shall submit
 25 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
 26 of dismissal made under (1)[a] of this subsection must be accompanied by a
 27 certification signed by or on behalf of the plaintiff that the information required under
 28 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
 29 dismissal made under (1)[b] of this subsection must be accompanied by a certification
 30 signed by or on behalf of all parties who have appeared in the action. The
 31 requirements of this paragraph do not apply to the types of cases listed in

1 AS 09.68.130(c).

2 * **Sec. 48.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

3 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
4 the report of the Panel has been filed or until 60 [80] days **after selection of the Panel**
5 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
6 to occur, unless discovery is further stayed for good cause by order of the court.

7 * **Sec. 49.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

8 (b) In addition to its authority under (a) of this rule and its power to punish
9 for contempt, a court may, after reasonable notice and an opportunity to show cause
10 to the contrary, and after hearing by the court, if requested, impose a fine not to
11 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
12 to comply with these rules or any rules promulgated by the supreme court.

13 * **Sec. 50.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
14 subsection to read:

15 (c) If the trier of fact determines that a party to a civil action has intentionally
16 made a false statement of a material fact in connection with the prosecution or defense
17 of a civil action, the court shall enter judgment against the party making the false
18 statement on the issue to which the false statement relates. If the civil action involves
19 multiple claims and the false statement does not apply to all claims, the judgment
20 required under this subsection shall apply only to those claims to which the false
21 statement relates.

22 * **Sec. 51.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
23 subsection to read:

24 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
25 result of compromise or other settlement between the parties, the parties shall submit
26 to the Alaska Judicial Council the information required under AS 09.68.130. A
27 dismissal by agreement under (a) of this rule must be accompanied by a certification
28 signed by the attorneys of record for all parties that the information required under
29 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
30 appellant or petitioner made under (b) of this rule must be accompanied by a
31 certification signed by the appellant's or petitioner's attorney of record. The

1 requirements of this subsection do not apply to the types of cases listed in
2 AS 09.68.130(c).

3 * **Sec. 52.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

4 * **Sec. 53.** AS 09.55.548 is repealed.

5 * **Sec. 54.** AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending
6 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
7 percentage of an award of punitive damages be deposited into the general fund.

8 * **Sec. 55.** AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending
9 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
10 damages by certain tax rates in effect on the date of injury or death if taxable.

11 * **Sec. 56.** AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
13 periodically if requested by a party, with a lump sum payment for certain attorney fees.

14 * **Sec. 57.** AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending
15 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
16 is paid by periodic payments.

17 * **Sec. 58.** AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending
18 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
19 increases for future inflation.

20 * **Sec. 59.** AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending
21 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
22 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
23 among the claimants, defendants, third-party defendants, persons who have been released from
24 liability, or other person who is responsible for the damages.

25 * **Sec. 60.** AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending
26 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
27 testifying as an expert witness.

28 * **Sec. 61.** AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of
29 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
30 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
31 eliminating provisions relating to interest and by providing that a subsequent offer revokes

1 prior offers.

2 * **Sec. 62.** AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending
3 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
4 awarded for future economic or noneconomic damages.

5 * **Sec. 63. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
6 legislation to create a pilot alternative dispute resolution procedure within the existing civil
7 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
8 disputes.

9 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
10 Association, review court sanctioned alternative dispute resolution programs in other states and
11 in the federal court system, and make recommendations to assist the legislature and the Alaska
12 Court System in the establishment of a pilot program for alternative dispute resolution within
13 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
14 legislature and to the Alaska Supreme Court within six months after the effective date of this
15 Act. The report must include specific types of programs, specific types of cases within each
16 program that are amenable to alternative dispute resolution, the cost to the parties and to the
17 Alaska Court System under these programs, and the qualifications of the neutral parties,
18 including nonlawyers, who will provide dispute resolution services under the program.

19 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
20 and early neutral evaluation.

21 * **Sec. 64. APPLICABILITY.** This Act applies to all causes of action accruing on or after
22 the effective date of this Act.

23 * **Sec. 65. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
24 application of a provision of this Act to any person or circumstance is held invalid, the
25 remainder of this Act and the application to other persons shall not be affected.

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(FIN)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY THE SENATE FINANCE COMMITTEE****Offered: 4/14/97****Referred: Rules****Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this
7 legislature as a matter of public policy to
8 (1) ensure that this Act does not apply to or in any way have an effect on
9 existing litigation or a civil cause of action that accrues before the effective date of this Act;
10 it is the specific intent of the legislature that this Act not apply to or in any way have an
11 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
12 now or in the future;
13 (2) encourage the efficiency of the civil justice system by discouraging
14 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without

1 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
2 compensation for tortious injuries caused by others;

3 (3) provide for reasonable, but not excessive, punitive damage awards against
4 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
5 hampering a positive business environment by allowing excessive penalties;

6 (4) encourage individual savings and economic growth by fostering an
7 environment likely to control the increase of liability insurance rates to individuals and
8 businesses resulting in a savings to the state, municipalities, and private businesses that are
9 self-insured;

10 (5) encourage the traditionally recognized Alaska values of self-reliance and
11 independence by underscoring the need for personal responsibility in making choices and
12 personal accountability for the consequences of those choices;

13 (6) alleviate the high cost of malpractice insurance premiums that discourage
14 physicians, architects, engineers, attorneys, and other professionals from rendering needed
15 services to the public;

16 (7) ensure that hospitals that comply with the disclosure requirements set out
17 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
18 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

19 (8) ensure that one of several tortfeasors is not held responsible for the
20 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
21 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

22 (9) enact a statute of repose that meets the tests set out in Turner Construction
23 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

24 (10) ensure that in actions involving the fault of more than one person, the
25 fault of each claimant, defendant, third-party defendant, person who has been released from
26 liability, or other person responsible for the damages be determined and awards be allocated
27 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
28 (Alaska 1994); and

29 (11) reduce the amount of litigation proceeding to trial by modifying the
30 allocation of attorney fees and court costs based on the offer of judgment and the final court
31 award, thereby providing a financial incentive to both parties to settle the dispute.

1 * Sec. 2. AS 06.05.473(h) is amended to read:

2 (h) After the payment of all other claims, including interest at the rate of 10.5
3 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay
4 claims that are otherwise valid but that were not filed within the time prescribed.

5 * Sec. 3. AS 09.10.050 is repealed and reenacted to read:

6 **Sec. 09.10.050. Certain property actions to be brought in six years.** Unless
7 the action is commenced within six years, a person may not bring an action for waste
8 or trespass upon real property.

9 * Sec. 4. AS 09.10 is amended by adding a new section to read:

10 **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the
11 action is commenced within three years, a person may not bring an action upon a
12 contract or liability, express or implied, except as provided in AS 09.10.040, the
13 provisions of this section may be waived by contract, or as otherwise provided by law.

14 * Sec. 5. AS 09.10.055 is repealed and reenacted to read:

15 **Sec. 09.10.055. Statute of repose of eight years.** (a) Notwithstanding the
16 disability of minority described under AS 09.10.140(a), a person may not bring an
17 action for personal injury, death, or property damage unless commenced within eight
18 years of the earlier of the date of

19 (1) substantial completion of the construction alleged to have caused
20 the personal injury, death, or property damage; however, the limitation of this
21 paragraph does not apply to a claim resulting from an intentional or reckless disregard
22 of specific project design plans and specifications or building codes; in this paragraph,
23 "substantial completion" means the date when construction is sufficiently completed
24 to allow the owner or a person authorized by the owner to occupy the improvement
25 or to use the improvement in the manner for which it was intended; or

26 (2) the last act alleged to have caused the personal injury, death, or
27 property damage.

28 (b) This section does not apply if

29 (1) the personal injury, death, or property damage resulted from

30 (A) prolonged exposure to hazardous waste;

31 (B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

(D) breach of an express warranty or guarantee; or

(E) a defective product; in this subparagraph, "product" means

an object that has intrinsic value, is capable of delivery as an assembled whole

or as a component part, and is introduced into trade or commerce;

(2) the facts that would give notice of a potential cause of action are intentionally concealed;

(3) a shorter period of time for bringing the action is imposed under another provision of law; or

(4) the provisions of this section are waived by contract.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

* Sec. 6. AS 09.10.070(a) is amended to read:

(a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

* Sec. 7. AS 09.10.140(a) is amended to read:

(a) Except as provided under (c) of this section, if [IF] a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

1 * Sec. 8. AS 09.10.140 is amended by adding a new subsection to read:

2 (c) In an action for personal injury or death of a person who was under the age
3 of six years at the time of the injury or death, the time period before the person's sixth
4 birthday is not a part of the time limit imposed under AS 09.10.070(a) for commencing
5 the civil action.

6 * Sec. 9. AS 09.17.010 is repealed and reenacted to read:

7 **Sec. 09.17.010. Noneconomic damages.** (a) In an action to recover damages
8 for personal injury or wrongful death, all damage claims for noneconomic losses shall
9 be limited to compensation for pain, suffering, inconvenience, physical impairment,
10 disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary
11 damage.

12 (b) Except as provided under (c) of this section, the damages awarded by a
13 court or a jury under (a) of this section for all claims of a person, including a loss of
14 consortium claim, arising out of a single injury or death may not exceed \$300,000.

15 (c) In an action for personal injury, the damages awarded by a court or jury
16 that are described under (b) of this section may not exceed \$500,000 when the
17 claimant, as a result of the injury,

18 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent
19 functional loss of one or more limbs resulting from injury to the spine or spinal cord;

20 (2) has permanently impaired cognitive capacity and is incapable of
21 making independent, responsible decisions;

22 (3) has third degree burns over one-half or more of the claimant's body;

23 or

24 (4) is totally blind.

25 (d) Multiple injuries sustained by one person as a result of a single incident
26 shall be treated as a single injury for purposes of this section.

27 * Sec. 10. AS 09.17.020 is amended to read:

28 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in
29 an action, whether in tort, contract, or otherwise, unless supported by clear and
30 convincing evidence of outrageous conduct, including acts done with malice or bad
31 motives, or reckless indifference to the interest of another person.

1 * Sec. 11. AS 09.17.020 is amended by adding new subsections to read:

2 (b) Except as provided under (c) of this section, the amount of punitive
3 damages awarded by a court or jury under (a) of this section may not exceed three
4 times the amount of compensatory damages awarded, or \$300,000, whichever amount
5 is greater.

6 (c) The amount of punitive damages awarded by a court or jury under (a) of
7 this section may not exceed four times the amount of compensatory damages awarded,
8 or \$600,000, whichever amount is greater, if

9 (1) the wrongful conduct or omission arose in connection with a
10 commercial activity motivated by financial gain; and

11 (2) the likelihood of death or serious bodily injury from the commercial
12 activity was previously known by the person responsible for making policy decisions
13 relating to the commercial activity and the knowledge was gained from previous
14 instances of death or serious bodily injury arising from the same wrongful conduct or
15 omission, regardless of where the previous wrongful conduct or omission occurred.

16 (d) If a person receives an award of punitive damages, the court shall require
17 that 50 percent of the award be deposited into the general fund of the state. This
18 subsection does not grant the state the right to file or join a civil action to recover
19 punitive damages.

20 * Sec. 12. AS 09.17.040(a) is amended to read:

21 (a) In every case where damages for personal injury or death are awarded by
22 the court or jury,

23 (1) the verdict shall be itemized between economic loss and
24 noneconomic loss, if any, as follows:

25 (A) [(1)] past economic loss;

26 (B) [(2)] past noneconomic loss;

27 (C) [(3)] future economic loss;

28 (D) [(4)] future noneconomic loss; [AND]

29 (E) [(5)] punitive damages; and

30 (2) the amount of damages awarded shall be reduced by the
31 amount of federal and state income tax that would have been paid on damages

1 contained in the verdict under tax rates in effect on the date of the injury or
2 death; this paragraph does not apply to an award of damages if the damages are
3 taxable under federal or state law.

4 * Sec. 13. AS 09.17.040(d) is amended to read:

5 (d) In an action to recover damages, the court shall, at the request of an
6 injured party, enter judgment ordering that amounts awarded a judgment creditor for
7 future damages that exceed \$100,000 be paid to the maximum extent feasible by
8 periodic payments rather than by a lump-sum payment. If a portion of the judgment
9 awarded is owed to an attorney under a contingent fee agreement, that portion
10 of the judgment shall be reduced to present value, if necessary, and paid in a
11 lump sum, and the remaining portion of the judgment shall be paid as provided
12 under this subsection.

13 * Sec. 14. AS 09.17.040(e) is amended to read:

14 (e) Except as provided in this subsection, if a judgment is paid by
15 structured settlement type periodic payments, the [THE] court shall [MAY] require
16 security be posted in the form of United States government obligations [,] in order
17 to ensure that funds are available as periodic payments become due. The court may
18 not require security to be posted if the state, a self-insured municipality, or an
19 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
20 obligation to discharge the judgment, provided that an authorized insurer must be
21 rated by two nationally recognized independent rating agencies to be in the two
22 highest categories of quality and financial soundness. If a judgment is paid by
23 annuity type period payments, the court shall require the annuity be purchased
24 from an authorized insurer that is rated by two nationally recognized independent
25 rating agencies to be in the two highest categories of quality and financial
26 soundness. The injured party shall determine whether a structured settlement or
27 an annuity is the source of the periodic payments. The injured party may not be
28 required to accept a structured settlement or annuity from the defendant's or
29 other party's insurer or from any affiliated companies of the insurer.

30 * Sec. 15. AS 09.17.040(f) is amended to read:

31 (f) A judgment ordering payment of future damages for personal injury or

1 death by periodic payment shall specify the recipient, the dollar amount of the
 2 payments, including any increases in future payments for anticipated inflation, the
 3 interval between payments, and the number of payments or the period of time over
 4 which payments shall be made. Payments may be modified only in the event of the
 5 death of the judgment creditor, in which case payments may not be reduced or
 6 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 7 of support, as provided by law, immediately before death. In the event the judgment
 8 creditor owed no duty of support to dependents at the time of the judgment creditor's
 9 death, the money remaining shall be distributed in accordance with a will of the
 10 deceased judgment creditor accepted into probate or under the intestate laws of the
 11 state if the deceased had no will. In this subsection, "inflation" means the change
 12 in the consumer price index for United States city average, all urban consumers,
 13 all items indices, compiled by the Bureau of Labor Statistics, United States
 14 Department of Labor.

15 * Sec. 16. AS 09.17.070 is repealed and reenacted to read:

16 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 17 injury or death may only recover damages that exceed amounts received by the
 18 claimant, or that with reasonable probability will be received in the future by the
 19 claimant, as compensation for the injuries from collateral sources, whether private,
 20 group, or governmental, and whether contributory or noncontributory, except when

21 (1) the collateral source is a federally funded program that by law must
 22 seek subrogation;

23 (2) the collateral source has a right of subrogation under federal law;

24 (3) the collateral source is the payment of a dependent child's medical
 25 bills by the injured child's parent that does not result from insurance coverage;

26 (4) the benefit consists of death benefits paid under life insurance; or

27 (5) the benefit consists of workers' compensation benefits received
 28 under AS 23.30.

29 (b) A person defending a claim may introduce into evidence at trial an amount
 30 paid or payable as a benefit to the claimant as a result of the personal injury or death
 31 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,

1 sickness, disability, accident, or income-disability insurance; insurance that provides
2 health benefits or income-disability coverage; and a contract or agreement of a group,
3 organization, partnership, or corporation, or other collateral source, to provide, pay for,
4 or reimburse the cost of medical, hospital, dental, or other health care services,
5 disability, or lost wages. However, evidence of a collateral source described under
6 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
7 defending a claim elects to introduce evidence described in this subsection, the
8 claimant may introduce evidence of the amount that the claimant has paid or
9 contributed to secure the claimant's right to the collateral benefit, including the cost
10 to the claimant resulting from depleted or exhausted coverage.

11 (c) A person who provides a collateral benefit admissible under (b) of this
12 section may not recover an amount against the claimant as reimbursement for those
13 benefits and may not be subrogated to the rights of a claimant against a person
14 defending a claim.

15 * Sec. 17. AS 09.17.080(a) is amended to read:

16 (a) In all actions involving fault of more than one person [PARTY TO THE
17 ACTION], including third-party defendants and persons who have been released
18 [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct
19 the jury to answer special interrogatories or, if there is no jury, shall make findings,
20 indicating

21 (1) the amount of damages each claimant would be entitled to recover
22 if contributory fault is disregarded; and

23 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
24 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
25 [AND] person who has been released from liability, or other person responsible for
26 the damages to each claimant regardless of whether the other person, including
27 an employer, is or could have been named as a party to the action; in this
28 paragraph, "other persons responsible" does not include a person protected
29 from a civil action under AS 09.10.055 [UNDER AS 09.16.040].

30 * Sec. 18. AS 09.17.080(b) is amended to read:

31 (b) In determining the percentages of fault, the trier of fact shall consider both

1 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 2 causal relation between the conduct and the damages claimed. [THE TRIER OF
 3 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
 4 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE
 5 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
 6 PERSON CANNOT BE DISTINGUISHED.]

7 * Sec. 19. AS 09.17.080(c) is amended to read:

8 (c) The court shall determine the award of damages to each claimant in
 9 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
 10 AS 09.16.040,] and enter judgment against each party liable. The court also shall
 11 determine and state in the judgment each party's equitable share of the obligation to
 12 each claimant in accordance with the respective percentages of fault as determined
 13 under (a) of this section. Except as provided under AS 23.30.015(g), an
 14 assessment of a percentage of fault against a person who is not a party may only
 15 be used as a measure for accurately determining the percentages of fault of a
 16 named party. Assessment of a percentage of fault against a person who is not a
 17 party does not subject that person to civil liability in that action and may not be
 18 used as evidence of civil liability in another action.

19 * Sec. 20. AS 09.17.900 is amended to read:

20 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
 21 that are in any measure negligent, [OR] reckless, or intentional toward the person or
 22 property of the actor or others, or that subject a person to strict tort liability. The term
 23 also includes breach of warranty, unreasonable assumption of risk not constituting an
 24 enforceable express consent, misuse of a product for which the defendant otherwise
 25 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
 26 Legal requirements of causal relation apply both to fault as the basis for liability and
 27 to contributory fault.

28 * Sec. 21. AS 09.20 is amended by adding a new section to read:

29 **Sec. 09.20.185. Expert witness qualification.** (a) In an action based on
 30 professional negligence, a person may not testify as an expert witness on the issue of
 31 the appropriate standard of care unless the witness is

1 (1) a professional who is licensed in this state or in another state or
2 country;

3 (2) trained and experienced in the same discipline or school of practice
4 as the defendant or in an area directly related to a matter at issue; and

5 (3) certified by a board recognized by the state as having acknowledged
6 expertise and training directly related to the particular field or matter at issue; however,
7 this paragraph does not apply if a board does not exist that could certify the witness
8 in the particular field or matter at issue.

9 * Sec. 22. AS 09.30.065 is amended to read:

10 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
11 the trial begins, either the party making a claim or the party defending against a claim
12 may serve upon the adverse party an offer to allow judgment to be entered in complete
13 satisfaction of the claim for the money or property or to the effect specified in the
14 offer, with costs then accrued. If within 10 days after the service of the offer the
15 adverse party serves written notice that the offer is accepted, either party may then file
16 the offer and notice of acceptance together with proof of service, and the clerk shall
17 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
18 evidence of that offer is not admissible except in a proceeding to determine the form
19 of judgment after verdict. If the judgment finally entered on the claim as to which an
20 offer has been made under this section is at least five percent, less [NOT MORE]
21 favorable to the offeree than the offer, the offeree, whether the party making the
22 claim or defending against the claim, shall pay all costs as allowed under the
23 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
24 incurred by the offeror from the date the offer was made, [THE INTEREST
25 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
26 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

27 (1) if the offer was served no later than 60 days after both parties
28 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
29 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
30 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
31 REDUCED BY FIVE PERCENT A YEAR];

(2) if the offer was served more than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure but more than 90 days before the trial began, the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees;

(3) if the offer was served 90 days or less but more than 10 days before the trial began, the offeree shall pay 50 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A YEAR].

* Sec. 23. AS 09.30.065 is amended by adding new subsections to read:

(b) If an offeror receives costs and reasonable actual attorney fees under (a) of this section, that offeror shall be considered the prevailing party for purposes of an award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska Rules of Civil Procedure is greater than a party would receive under (a) of this section, the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of this section. A party who receives attorney fees under this section may not also receive attorney fees under the Alaska Rules of Civil Procedure.

(c) If an offeror makes more than one offer of judgment, the last offer served on the adverse party shall be considered to be a revocation of any prior offer of judgment.

* Sec. 24. AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments and decrees for the payment of money, including prejudgment interest, is three percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

1 * **Sec. 25.** AS 09.30.070 is amended by adding a new subsection to read:

2 (c) Prejudgment interest may not be awarded for future economic damages,
3 future noneconomic damages, or punitive damages.

4 * **Sec. 26.** AS 09.50.280 is amended to read:

5 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
6 rendered for the plaintiff, it shall be for the legal amount found due from the state with
7 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME
8 DUE] and without punitive damages.

9 * **Sec. 27.** AS 09.55.440(a) is amended to read:

10 (a) Upon the filing of the declaration of taking and the deposit with the court
11 of the amount of the estimated compensation stated in the declaration, title to the estate
12 as specified in the declaration vests in the plaintiff, and that property is condemned
13 and taken for the use of the plaintiff, and the right to just compensation for it vests in
14 the persons entitled to it. The compensation shall be ascertained and awarded in the
15 proceeding and established by judgment. The judgment must include interest at the
16 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
17 awarded that [WHICH] exceeds the amount paid into court under the declaration of
18 taking. The interest runs from the date title vests to the date of payment of the
19 judgment.

20 * **Sec. 28.** AS 09.55.535(k) is amended to read:

21 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
22 apply to arbitrations under this section if they do not conflict with the provisions of
23 this section; arbitrations under this section shall be conducted in accordance with
24 procedures established by any rules of court which may be adopted and according to
25 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
26 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

27 * **Sec. 29.** AS 09.55.536(a) is amended to read:

28 (a) In an action for damages due to personal injury or death based upon
29 the provision of professional services by a health care provider, including a person
30 providing services on behalf of a governmental entity, when the parties have not
31 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within

20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

* Sec. 30. AS 09.55.536(c) is amended to read:

(c) Not more than 30 days after selection of the panel, the panel [IT] shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court in sufficient detail to explain the case and the reasons for the panel's answers:

(1) Why did the claimant seek [WHAT WAS THE DISORDER FOR WHICH THE PLAINTIFF CAME TO] medical care?

(2) Was a correct diagnosis made? If not, what was incorrect about the diagnosis [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME WITHOUT MEDICAL CARE]?

(3) Was the treatment or lack of treatment [SELECTED] appropriate? If not, what was inappropriate about the treatment or lack of treatment [FOR THE CASE]?

(4) Was the claimant injured during the course of evaluation or treatment or by failure to diagnose or treat [DID AN INJURY ARISE FROM THE MEDICAL CARE]?

(5) If the answer to question 4 is "yes," what [WHAT] is the nature and extent of the medical injury?

(6) What specifically caused the medical injury?

(7) Was the medical injury caused by unskillful care? Explain.

(8) If a medical injury had not occurred, what would have been the likely outcome of the medical case [HOW WOULD THE PLAINTIFF'S CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

* Sec. 31. AS 09.55.536(f) is amended to read:

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received or 60 days after selection of the panel, whichever occurs

1 **first.** However, the court may relax this prohibition upon a showing of good cause by
 2 any party. If the panel has not completed its report within the 30-day period
 3 prescribed in (c) of this section, the court may, upon application, grant **the panel** [IT]
 4 an additional 30 days.

5 * Sec. 32. AS 09.55.536 is amended by adding a new subsection to read:

6 (i) This section applies regardless of whether a party in the action or the health
 7 care provider whose professional services are the subject of the action is a
 8 governmental entity or in the public or private sector.

9 * Sec. 33. AS 09.55.560(1) is amended to read:

10 (1) "health care provider" means an acupuncturist licensed under
 11 AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
 12 AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
 13 AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
 14 AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
 15 AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
 16 therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
 17 a psychologist and a psychological associate licensed under AS 08.86; [AND] a
 18 hospital as defined in AS 18.20.130, including a governmentally owned or operated
 19 hospital; [AND] an employee of a health care provider acting within the course and
 20 scope of employment; **an ambulatory surgical facility and other organizations**
 21 **whose primary purpose is the delivery of health care, including a health**
 22 **maintenance organization, individual practice association, integrated delivery**
 23 **system, preferred provider organization or arrangement, and a physical hospital**
 24 **organization.**

25 * Sec. 34. AS 09.55.560 is amended by adding new paragraphs to read:

26 (4) "professional negligence" means a negligent act or omission by a
 27 health care provider in rendering professional services;

28 (5) "professional services" means service provided by a health care
 29 provider that is within the scope of services for which the health care provider is
 30 licensed and that is not prohibited under the health care provider's license or by a
 31 facility in which the health care provider practices.

1d * **Sec. 35.** AS 09.60 is amended by adding a new section to read:

2 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
 3 collects a contingency fee in connection with an action for personal injury, death, or
 4 property damage and the damages awarded by a court or jury include an award of
 5 punitive damages, the contingent fee due the attorney shall be calculated after that
 6 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
 7 from the total award of damages.

8 * **Sec. 36.** AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
 10 electrical service to the public for compensation under a certificate of public
 11 convenience and necessity issued by the Alaska Public Utilities Commission under
 12 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
 13 injury resulting from an act or omission of the utility relating to the production,
 14 delivery, or sale of electricity.

15 (b) This section does not preclude liability for civil damages that are the result
 16 of an intentional, reckless, or negligent act or omission.

17 * **Sec. 37.** AS 09.65 is amended by adding a new section to read:

18 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 19 hospital is not liable for civil damages as a result of an act or omission by an
 20 emergency room physician who is not an employee or actual agent of the hospital if
 21 the hospital provides notice that the emergency room physician is an independent
 22 contractor and the emergency room physician is insured as described under (c) of this
 23 section. The hospital is responsible for exercising reasonable care in granting
 24 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 25 and for taking appropriate steps to revoke or restrict privileges in appropriate
 26 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 27 emergency room physician who is an independent contractor. The notice required by
 28 this subsection must (1) be posted conspicuously in all admitting areas of the hospital;
 29 (2) consist of a sign at least four feet high and two feet wide, with print at least two
 30 inches high; (3) be published at least annually in a newspaper of general circulation
 31 in the area; and (4) be in substantially the following form:

1 Notice to Hospital Users and

2 Notice of Limited Liability

3 (Name of hospital) may not be responsible for the actions of
 4 emergency room physicians in (name of hospital's emergency
 5 room). The following emergency room physicians are
 6 independent contractors and are not employees of the hospital:

7 (List specific emergency room physicians)

8 (b) This section does not preclude liability for civil damages that are the
 9 proximate result of the hospital's negligence or intentional misconduct.

10 (c) A hospital is not immune from liability under (a) of this section for an act
 11 or omission of an emergency room physician who is an independent contractor unless
 12 the emergency room physician has liability insurance coverage in the amount of at
 13 least \$500,000 for each incident and the coverage is in effect and applicable to those
 14 health care services offered by the emergency room physician that the hospital is
 15 required to provide by law or by accreditation requirements.

16 (d) In this section,

17 (1) "emergency room physician" means a physician who provides health
 18 care services in a hospital emergency room;

19 (2) "hospital" has the meaning given in AS 18.20.130 and includes a
 20 governmentally owned or operated hospital;

21 (3) "independent contractor" means an emergency room physician who
 22 is not an employee or actual agent of the hospital in connection with the rendition of
 23 the health care services.

24 * Sec. 38. AS 09.65.210 is repealed and reenacted to read:

25 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
 26 **under the influence of alcohol or drugs.** A person who suffers personal injury or
 27 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
 28 recover damages for the personal injury or death if the injury or death occurred while
 29 the person was.

30 (1) engaged in the commission of a felony, the person has been
 31 convicted of the felony, including conviction based on a guilty plea or plea of nolo

1 contendere, and the felony substantially contributed to the personal injury or death;

2 (2) engaged in conduct that would constitute the commission of an
3 unclassified felony, a class A, or a class B felony for which the person was not
4 convicted and the conduct

5 (A) substantially contributed to the personal injury or death; and

6 (B) is proven by the defendant in the civil trial by clear and
7 convincing evidence;

8 (3) fleeing after the commission, by that person, of conduct that would
9 constitute an unclassified felony, a class A felony, or a class B felony or being
10 apprehended for conduct that would constitute an unclassified felony, a class A felony,
11 or a class B felony if the conduct

12 (A) during the flight or apprehension substantially contributed
13 to the injury or death; and

14 (B) is proven by the defendant in the civil trial by clear and
15 convincing evidence;

16 (4) operating a vehicle, aircraft, or watercraft while under the influence
17 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
18 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
19 the conduct substantially contributed to the personal injury or death; or

20 (5) engaged in conduct that would constitute a violation of
21 AS 28.35.030 for which the person was not convicted if the conduct substantially
22 contributed to the personal injury or death and the conduct is proven by the defendant
23 in the civil trial by clear and convincing evidence.

24 * Sec. 39. AS 09.68 is amended by adding a new section to read:

25 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
26 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
27 information relating to the compromise or other settlement of all civil litigation. The
28 information, including the case name and file number, a general description of the
29 claims being settled, the dollar amount of the settlement, to whom the settlement was
30 paid, and any nonmonetary terms, shall be collected on a form developed by the
31 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.

* Sec. 40. AS 21.06 is amended by adding a new section to read:

Sec. 21.06.087. Insurance report. (a) The director shall require reporting of and shall compile information necessary to evaluate the effect of the measures enacted in this Act on the availability and cost of insurance in the state.

(b) Information described in (a) of this section shall be provided by all insurers doing business in this state in the format specified by the director and must include factual information stating premiums, claims, losses, expenses, and solvency of the company as a whole. Information shall be compiled by the division in a way that protects the identity of individual insureds.

(c) The director shall adopt regulations to implement and interpret this section, including requiring insurers doing business in the state to provide information necessary for the division to carry out its responsibilities under (a) and (b) of this section. If there are indications of market disruption, the director may waive all or part of the reporting requirements in this section.

(d) Beginning June 1, 2000, the information compiled under (a) of this section shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

1. follow and (e) The division may consult with the Alaska Judicial Council when
 2. determining what information to require to be reported under (a) - (c) of this section
 3. and when implementing the compilation required under (a) of this section.

4. * Sec. 41. AS 21.89.100(d) is amended to read:

5. (d) If the insured selects independent counsel at the insurer's expense, the
 6. insurer may require that the independent counsel have at least four years of experience
 7. in civil litigation, including defense experience in the general subject area at issue in
 8. the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 9. policy, the obligation of the insurer to pay the fee charged by the independent counsel
 10. is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 11. course of business in the defense of a similar civil action in the community in which
 12. the claim arose or is being defended. In providing independent counsel, the insurer
 13. is not responsible for the fees and costs of defending an allegation for which
 14. coverage is properly denied and shall be responsible only for the fees and costs
 15. to defend those allegations for which the insurer either reserves its position as to
 16. coverage or accepts coverage. The independent counsel shall keep detailed
 17. records allocating fees and costs accordingly. A dispute between the insurer and
 18. insured regarding attorney fees that is not resolved by the insurance policy or this
 19. section shall be resolved by arbitration under AS 09.43.

20. * Sec. 42. AS 21.89.100 is amended by adding a new subsection to read:

21. (h) When an insured is represented by independent counsel, the insurer may
 22. settle directly with the plaintiff if the settlement includes all claims based upon the
 23. allegations for which the insurer previously reserved its position as to coverage or
 24. accepted coverage, regardless of whether the settlement extinguishes all claims against
 25. the insured.

26. * Sec. 43. AS 23.30.015(g) is amended to read:

27. (g) If the employee or the employee's representative recovers damages from
 28. the third person, the employee or representative shall promptly pay to the employer the
 29. total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
 30. of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 31. and expenses. Any excess recovery by the employee or representative shall be

1 credited against any amount payable by the employer thereafter. If the employer is
2 allocated a percentage of fault under AS 09.17.080, the amount due the employer
3 under this subsection shall be reduced by an amount equal to the employer's
4 equitable share of damages assessed under AS 09.17.080(c).

5 * Sec. 44. AS 44.77.015(a) is amended to read:

6 (a) For the purposes of filing claims for medical services provided under
7 AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1)
8 within six months after the date of service, or as provided in (b) of this section, if
9 there is no third-party claim, or (2) within 12 months after the date of service if there
10 is a third-party claim. Except as provided in (c) of this section, a claim may not be
11 paid if it is not filed promptly; an inference to the contrary may not be drawn from
12 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

13 * Sec. 45. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

14 (c) **Motion to Set Trial and Certificate.** Unless otherwise ordered by the
15 court, a [A] motion to set trial may not be filed until after the meeting of parties
16 under (n) of this rule has occurred and the scheduling order under Rule 16(b) has
17 been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND
18 COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to
19 set trial together with a certificate, signed by counsel, stating:

- 20 (1) That the issues in the case have actually been joined;
21 (2) That all parties have completed discovery or have a reasonable
22 opportunity to do so within the next 60 days;
23 (3) That the procedure for listing witnesses and exhibits and providing
24 exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
25 (4) Whether trial by jury has been timely demanded;
26 (5) The estimated number of days for the trial, including estimates for
27 each party's case and for jury selection;
28 (6) The names, addresses and telephone numbers of all attorneys and
29 pro se parties who are responsible for the conduct of the litigation;
30 (7) Which, if any, statute or rule entitles the case to preference on the
31 trial calendar;

(8) That the parties have complied with [PARAGRAPH] (k) of this rule.

* **Sec. 46.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

(n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and to develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the proposed discovery plan. The proposed discovery plan shall indicate the parties' views and proposals concerning

(1) what changes should be made in the timing or forms of subsequent disclosures under the rules, including a statement as to when the disclosures required under Rule 26(a) were made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(4) whether a scheduling conference is unnecessary;

(5) whether there will be dispositive or partially dispositive motions filed in the case and whether other deadlines should be set aside pending resolution of the dispositive or partially dispositive motions by the court; and

(6) any other orders that should be entered by the court under Civil Rule 16(b) and (c).

* **Sec. 47.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new paragraph to read:

(3) **Settlement Information.** If a voluntary dismissal under this rule

1 is the result of compromise or other settlement of the parties, the parties shall submit
 2 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
 3 of dismissal made under (1)[a] of this subsection must be accompanied by a
 4 certification signed by or on behalf of the plaintiff that the information required under
 5 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
 6 dismissal made under (1)[b] of this subsection must be accompanied by a certification
 7 signed by or on behalf of all parties who have appeared in the action. The
 8 requirements of this paragraph do not apply to the types of cases listed in
 9 AS 09.68.130(c).

10 * Sec. 48. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

11 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
 12 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
 13 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
 14 to occur, unless discovery is further stayed for good cause by order of the court.

15 * Sec. 49. Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

16 (b) In addition to its authority under (a) of this rule and its power to punish
 17 for contempt, a court may, after reasonable notice and an opportunity to show cause
 18 to the contrary, and after hearing by the court, if requested, impose a fine not to
 19 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
 20 to comply with these rules or any rules promulgated by the supreme court.

21 * Sec. 50. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
 22 subsection to read:

23 (c) If the trier of fact determines that a party to a civil action has intentionally
 24 made a false statement of a material fact in connection with the prosecution or defense
 25 of a civil action, the court shall enter judgment against the party making the false
 26 statement on the issue to which the false statement relates. If the civil action involves
 27 multiple claims and the false statement does not apply to all claims, the judgment
 28 required under this subsection shall apply only to those claims to which the false
 29 statement relates.

30 * Sec. 51. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
 31 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 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. 52.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

***Sec. 53.** AS 09.55.548 is repealed.

***Sec. 54.** AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain percentage of an award of punitive damages be deposited into the general fund.

***Sec. 55.** AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of damages by certain tax rates in effect on the date of injury or death if taxable.

***Sec. 56.** AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid periodically if requested by an injured party, with a lump sum payment for certain attorney fees.

***Sec. 57.** AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment is paid by periodic payments.

***Sec. 58.** AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any increases for future inflation.

***Sec. 59.** AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated

1 among the claimants, defendants, third-party defendants, persons who have been released from
2 liability, or other person who is responsible for the damages.

3 * **Sec. 60.** AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending
4 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
5 testifying as an expert witness.

6 * **Sec. 61.** AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of
7 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
8 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
9 eliminating provisions relating to interest and by providing that a subsequent offer revokes
10 prior offers.

11 * **Sec. 62.** AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
13 awarded for future economic or noneconomic damages.

14 * **Sec. 63. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
15 legislation to create a pilot alternative dispute resolution procedure within the existing civil
16 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
17 disputes.

18 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
19 Association, review court sanctioned alternative dispute resolution programs in other states and
20 in the federal court system, and make recommendations to assist the legislature and the Alaska
21 Court System in the establishment of a pilot program for alternative dispute resolution within
22 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
23 legislature and to the Alaska Supreme Court within six months after the effective date of this
24 Act. The report must include specific types of programs, specific types of cases within each
25 program that are amenable to alternative dispute resolution, the cost to the parties and to the
26 Alaska Court System under these programs, and the qualifications of the neutral parties,
27 including nonlawyers, who will provide dispute resolution services under the program.

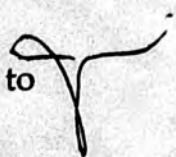
28 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
29 and early neutral evaluation.

30 * **Sec. 64. APPLICABILITY.** This Act applies to all causes of action accruing on or after
31 the effective date of this Act.

1 ~~SEC. 65.~~ *** Sec. 65. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
2 application of a provision of this Act to any person or circumstance is held invalid, the
3 remainder of this Act and the application to other persons shall not be affected.

To: Senator Tim Kelly

Fm: Jim Sourant. aide to
Brian Porter



April 13, 1997

Dear Senator Kelly:

1. We should have your committee substitute out of Mike Ford's hands by the time this memo is delivered to Tim B. Obviously, this is the important one.
2. As to the bill which passed out of Senate Finance Committee, copy attached, I make the following comments regarding the amendments made by that committee:
 - a. Page 1, lines 8-12 : This makes clear that the tort bill has absolutely no effect on the pending Exxon Valdez litigation, and that it will not apply to any future such admiralty disasters.
 - b. Page 5, lines 30-31: This makes clear that reckless conduct is enough to sustain a claim of punitive damages.
 - c. Page 7, lines 5-6: This makes clear that periodic payments are not mandatory on the parties, but available to the injured plaintiff if desired
 - d. Page 24, line 21: Consistency change for "c" above.
 - e. Don't get hung up on this version. It doesn't matter. It is your committee substitute that will matter.

Time - no Rules Committee Agreement

COMPARISON

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 1.</u> <u>INTENT</u>	Same.	Same.
<u>SECTION 2.</u> <u>LIQUIDATION OF A STATE</u> <u>BANK</u>	Same.	Same.
<u>SECTION 3.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 4.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 5.</u> <u>STATUTE OF REPOSE</u>	* Increased to 10 years. * Excepts from the statute of repose the situation where the facts which would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.	*8 years.
<u>SECTION 6.</u> <u>STATUTE OF</u> <u>LIMITATIONS FOR TORT</u> <u>AND OTHER CLAIMS</u>	Same.	Same.
<u>SECTION 7.</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.
<u>SECTION 8.</u> <u>ADDITION TO</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same. 8 yrs	Same. 6 yrs

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 9.</u> <u>NON-ECONOMIC</u> <u>DAMAGES</u>	* Lower limit increases to \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater. * Upper limit increases to \$1.5 million or the person's life expectancy multiplied by \$30,000, whichever is greater. * Provides that these limits are the maximum amount that can be recovered for all claims arising out of a single injury.	*Lower limit of \$300,000. *Upper limit of \$500,000.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 10.</u> <u>PUNITIVE DAMAGES</u>	*Adopts the Task Force recommendations for subsections a through e. *Retains the three times compensatory damage limit contained in the Senate Finance CS, but increases that limit to a maximum of \$500,000. * Increases the secondary limit to four times compensatory or \$3 million, whichever is greater. *Adds additional limits for punitive damages against an employer for violation of an unlawful employment practices prohibited by AS 18.80.220. *Limits are \$50,000 if the employer has less than fifteen employees; \$100,000 if fifteen or more but less than one hundred employees, \$300,000 if one hundred or more but less than two hundred employees; \$400,000 if 200 or more but less than five hundred employees; \$500,000 if more than 500 employees.	*Limit for most cases is three times compensatory damages or \$300,000, whichever is greater. *Secondary limit is four times compensatory damages or \$600,000, whichever is greater.
	Deleted.	Section 12. (Income taxes)
	Deleted.	Sections 13-15 (Periodic payments)
	Deleted.	Section 16 (Collateral benefits)

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 11.</u> <u>ALLOCATION OF FAULT</u>	*Requires the person to be joined in order to allocate fault unless the person cannot be sued because of the statute of repose , is not within the jurisdiction of the court, or is precluded from being joined by law or court rules or is cannot be reasonably located.	*Appears as section 17 in the Senate Finance CS. *Provides that fault would be allocated to all persons, regardless of whether they are joined as a party unless they cannot be sued because of the statute of repose.
<u>SECTION 12.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 18 in Senate Finance CS.
<u>SECTION 13.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 19 of Senate Finance CS.
<u>SECTION 14.</u> <u>INTENTIONAL CONDUCT</u>	No change.	*Appears as section 20 of Senate Finance CS.
<u>SECTION 15.</u> <u>EXPERT WITNESS</u> <u>QUALIFICATION</u>	*Substantially the same as section 21 of Senate Finance CS.	*Appears as section 21 of Senate Finance CS. *Substantially the same.
<u>SECTION 16.</u> <u>OFFERS OF JUDGMENT</u>	* Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer. * Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made.	*Appears as section 22 in Senate Finance CS.
<u>SECTION 17.</u> <u>OFFERS OF JUDGMENT</u>	Same.	* Appears as section 23 of Senate Finance CS

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 18.</u> <u>PREJUDGMENT</u> <u>INTEREST</u>	Same.	* Appears as section 24 of Senate Finance CS.
<u>SECTION 19.</u> <u>PREJUDGMENT</u> <u>INTEREST ON FUTURE</u> <u>DAMAGES</u>	Same.	* Appears as Senate Finance CS Section 25.
<u>SECTION 20.</u> <u>JUDGMENT FOR</u> <u>PLAINTIFF</u>	Same.	* Appears as section 26 of Senate Finance CS.
<u>SECTION 21.</u> <u>CONDEMNATION</u>	Same.	* Appears as section 27 of Senate Finance CS.
<u>SECTIONS 22 - 29.</u>	Same.	* Appears as sections 29-36 of Senate Finance CS.
<u>SECTION 30.</u> <u>CIVIL LIABILITY OF</u> <u>HOSPITALS</u>	* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year." * Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.	* Appears as section 37 in Senate Finance CS.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 31.</u> <u>DAMAGES FROM</u> <u>COMMISSION OF FELONY</u>	* Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death.	* Appears as section 38 in Senate Finance CS.
<u>SECTION 32.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	* Adds collection of attorney fees and costs information.	* Appears as section 39 in the Senate Finance CS.
<u>SECTION 33.</u> <u>INSURANCE REPORT</u>	Same.	* Appears as section 40 of Senate Finance CS.
<u>SECTIONS 34-39.</u>	Same.	* Appears as sections 41- 46.
<u>SECTION 40 (NEW)</u> <u>LIMITED DISCOVERY</u>	* Provides for limited discovery.	* Not present.
<u>SECTION 41.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Includes attorney fee information.	* Appears as section 47 of Senate Finance CS.
<u>SECTION 42.</u> <u>DISCOVERY IN MEDICAL</u> <u>MALPRACTICE</u>	Same.	*Appears as section 48 of Senate Finance CS.
<u>SECTION 43.</u> <u>RULE 95</u>	*Increases sanctions to \$50,000.	* Appears as section 49 of Senate Finance CS. * Sanctions remain \$1,000.
<u>SECTION 44</u> <u>TRUTH PROVISION</u>	*Limited to Personal Injury and Property Damage cases.	* Appears as section 50 of Senate Finance CS. * Unlimited.
<u>SECTION 45-46.</u> <u>DISTRICT COURT</u> <u>PROCEDURES</u>	*Provides for expedited procedure in certain cases.	*Not present.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 47</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Same as section 51 of Senate Finance CS, except that it includes attorney fee information.	* Appears as section 51 of Senate Finance CS.
<u>SECTION 48-54</u> <u>RULES CHANGES</u>	*Substantially the same.	*Appears as section 52-62 Repealers of Senate Finance CS.
<u>SECTION 55</u> <u>ALTERNATIVE DISPUTE</u> <u>RESOLUTION</u>	*Substantially the same.	*Appears as section 63 of Senate Finance CS.
<u>SECTION 56.</u>	Same.	*Appears as section 64 of Senate Finance CS.
<u>SECTION 57.</u>	Same.	*Appears as section 65 of Senate Finance CS.

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STATE OF ALASKA, DEPARTMENT OF LAW
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5190

FAX COVER SHEET

To: Attorney General Bruce M. Botelho
(907) 465-2076

From: Assistant Attorney General Gail T. Voigtlander

Date: April 13, 1997

No. of Pages: 8

Message: See attached signed version of resolutions agreement

Post-It Fax Note	7671	Date	4/13/97
To	Mike L.	From	Pam
Co/Dpt.		Co.	
Phone #		Phone #	
Fax #	463-3032	Fax #	

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Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
LEGISLATIVE COUNCIL JOINT COMMITTEE



SESSION:
STATE CAPITOL ROOM 216
UNEL, ALASKA 99501-1182
PHONE: (907) 465-4930
FAX: (907) 465-3834

INTERIM:
716 W. 4TH AVE., SUITE 360
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8197
FAX: (907) 258-5510

DISTRICT 20

Sectional Summary of SSHB 58 (JUD)

An Act Relating to Civil Actions

Section 1. **Legislative intent.** This section generally sets forth the legislative intent of this Act.

Section 2. **Minor consistency change.** This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

✓ Section 3. **Certain property actions to be brought in six years.** This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

✓ Section 4. **Contract actions to be brought in three years.** This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

Section 5. **Statute of repose of eight years.** This section adds a new section which generally imposes an eight year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

This section does not apply if the cause of action resulted from:

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or fraudulent misrepresentation;

- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

Section 6. Limitation of actions against health care providers. This section amends AS 09.10 by adding a new section. It generally requires that actions for medical malpractice involving children under the age of six at the time of the alleged negligent act or omission be brought before the child's eighth birthday, including actions involving birth injuries. This statute is tolled in cases where fraud or collusion, or intentional concealment of facts can be shown. It is also tolled until the actual discovery of a foreign object in the body of the injured person.

Section 7. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

Section 8. Noneconomic damages. This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places more stringent limits on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadraplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

Section 9. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought.

Section 10. Punitive damages. This section relates to new subsections which are added to the preceding Section 9 in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

Subsection (d) requires that one half of any punitive damage award be paid into the general fund of the State of Alaska.

Section 11. Award of damages; periodic payments. This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

Section 12. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

Section 13. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of U.S. government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

Section 14. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

Section 15. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

Section 16. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

Section 17. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

Section 18. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

✓ **Section 19. Definition; intentional torts.** This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 20. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

Section 21. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as

evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 22. Offers of judgment. The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

Section 23. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

Section 24. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 25. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 23 interest rate to judgments against the State of Alaska.

Section 26. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 23.

Section 27. Voluntary arbitration. This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source set offs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

✓ **Section 28. Medical advisory panels.** This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

✓ **Section 29. Expert advisory panel; panel questions.** This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

✓ **Section 30. Expert advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

✓ **Section 31. Expert advisory panel; public sector provider.** This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 32. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 33. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 34. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted

under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 35. Civil liability of hospitals for nonemployees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident.

Section 36. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or watercraft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section applies to survival and wrongful death actions which might otherwise have been brought by the personal representative of the perpetrator.

Section 37. Collection of settlement information. This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 38. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the

Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

The June 1, 2000 commencement date for the reports to the governor and legislature is suggested by the division of insurance as a realistic starting date considering existing regulatory reporting deadlines.

Section 39. Appointment of independent counsel; conflicts of interest.

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 40. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 41. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

✓ **Section 42. Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 43. Alaska Rule of Civil Procedure 16.1(k)(4). This section is repealed as a consistency change to the foregoing section 42.

Section 44. Alaska Rule of Civil Procedure 16.1(n). This section also is a consistency change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

✓ **Section 45. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

✓ **Section 46. Medical advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 47. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$10,000 against attorneys, increased from \$1,000 under the existing rule.

Section 48. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

✓ **Section 49. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 50. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 42.

Section 51. Collateral benefits. This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 51. Apportionment of damages. This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

Section 52 - Section 60. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 61. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first what the experience has been in other jurisdictions before putting any program into operation.

Section 62. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 63. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Section 64. Effective date. This Act takes effect July 1, 1997.

CS FOR SENATE BILL NO. 15(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/13/97

Referred: Finance

Sponsor(s): SENATOR TAYLOR

A BILL**FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; relating to motor vehicle liability insurance and
 2 bonds; amending Rules 16.1, 26, 41, 49, 72.1, 79(b), 82(b), 95, and 100, Alaska
 3 Rules of Civil Procedure; amending Rules 1 and 4, Alaska District Court Rules
 4 of Civil Procedure; amending Rule 511, Alaska Rules of Appellate Procedure; and
 5 repealing Rule 72.1, Alaska Rules of Civil Procedure; and providing for an
 6 effective date."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. PURPOSE. It is the purpose of this Act to

- 9 (1) reduce the time and costs associated with civil litigation;
 10 (2) improve access to justice for individuals and small businesses;
 11 (3) provide for fair but not excessive compensation for persons injured through
 12 the fault of others;
 13 (4) increase the predictability of case outcomes to reduce inappropriate

1 litigation and settlement behavior; and

2 (5) collect information on the civil justice system and on the insurance industry
3 to inform the public policy debate on tort reform related issues.

4 * Sec. 2. AS 06.05.473(h) is amended to read:

5 (h) After the payment of all other claims, including interest at the rate of 10.5
6 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay
7 claims that are otherwise valid but that were not filed within the time prescribed.

8 * Sec. 3. AS 09.10.050 is repealed and reenacted to read:

9 **Sec. 09.10.050. Certain property actions to be brought in six years.** Unless
10 the action is commenced within six years, a person may not bring an action for waste
11 or trespass upon real property.

12 * Sec. 4. AS 09.10 is amended by adding a new section to read:

13 **Sec. 09.10.065. Contract actions to be brought in three years.** Unless an
14 action is commenced within three years, a person may not bring an action upon a
15 contract or liability, express or implied, excepting those described in AS 09.10.040 or
16 as otherwise provided by law.

17 * Sec. 5. AS 09.10.070(a) is amended to read:

18 (a) A person may not bring an action (1) for libel, slander, assault, battery,
19 seduction, false imprisonment, or for any injury to the person or rights of another not
20 arising on contract and not specifically provided otherwise; (2) for taking, detaining,
21 or injuring personal property, including an action for its specific recovery; (3)
22 upon a statute for a forfeiture or penalty to the state; or (4) [(3)] upon a liability
23 created by statute, other than a penalty or forfeiture; unless the action is commenced
24 within two years.

25 * Sec. 6. AS 09.17.010(c) is amended to read:

26 (c) The limit under (b) of this section does not apply to damages for severe
27 disfigurement or severe physical impairment.

28 * Sec. 7. AS 09.17.020 is repealed and reenacted to read:

29 **Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of
30 punitive damages is presented to the fact finder, the fact finder shall determine,
31 concurrent with all other issues presented, whether punitive damages shall be allowed

1 by using the standards set out in (b) of this section. If punitive damages are allowed,
2 a separate proceeding under (c) of this section shall be conducted before the same fact
3 finder to determine the amount of punitive damages to be awarded.

4 (b) The fact finder may make an award of punitive damages only if the
5 plaintiff proves by clear and convincing evidence that the defendant's conduct

6 (1) was outrageous;

7 (2) was the result of malicious or hostile feelings toward the plaintiff;

8 or

9 (3) evidenced reckless indifference to the rights or safety of others.

10 (c) At the separate proceeding to determine the amount of punitive damages
11 to be awarded, the fact finder may consider

12 (1) the likelihood at the time of the conduct that serious harm would
13 arise from the defendant's conduct;

14 (2) the degree of the defendant's awareness of the likelihood described
15 in (1) of this subsection;

16 (3) the amount of financial gain the defendant gained or expected to
17 gain as a result of the defendant's conduct;

18 (4) the duration of the conduct and any intentional concealment of the
19 conduct;

20 (5) the attitude and conduct of the defendant upon discovery of the
21 conduct;

22 (6) the financial condition of the defendant; and

23 (7) the total deterrence of other damages and punishment imposed on
24 the defendant as a result of the conduct, including compensatory and punitive damages
25 awards to persons in situations similar to those of the plaintiff and the severity of the
26 criminal penalties to which the defendant has been or may be subjected.

27 (d) At the conclusion of the separate proceeding under (c) of this section, the
28 fact finder shall determine the amount of punitive damages to be awarded, and the
29 court shall enter judgment for that amount.

30 (e) Unless that evidence is relevant to another issue in the case, discovery of
31 evidence that is relevant to the amount of punitive damages to be determined under

(c)(3) or (6) of this section may not be conducted until after the fact finder has determined that an award of punitive damages is allowed under (a) and (b) of this section. The court may issue orders as necessary, including directing the parties to have the information relevant to the amount of punitive damages to be determined under (c)(3) or (6) of this section available for production immediately at the close of the initial trial in order to minimize the delay between the initial trial and the separate proceeding to determine the amount of punitive damages.

(f) Except as provided in (g) of this section or otherwise provided by law, an award of punitive damages may not exceed the greater of

(1) three times the amount of compensatory damages awarded to the plaintiff in the action; or

(2) the sum of \$500,000.

(g) Except as otherwise provided by law, if the fact finder finds that the conduct proven under (b) of this section was motivated by financial gain, it may award an amount of punitive damages not to exceed the greatest of

(1) the amount calculated under the limitation in (f) of this section;

(2) the average net annual income earned by the defendant for the five years before the date the trial began; or

(3) two times the amount of financial gain that the defendant received or expected to receive as a result of the defendant's misconduct.

(h) Punitive damages may not be awarded against a person that is immune by law from an award of punitive damages.

* Sec. 8. AS 09.17.900 is amended to read:

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, or intentional toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

1 civil litigation system can promote the timely and efficient resolution of many civil
2 disputes. The purpose of AS 09.43.310 - 09.43.390 is to provide for an initial pilot
3 program of alternative dispute resolution of certain civil cases filed in the superior
4 court on or after January 1, 1998.

5 **Sec. 09.43.320. Pilot program for alternative dispute resolution.** (a) The
6 supreme court shall provide for a pilot program under AS 09.43.310 - 09.43.390 for
7 the submission of civil cases filed in the superior court, Third Judicial District, to
8 alternative dispute resolution procedures. The program shall begin January 1, 1998,
9 and operate for at least five years.

10 (b) The following types of cases may not be included in the pilot program:

- 11 (1) divorce and dissolution;
12 (2) adoption, custody, support, visitation, and emancipation of children;
13 (3) children in need of aid cases under AS 47.10 or delinquent minors
14 cases under AS 47.12;
15 (4) domestic violence protective orders under AS 18.66.100 -
16 18.66.180;
17 (5) estate, guardianship, and trust cases filed under AS 13;
18 (6) cases when no answer to the complaint or petition is filed by any
19 party to the case with the court.

20 **Sec. 09.43.330. Structure of pilot program.** (a) The supreme court shall
21 provide criteria for the screening of covered cases under the program to determine if
22 the cases are appropriate for referral to alternative dispute resolution. The criteria shall
23 be constructed so that at least 50 percent of the estimated number of covered cases
24 filed in a calendar year are referred to alternative dispute resolution.

25 (b) The supreme court shall establish minimum qualifications for a person to
26 be listed to conduct alternative dispute resolution procedures under AS 09.43.310 -
27 09.43.390. The supreme court shall establish a list of persons determined to meet
28 those qualifications and the current schedule of fees charged by the person listed.

29 (c) For a case referred under the program, the parties may mutually agree to
30 select a person to conduct the alternative dispute resolution procedure regardless of
31 whether the person appears on the list established under (b) of this section or whether

1 the person meets the minimum qualifications to be selected for the list. If an
2 agreement cannot be reached, the trial court judge assigned the case shall appoint a
3 person from the list. A person selected or appointed under this subsection has judicial
4 immunity for conducting the alternative dispute procedure to the same extent as a
5 judge and shall abide by applicable rules of confidentiality related to alternative dispute
6 resolution procedures established by the supreme court.

7 (d) Fees and costs to conduct an alternative dispute resolution procedure under
8 AS 09.43.310 - 09.43.390 shall be shared equally among the parties to the case being
9 referred unless the court finds a party wholly or partially indigent and orders total or
10 partial payment at public expense. The supreme court shall establish guidelines for the
11 determination of total or partial indigency under the program. Fees and costs borne
12 at public expense under this subsection constitute a lien on any recovery in the case
13 by that party and shall be paid first from the recovery.

14 (e) The superior court shall establish standards for the timely referral to and
15 the conclusion of the alternative dispute resolution procedure required under this
16 program. The standards must include that the alternative dispute resolution procedure

17 (1) shall terminate no more than 100 days after the defendant's answer
18 is served unless the trial court grants a time extension in an exceptional case and for
19 good cause shown; and

20 (2) be limited to no more than 12 hours for the procedure unless the
21 parties mutually agree to a longer period.

22 **Sec. 09.43.340. Evaluation of pilot program.** (a) The Alaska Judicial
23 Council shall evaluate annually the efficacy of the pilot program. Among other
24 factors, the evaluation shall address the speed with which cases are resolved, the
25 satisfaction of the parties to the cases, the expenditures made by the parties to the
26 cases, and the expenditure of court resources.

27 (b) The council shall work with the court system to create a system for
28 efficient collection of information needed to evaluate the program. The council shall
29 report the results of its evaluation to the governor and legislature each year by
30 March 31.

31 **Sec. 09.43.390. Definitions.** In AS 09.43.310 - 09.43.390,

1 (1) "alternative dispute resolution procedure" includes mediation and
2 early neutral evaluation;

3 (2) "covered cases" means civil cases described in AS 09.43.320(a) and
4 not excluded from participation in the program by AS 09.43.320(b);

5 (3) "program" means the alternative dispute resolution pilot program
6 established in AS 09.43.320.

7 * Sec. 13. AS 09.50.280 is amended to read:

8 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
9 rendered for the plaintiff, it shall be for the legal amount found due from the state with
10 interest as provided under AS 09.30.070 [LEGAL INTEREST FROM THE DATE
11 IT BECAME DUE] and without punitive damages.

12 * Sec. 14. AS 09.55.440(a) is amended to read:

13 (a) Upon the filing of the declaration of taking and the deposit with the court
14 of the amount of the estimated compensation stated in the declaration, title to the estate
15 as specified in the declaration vests in the plaintiff, and that property is condemned
16 and taken for the use of the plaintiff, and the right to just compensation for it vests in
17 the persons entitled to it. The compensation shall be ascertained and awarded in the
18 proceeding and established by judgment. The judgment must include interest at the
19 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
20 awarded that [WHICH] exceeds the amount paid into court under the declaration of
21 taking. The interest runs from the date title vests to the date of payment of the
22 judgment.

23 * Sec. 15. AS 09.55.535 is repealed and reenacted to read:

24 **Sec. 09.55.535. Mandatory arbitration.** (a) A person who files an action for
25 personal injury, death, or property damage shall also submit the claim to the court for
26 arbitration unless the action is excluded under (b) of this section.

27 (b) A person is not required to comply with (a) of this section if the

28 (1) amount in controversy, excluding interest, costs, and attorney fees,
29 exceeds \$100,000;

30 (2) parties have, under a written agreement made before the accrual of
31 the action, agreed to submit the claim to arbitration; or

1 (3) action

2 (A) is a class action;

3 (B) seeks equitable or declaratory relief;

4 (C) concerns the title to real property;

5 (D) is a probate action;

6 (E) is an appeal from a court of limited jurisdiction;

7 (F) involves divorce or domestic relations;

8 (G) is an appeal from action by an administrative agency;

9 (H) is subject to the alternative dispute resolution procedure

10 under AS 09.43.320;

11 (I) is a small claims action.

12 (c) When a claim is submitted as required by (a) of this section, the court shall
13 appoint an arbitrator to review the claim. The arbitrator appointed to review the claim
14 shall interview the parties and examine all records or materials relating to the claim
15 and may compel the attendance of witnesses, interview the parties, or consult with
16 medical specialists.

17 (d) An arbitrator appointed under this section shall conduct a prehearing
18 settlement conference within 30 days after the appointment. The arbitrator shall
19 establish a period for discovery and a date for a hearing. The hearing date may not
20 be more than 120 days after the settlement conference.

21 (e) An arbitrator shall render a decision within 30 days after hearing a claim
22 under (d) of this section. The decision must contain findings of fact and conclusions
23 of law. The decision of the arbitrator may be rejected by a party.

24 (f) If the decision of the arbitrator is rejected by a party, the action may
25 proceed in the appropriate court. The arbitrator's decision is admissible in that action
26 to the extent allowed under the Alaska Rules of Evidence and may be used by a party
27 to support or oppose a claim of damages. If a party rejects the decision of the
28 arbitrator and litigates the action in court but is not the prevailing party in the action,
29 the court shall award actual costs and attorney fees to the opposing party.

30 (g) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
31 apply to an arbitration under this section to the extent the provisions do not conflict

1 with the provisions of this section.

2 * **Sec. 16.** AS 09.65.210 is repealed and reenacted to read:

3 **Sec. 09.65.210. Damages resulting from the commission of a felony or**
 4 **other conduct that would constitute a felony.** (a) Except as provided in (b) of this
 5 section, a person who suffers personal injury or death may not recover damages for
 6 the personal injury or death if the injury or death occurred while the person was

7 (1) engaged in the commission of a felony, and the person has been
 8 convicted of the felony, including conviction based on a guilty plea or plea of nolo
 9 contendere, and the felony substantially contributed to a personal injury or death;

10 (2) engaged in conduct that would constitute the commission of an
 11 unclassified felony or a class A or class B felony for which the person was not
 12 convicted and if the conduct

13 (A) substantially contributed to the injury or death; and

14 (B) is proven by the defendant in the civil trial by clear and
 15 convincing evidence; or

16 (3) fleeing after the commission, by that person, of conduct that would
 17 constitute an unclassified felony or a class A or class B felony, or being apprehended
 18 for conduct that would constitute an unclassified felony or class A or class B felony
 19 if

20 (A) the conduct during the flight or apprehension substantially
 21 contributed to the injury or death; and

22 (B) the conduct that would constitute a felony is proven by the
 23 defendant in the civil trial by clear and convincing evidence.

24 (b) If the person is acquitted of all unclassified, class A, and class B felonies
 25 arising from the conduct, this section does not preclude the person from recovering
 26 damages for those injuries or death.

27 (c) This section does not affect a right of action under 42 U.S.C. 1983.

28 * **Sec. 17.** AS 09.68 is amended by adding a new section to read:

29 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
 30 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
 31 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 is to be 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 AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100-18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

* Sec. 18. AS 18.80 is amended by adding a new section to read:

Sec. 18.80.225. Punitive damages for unlawful employment practices. (a)

In an action against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the court or jury may not exceed

- (1) \$50,000 if the employer has less than 101 employees;
- (2) \$100,000 if the employer has more than 100 but less than 201 employees;
- (3) \$200,000 if the employer has more than 200 but less than 501 employees;
- (4) \$300,000 if the employer has more than 500 employees.

(b) This section may not be construed to allow an award of punitive damages against the state.

1 (c) In this section, "employees" means persons employed in each of 20 or
2 more calendar weeks in the current or preceding calendar year.

3 * **Sec. 19.** AS 21.06 is amended by adding a new section to read:

4 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
5 and shall compile information necessary to evaluate

6 (1) the effect of the measures enacted in this Act on the availability and
7 cost of insurance in the state; and

8 (2) the financial health and profitability of insurers doing business in
9 the state.

10 (b) Information described in (a) of this section shall be provided by all insurers
11 doing business in this state in the format specified by the director and must include
12 factual information stating premiums, claims, expenses, and an allocation of investment
13 profits or losses by line of business written in this state. Information shall be compiled
14 by the division in a way that protects the identity of individual insureds.

15 (c) The director shall adopt regulations to implement and interpret this section,
16 including requiring insurers doing business in the state to provide information
17 necessary for the division of insurance to carry out its responsibilities under (a) and
18 (b) of this section.

19 (d) Beginning June 1, 1999, the information compiled under (a) of this section
20 shall be reported to the governor and the legislature annually.

21 (e) The division may consult with the Alaska Judicial Council when
22 determining what information to require to be reported under (a) - (c) of this section
23 and when implementing the compilation required under (a) of this section.

24 * **Sec. 20.** AS 21.36 is amended by adding a new section to read:

25 **Sec. 21.36.128. Civil action for claim settlement practices.** (a) A person
26 who alleges a violation of AS 21.36.125 or a violation of a trade practice or claim
27 settlement regulation adopted by the director may bring a civil action for damages.
28 Notwithstanding any other provision of law, a person bringing an action under this
29 section may not be required to prove that the violation occurred with a frequency that
30 indicates a general business practice.

31 (b) Before filing a civil action under (a) of this section, the person filing the

1 action shall give at least 60 days written notice to the person who committed the
2 violation. Notice required under this subsection must include

3 (1) a copy of the statute or regulation that the person is claimed to have
4 violated;

5 (2) the facts and circumstances giving rise to the violation;

6 (3) the name of any individual involved in the violation;

7 (4) reference to any policy that is relevant to the violation; this
8 paragraph does not apply if the person bringing the civil action is a third party
9 claimant unless the insurer has provided the person bringing the civil action with a
10 copy of the policy; and

11 (5) a statement that the notice is given in compliance with this
12 subsection.

13 (c) If, within 60 days after notice required under (b) of this section is received
14 by the insurer, the insurer pays the damages claimed by the person bringing the action
15 or corrects the settlement practice giving rise to the action, a person may not bring an
16 action under (a) of this section.

17 (d) If an insurer receives a notice described under (b) of this section or settles
18 an alleged violation as provided under (c) of this section, the insurer shall provide a
19 copy of the notice to the director or notify the director of the settlement within 30 days
20 after receiving the notice or settling the matter.

21 (e) Upon mailing or delivering the notice required under (b) of this section,
22 the applicable time limit for commencing an action under (a) of this section shall be
23 tolled for 65 days.

24 (f) If the person filing an action under (a) of this section is a prevailing party,
25 the person may recover

26 (1) costs and reasonable attorney fees; and

27 (2) damages that are foreseeable as a result of the violation, including
28 damages in excess of applicable insurance policy limits.

29 (g) Notwithstanding any other provision of law, a person filing an action under
30 (a) of this section may recover punitive damages if the act or omission giving rise to
31 the violation is

- 1 (1) wilful, wanton, or malicious; or
2 (2) in reckless disregard of the rights of the person filing the civil
3 action.

4 (h) The rights provided under this section are in addition to other rights
5 provided by law.

6 * Sec. 21. AS 22.10.020(i) is amended to read:

7 (i) The superior court is the court of original jurisdiction over all causes of
8 action arising under the provisions of AS 18.80. A person who is injured or aggrieved
9 by an act, practice, or policy that [WHICH] is prohibited under AS 18.80 may apply
10 to the superior court for relief. The person aggrieved or injured may maintain an
11 action on behalf of that person or on behalf of a class consisting of all persons who
12 are aggrieved or injured by the act, practice, or policy giving rise to the action. In an
13 action brought under this subsection, the court may grant relief as to any act, practice,
14 or policy of the defendant that [WHICH] is prohibited by AS 18.80, regardless of
15 whether each act, practice, or policy, with respect to which relief is granted, directly
16 affects the plaintiff, so long as a class or members of a class of which the plaintiff is
17 a member are or may be aggrieved or injured by the act, practice, or policy. The court
18 may enjoin any act, practice, or policy that [WHICH] is illegal under AS 18.80 and
19 may, subject to AS 18.80.225, order any other relief, including the payment of money,
20 that is appropriate.

21 * Sec. 22. AS 22.15.030(a) is amended to read:

22 (a) The district court has jurisdiction of civil cases, including foreign
23 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170,
24 as follows:

25 (1) for the recovery of money or damages when the amount claimed
26 exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];

27 (2) for the recovery of specific personal property [,] when the value of
28 the property claimed and the damages for the detention do not exceed \$100,000
29 [\$50,000];

30 (3) for the recovery of a penalty or forfeiture, whether given by statute
31 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 not exceed \$100,000 [\$50,000];

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.030;

(10) over cases involving protective orders for domestic violence under AS 18.66.100 - 18.66.180.

* Sec. 23. AS 28.22 is amended by adding a new section to read:

Sec. 28.22.150. Required medical payment policy provision. If the insurance carrier denies coverage for a claim for medical treatment by the insured under a motor vehicle liability policy that contains medical coverage and the claim is later determined to be covered under the policy, the insurance carrier shall pay the insured's

(1) actual costs, plus interest from the date the claim is received by the insurer; and

(2) actual attorney fees or an amount equal to 50 percent of the disputed claim, whichever is greater; actual attorney fees awarded under this paragraph may not exceed \$250 per hour of work performed.

* Sec. 24. AS 28.22.201(a) is amended to read:

(a) The uninsured and underinsured motorists coverage required under this chapter

(1) applies [DOES NOT APPLY] to bodily injury, sickness, disease, or death of an insured or damage to or destruction of property of an insured even if [UNTIL] the limits of liability bonds and policies that apply have not been used up by payments or judgments or settlements; however, the insurer shall, in each instance, receive a credit against the insured's total damages for amounts actually received by the insured for covered claims from other sources, including liability bonds, other insurance policies, judgments, or settlements;

(2) must be a single combined coverage; and

(3) may be rejected by the insured in writing; if the insured has rejected uninsured or underinsured coverage, the coverage may not be included in a supplemental, renewal, or replacement policy unless the insured subsequently requests uninsured or underinsured coverage in writing.

* Sec. 25. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

(c) Motion to Set Trial and Certificate. Unless otherwise ordered by the court, a [A] motion to set trial may not be filed until after the meeting of parties under paragraph (n) of this rule has occurred and the scheduling order under Rule 16(b) has been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to set trial together with a certificate, signed by counsel, stating:

(1) That the issues in the case have actually been joined;

(2) That all parties have completed discovery or will have a reasonable opportunity to do so within the next 60 days;

(3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in paragraph (d) of this rule has been completed;

(4) Whether trial by jury has been timely demanded;

(5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;

(6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;

(7) Which, if any, statute or rule entitles the case to preference on the trial calendar;

1 (8) That the parties have complied with paragraph (k) of this rule.

2 * Sec. 26. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

3 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
4 soon as practicable after the exchange of initial disclosures required under Rule
5 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
6 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
7 their claims and defenses and the possibilities for a prompt settlement or resolution of
8 the case and to develop a proposed discovery plan. The attorneys of record and all
9 unrepresented parties that have appeared in the case are jointly responsible for
10 arranging and being present or represented at the meeting, for attempting in good faith
11 to agree on the proposed discovery plan, and for submitting to the court within 10 days
12 after the meeting a written report outlining the proposed discovery plan. The proposed
13 discovery plan shall indicate the parties' views and proposals concerning

14 (1) what changes should be made in the timing or forms of subsequent
15 disclosures under the rules, including a statement as to when the disclosures required
16 under Rule 26(a) were made;

17 (2) the subjects on which discovery may be needed, when discovery
18 should be completed, and whether discovery should be conducted in phases or be
19 limited to or focused upon particular issues;

20 (3) what changes should be made in the limitations on discovery
21 imposed under these rules and what other limitations should be imposed;

22 (4) whether a scheduling conference is unnecessary;

23 (5) whether there will be dispositive or partially dispositive motions
24 filed in the case and whether other deadlines should be set aside pending resolution of
25 the dispositive or partially dispositive motions by the court; and

26 (6) any other orders that should be entered by the court under
27 Rule 16(b) and (c).

28 * Sec. 27. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
29 paragraph to read:

30 (3) **Settlement Information.** If a voluntary dismissal under this rule is
31 the result of compromise or other settlement of the parties, the parties shall submit to

1 the Alaska Judicial Council the information required under AS 09.68.130. A notice
2 of dismissal made under (1)[a] of this subsection must be accompanied by a
3 certification signed by or on behalf of the plaintiff that the information required under
4 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
5 dismissal made under (1)[b] of this subsection must be accompanied by such a
6 certification signed by or on behalf of all parties who have appeared in the action.
7 The requirements of this paragraph do not apply to the types of cases listed in
8 AS 09.68.130(c).

9 * Sec. 28. Rule 68, Alaska Rules of Civil Procedure, is repealed and reenacted to read:

10 **Rule 68. Offer of Judgment.** (a) At any time more than 10 days before the
11 trial begins, either the party making a claim or the party defending against a claim may
12 serve upon the adverse party an offer to allow judgment to be entered in complete
13 satisfaction of the claim for the money or property or to the effect specified in the
14 offer, with costs then accrued. The offer may not be revoked in the 10-day period
15 following service of the offer. If, within 10 days after service of the offer, the adverse
16 party serves written notice that the offer is accepted, either party may then file the
17 offer and notice of acceptance together with proof of service, and the clerk shall enter
18 judgment. An offer not accepted within 10 days is considered withdrawn, and
19 evidence of the offer is not admissible except in a proceeding to determine costs. The
20 fact that an offer is made but not accepted does not preclude a subsequent offer.

21 (b) If the judgment finally rendered by the court is not more favorable to the
22 offeree than the offer, the prejudgment interest accrued up to the date judgment is
23 entered shall be adjusted as follows:

24 (1) if the offeree is the party making the claim, the interest rate will be
25 reduced by the amount specified in AS 09.30.065;

26 (2) if the offeree is the party defending against the claim, the interest
27 rate will be increased by the amount specified in AS 09.30.065.

28 (c) If the judgment finally rendered by the court is not more favorable to the
29 offeree than the offer, the court's award of attorney's fees under Rule 82 shall be
30 adjusted as follows:

31 (1) if the offeree is the party making the claim, the court shall adjust

1 its award of attorney's fees to the offeree as follows:

2 (A) if the offer was served no later than 30 days after both
3 parties made the disclosures required by Rule 26(a)(1), the attorney's fees
4 award shall be reduced by 50 percent;

5 (B) if the offer was served more than 30 days after both parties
6 made the disclosures required by Rule 26(a)(1) but more than 90 days before
7 the trial began, the attorney's fees award shall be reduced by 30 percent;

8 (C) if the offer was served 90 days or less but more than 10
9 days before the trial began, the attorney's fees award shall be reduced by 20
10 percent;

11 (2) if the offeree is the party defending against the claim, the court
12 shall adjust its award of attorney's fees to the offeror as follows:

13 (A) if the offer was served no later than 30 days after both
14 parties made the disclosures required by Rule 26(a)(1), the attorney's fees
15 award shall be increased by 50 percent;

16 (B) if the offer was served more than 30 days after both parties
17 made the disclosures required by Rule 26(a)(1) but more than 90 days before
18 the trial began, the attorney's fees award shall be increased by 30 percent;

19 (C) if the offer was served 90 days or less but more than 10
20 days before the trial began, the attorney's fees award shall be increased by 20
21 percent.

22 (d) When the liability of one party to another has been determined by verdict,
23 order, or judgment, but the amount or extent of the liability remains to be determined
24 by further proceedings, the party adjudged liable may make an offer of judgment,
25 which shall have the same effect as an offer made 90 days or less but more than 10
26 days before trial begins, if it is served not less than 10 days before the commencement
27 of hearings to determine the amount or extent of liability.

28 * Sec. 29. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

29 (g) **Discovery.** Except by leave of court, no discovery may be conducted until
30 the report of the panel has been filed or until 60 days after selection of the panel [80
31 DAYS HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever

1 is first to occur, unless discovery is further stayed for good cause by order of the court.

2 * Sec. 30. Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

3 (b) In addition to its authority under (a) of this rule and its power to punish
4 for contempt, a court may, after reasonable notice and an opportunity to show cause
5 to the contrary, and after hearing by the court, if requested, impose a fine not to
6 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
7 to comply with these rules or any rules promulgated by the supreme court.

8 * Sec. 31. Rule 1(a)(1), District Court Rules of Civil Procedure is amended to read:

9 (1) The procedure in civil actions and proceedings before district judges
10 and magistrates shall be governed by the rules governing the procedure in the superior
11 court to the extent that such rules are applicable. However, unless otherwise agreed
12 by all parties or permitted by order of the court in exceptional cases and for good
13 cause shown, discovery shall be limited to the disclosures required under Civil
14 Rule 26(a) and to the taking by each party of the deposition of one or more
15 opposing parties and of one additional person who is not a party.

16 * Sec. 32. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
17 subsection to read:

18 (b) Unless otherwise permitted by order of the court in exceptional cases and
19 for good cause shown, all parties shall file a memorandum to set the case for trial, as
20 set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all
21 parties to the case. The parties shall submit a joint memorandum to set the case for
22 trial, which may state their separate positions if they do not agree concerning the
23 information or estimates to be provided in the memorandum. The court shall set the
24 trial to commence on a date not less than 30 and not more than 90 days after the filing
25 of the memorandum to set the case for trial, unless a continuance is granted by the
26 court under Civil Rule 40(e).

27 * Sec. 33. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
28 subsection to read:

29 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
30 result of compromise or other settlement between the parties, the parties shall submit
31 to the Alaska Judicial Council the information required under AS 09.68.130. A

1 dismissal by agreement under (a) of this rule must be accompanied by a certification
2 signed by the attorneys of record for all parties that the information required under
3 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
4 appellant or petitioner made under (b) of this rule must be accompanied by such a
5 certification signed by the appellant's or petitioner's attorney of record. The
6 requirements of this subsection do not apply to the types of cases listed in
7 AS 09.68.130(c).

8 * Sec. 34. AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.560(2), and
9 09.55.560(3) are repealed.

10 * Sec. 35. AS 28.20.445(c), 28.20.445(h); AS 28.22.211, and AS 28.40.100(a)(22) are
11 repealed.

12 * Sec. 36. Rules 16.1(k)(4) and 72.1, Alaska Rules of Civil Procedure, are repealed.

13 * Sec. 37. AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of this
14 Act, have the effect of amending

15 (1) Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to conduct
16 a separate proceeding for the determination of a punitive damages award after it has
17 determined that punitive damages are allowed in a case; and

18 (2) Rule 26(b) and (d), Alaska Rules of Civil Procedure, by affecting the
19 scope, limits, timing, and sequence of discovery allowed in a case.

20 * Sec. 38. AS 09.30.065, as amended by sec. 9 of this Act, has the effect of amending
21 Rule 68, Alaska Rules of Civil Procedure, by altering the manner in which interest under
22 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the
23 offeree than the offer.

24 * Sec. 39. AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, has the effect of
25 amending Rule 100, Alaska Rules of Civil Procedure, by making the mediation process
26 mandatory for certain civil cases in the superior court, Third Judicial District, and by
27 expanding the scope of the rule to include other forms of alternative dispute resolution in
28 addition to mediation.

29 * Sec. 40. AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending
30 Rule 79(b), Alaska Rule of Civil Procedure, by allowing the award of actual costs in certain
31 actions.

1 * **Sec. 41.** AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending
 2 Rule 82(b), Alaska Rule of Civil Procedure, by allowing the award of actual attorney fees in
 3 certain actions.

4 * **Sec. 42.** AS 28.22.150(2), enacted by sec. 23 of this Act, amends Rule 82(b), Alaska
 5 Rules of Civil Procedure, by providing for attorney fee awards in certain cases that may differ
 6 from those awarded under Rule 82(b).

7 * **Sec. 43. APPLICABILITY.** (a) Sections 1, 9, 15, 18, 20, 22, 25, 26, 28 - 32, 34, and
 8 35 of this Act apply to all civil actions filed on or after the effective date of those sections.

9 (b) Sections 3 - 8, 10, 11, 13, 16, and 21 of this Act apply to all causes of action
 10 accruing on or after the effective date of those sections.

11 (c) Section 12 of this Act applies only to those civil actions covered by the pilot
 12 program for alternative dispute resolution established under the provisions of AS 09.43.310 -
 13 09.43.390, as enacted by sec. 11 of this Act, filed on or after January 1, 1998.

14 (d) Sections 17, 27, and 33 of this Act apply only to all voluntary dismissals of civil
 15 actions filed with the state court on or after January 1, 1998.

16 (e) Sections 19, 23, 24, and 35 of this Act apply to all insurers doing business in this
 17 state on or after the effective date of those sections.

18 * **Sec. 44. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
 19 application of a provision of this Act to any person or circumstance is held invalid, the
 20 remainder of this Act and the application to other persons shall not be affected.

21 * **Sec. 45. REVISOR'S INSTRUCTION.** Due to the addition of AS 09.43.310 - 09.43.390
 22 in sec. 12 of this Act, in AS 21.89.100(d), the revisor of statutes shall substitute
 23 "AS 09.43.010 - 09.43.220" for "AS 09.43."

24 * **Sec. 46.** (a) AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of
 25 this Act, take effect only if sec. 37 of this Act receives the two-thirds majority vote of each
 26 house required by art. IV, sec. 15, Constitution of the State of Alaska.

27 (b) AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, takes effect only if
 28 sec. 38 of this Act receives the two-thirds majority vote of each house required by art. IV,
 29 sec. 15, Constitution of the State of Alaska.

30 (c) The amendments or the repeal of the following court rules takes effect only if all
 31 amendments and the repeal listed in this subsection receive the two-thirds majority vote of

1 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

2 (1) Rule 16.1(c), Alaska Rules of Civil Procedure, as amended by sec. 25 of
3 this Act;

4 (2) Rule 16.1(n), Alaska Rules of Civil Procedure, as amended by sec. 26 of
5 this Act;

6 (3) Rule 16.1(k)(4), Alaska Rules of Civil Procedure, repealed by sec. 36 of
7 this Act.

8 (d) AS 09.68.130, as enacted by sec. 17 of this Act, takes effect only if secs. 27 and
9 33 both receive the two-thirds majority vote of each house required by art. IV, sec. 15,
10 Constitution of the State of Alaska.

11 * **Sec. 47.** Sections 1 - 8, 10 - 16, 18 - 24, 34, 35, and 37 - 46 of this Act take effect
12 immediately under AS 01.10.070(c).

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PORTER, Cowdery, Bunde

Introduced: 2/17/97

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; relating to independent counsel provided under
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58,
3 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska
4 Rules of Evidence; amending Rule 511, Alaska Rules of Appellate Procedure; and
5 providing for an effective date."

6 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 * **Section 1. LEGISLATIVE INTENT.** In enacting this bill, it is the intent of this
8 legislature as a matter of public policy to

9 (1) encourage the efficiency of the civil justice system by discouraging
10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
12 compensation for tortious injuries caused by others;

13 (2) provide for reasonable, but not excessive, punitive damage awards against

1 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
2 hampering a positive business environment by allowing excessive penalties;

3 (3) encourage individual savings and economic growth by fostering an
4 environment likely to control the increase of liability insurance rates to individuals and
5 businesses resulting in a savings to the state, municipalities, and private businesses that are
6 self-insured;

7 (4) encourage the traditionally recognized Alaska values of self-reliance and
8 independence by underscoring the need for personal responsibility in making choices and
9 personal accountability for the consequences of those choices;

10 (5) alleviate the high cost of malpractice insurance premiums that discourage
11 physicians, architects, engineers, attorneys, and other professionals from rendering needed
12 services to the public;

13 (6) ensure that hospitals that comply with the disclosure requirements set out
14 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
15 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

16 (7) ensure that one of several tortfeasors is not held responsible for the
17 negligence of an employer; to this extent, this Act is intended to overrule Lake v. Construction
18 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

19 (8) enact a statute of repose that meets the tests set out in Turner Construction
20 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

21 (9) ensure that in actions involving the fault of more than one person, the fault
22 of each claimant, defendant, third-party defendant, person who has been released from
23 liability, or other person responsible for the damages be determined and awards be allocated
24 in accordance with the fault of each, thereby overruling Benner v. Wichman, 874 P.2d 949
25 (Alaska 1994); and

26 (10) reduce the amount of litigation proceeding to trial by modifying the
27 allocation of attorney fees and court costs based on the offer of judgment and the final court
28 award, thereby providing a financial incentive to both parties to settle the dispute.

29 * Sec. 2. AS 06.05.473(h) is amended to read:

30 (h) After the payment of all other claims, including interest at the rate of 10.5
31 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay

1 claims that are otherwise valid but that were not filed within the time prescribed.

2 * **Sec. 3.** AS 09.10.050 is repealed and reenacted to read:

3 **Sec. 09.10.050. Certain property actions to be brought in six years.** Unless
4 the action is commenced within six years, a person may not bring an action for waste
5 or trespass upon real property.

6 * **Sec. 4.** AS 09.10 is amended by adding a new section to read:

7 **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the
8 action is commenced within three years, a person may not bring an action upon a
9 contract or liability, express or implied, except as provided in AS 09.10.040 or as
10 otherwise provided by law.

11 * **Sec. 5.** AS 09.10.055 is repealed and reenacted to read:

12 **Sec. 09.10.055. Statute of repose of eight years.** (a) Notwithstanding the
13 disability of minority described under AS 09.10.140(a), a person may not bring an
14 action for personal injury, death, or property damage unless commenced within eight
15 years of the earlier of the date of

16 (1) substantial completion of the construction alleged to have caused
17 the personal injury, death, or property damage; however, the limitation of this
18 paragraph does not apply to a claim resulting from an intentional or reckless disregard
19 of specific project design plans and specifications or building codes; in this paragraph,
20 "substantial completion" means the date when construction is sufficiently completed
21 to allow the owner or a person authorized by the owner to occupy the improvement
22 or to use the improvement in the manner for which it was intended; or

23 (2) the last act alleged to have caused the personal injury, death, or
24 property damage.

25 (b) This section does not apply if

26 (1) the personal injury, death, or property damage resulted from
27 (A) prolonged exposure to hazardous waste;
28 (B) an intentional act or gross negligence;
29 (C) fraud or fraudulent misrepresentation;
30 (D) breach of an express warranty or guarantee; or
31 (E) a defective product; in this subparagraph, "product" means

an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

(2) the facts that would give notice of a potential cause of action are intentionally concealed;

(3) a shorter period of time for bringing the action is imposed under another provision of law.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign body.

* Sec. 6. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.065. Limitation of actions against health care providers. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), an action based on professional negligence may not be brought against a health care provider if the injured person is, on the date of the alleged negligent act or omission, less than six years of age unless the action is commenced before the person's eighth birthday.

(b) The limitation imposed under (a) of this section is tolled during any period in which there exists

(1) fraud, including fraud or collusion by a parent, guardian, insurer, or health care provider, resulting in the failure to bring an action on behalf of an injured minor;

(2) intentional concealment of facts that would give notice of a potential action; or

(3) the undiscovered presence of a foreign object that has no therapeutic or diagnostic purpose or effect in the body of the injured person and the action is based on the presence of the foreign object.

(c) In this section,

(1) "health care provider" has the meaning given in AS 09.55.560;

(2) "professional negligence" has the meaning given in AS 09.55.560;

(3) "professional services" has the meaning given in AS 09.55.560.

* Sec. 7. AS 09.10.070(a) is amended to read:

(a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

* Sec. 8. 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 \$300,000.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$500,000 when the claimant, as a result of the injury,

(1) is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord; or

(2) has permanently impaired cognitive capacity and is incapable of making independent, responsible decisions.

(d) Multiple injuries sustained by one person as a result of a single incident shall be treated as a single injury for purposes of this section.

* Sec. 9. AS 09.17.020 is amended to read:

Sec. 09.17.020. Punitive damages. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence of malice or conscious acts showing deliberate disregard of

1 another person by the person from whom the punitive damages are sought.

2 * Sec. 10. AS 09.17.020 is amended by adding new subsections to read:

3 (b) Except as provided under (c) of this section, the amount of punitive
4 damages awarded by a court or jury under (a) of this section may not exceed three
5 times the amount of compensatory damages awarded or \$300,000, whichever amount
6 is greater.

7 (c) The amount of punitive damages awarded by a court or jury under (a) of
8 this section may not exceed four times the amount of compensatory damages awarded
9 or \$600,000, whichever amount is greater, if

10 (1) the wrongful conduct or omission arose in connection with a
11 commercial activity motivated by financial gain; and

12 (2) the likelihood of death or serious bodily injury from the commercial
13 activity was previously known by the person responsible for making policy decisions
14 relating to the commercial activity and the knowledge was gained from previous
15 instances of death or serious bodily injury arising from the same wrongful conduct or
16 omission, regardless of where the previous wrongful conduct or omission occurred.

17 (d) If a person receives an award of punitive damages, the court shall require
18 that 50 percent of the award be deposited into the general fund of the state. This
19 subsection does not grant the state the right to file or join a civil action to recover
20 punitive damages.

21 * Sec. 11. AS 09.17.040(a) is amended to read:

22 (a) In every case where damages for personal injury or death are awarded by
23 the court or jury,

24 (1) the verdict shall be itemized between economic loss and
25 noneconomic loss, if any, as follows:

26 (A) [(1)] past economic loss;

27 (B) [(2)] past noneconomic loss;

28 (C) [(3)] future economic loss;

29 (D) [(4)] future noneconomic loss; [AND]

30 (E) [(5)] punitive damages; and

31 (2) the amount of damages awarded shall be reduced by the

amount of federal and state income tax that would have been paid on damages contained in the verdict under tax rates in effect on the date of the injury or death; this paragraph does not apply to an award of damages if the damages are taxable under federal or state law.

* Sec. 12. AS 09.17.040(d) is amended to read:

(d) In an action to recover damages, the court shall, at the request of a [AN INJURED] party, enter judgment ordering that amounts awarded a judgment creditor for [FUTURE] damages that exceed \$100,000 be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment. If a portion of the judgment awarded is owed to an attorney under a contingent fee agreement, that portion of the judgment shall be reduced to present value, if necessary, and paid in a lump sum, and the remaining portion of the judgment shall be paid as provided under this subsection.

* Sec. 13. AS 09.17.040(e) is amended to read:

(e) Except as provided in this subsection, if a judgment is paid by structured settlement type periodic payments, the [THE] court shall [MAY] require security be posted in the form of United States government obligations [,] in order to ensure that funds are available as periodic payments become due. The court may not require security to be posted if the state, a self-insured municipality, or an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment, provided that an authorized insurer must be rated by two nationally recognized independent rating agencies to be in the two highest categories of quality and financial soundness. If a judgment is paid by annuity type period payments, the court shall require the annuity be purchased from an authorized insurer that is rated by two nationally recognized independent rating agencies to be in the two highest categories of quality and financial soundness. The injured party shall determine whether a structured settlement or an annuity is the source of the periodic payments. The injured party may not be required to accept a structured settlement or annuity from the defendant's or other party's insurer or from any affiliated companies of the insurer.

* Sec. 14. AS 09.17.040(f) is amended to read:

(f) A judgment ordering payment of [FUTURE] damages for personal injury or death by periodic payment shall specify the recipient, the dollar amount of the payments, including any increases in future payments for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will. In this subsection, "inflation" means the change in the consumer price index for Anchorage, all items index, compiled by the Bureau of Labor Statistics, United States Department of Labor.

* Sec. 15. AS 09.17.070 is repealed and reenacted to read:

Sec. 09.17.070. Collateral benefits. (a) A claimant in an action for personal injury or death may only recover damages that exceed amounts 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 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 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 or agreement of a group, organization, partnership, or corporation, or other collateral source, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services, disability, or lost wages. However, 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.

* Sec. 16. AS 09.17.080(a) is amended to read:

(a) In all actions involving fault of more than one person [PARTY TO THE ACTION], including third-party defendants and persons who have been released [UNDER AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault [OF ALL OF THE PARTIES TO EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant, [AND] person who has been released from liability, or other person responsible for the damages to each claimant regardless of whether the other person, including an employer, is or could have been named as a party to the action [UNDER AS 09.16.040].

* Sec. 17. AS 09.17.080(b) is amended to read:

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each person [PARTY] at fault, and the extent of the

1 causal relation between the conduct and the damages claimed. The trier of fact may
2 assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO
3 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages
4 claimed and the separate act or omission of each person cannot be distinguished.

5 * Sec. 18. AS 09.17.080(c) is amended to read:

6 (c) The court shall determine the award of damages to each claimant in
7 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
8 AS 09.16.040,] and enter judgment against each party liable. The court also shall
9 determine and state in the judgment each party's equitable share of the obligation to
10 each claimant in accordance with the respective percentages of fault as determined
11 under (a) of this section. Except as provided under AS 23.30.015(g), an
12 assessment of a percentage of fault against a person who is not a party may only
13 be used as a measure for accurately determining the percentages of fault of a
14 named party. Assessment of a percentage of fault against a person who is not a
15 party does not subject that person to civil liability in that action and may not be
16 used as evidence of civil liability in another action.

17 * Sec. 19. AS 09.17.900 is amended to read:

18 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
19 that are in any measure negligent, [OR] reckless, or intentional toward the person or
20 property of the actor or others, or that subject a person to strict tort liability. The term
21 also includes breach of warranty, unreasonable assumption of risk not constituting an
22 enforceable express consent, misuse of a product for which the defendant otherwise
23 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
24 Legal requirements of causal relation apply both to fault as the basis for liability and
25 to contributory fault.

26 * Sec. 20. AS 09.20 is amended by adding a new section to read:

27 **Sec. 09.20.185. Expert witness qualification.** (a) In an action based on
28 professional negligence, a person may not testify as an expert witness on the issue of
29 the appropriate standard of care unless the witness is

30 (1) a professional who is licensed in this state or in another state or
31 country;

1 (2) trained and experienced in the same discipline or school of practice
2 as the defendant or in an area directly related to a matter at issue; and

3 (3) certified by a board recognized by the state as having acknowledged
4 expertise and training directly related to the particular field or matter at issue; however,
5 this paragraph does not apply if a board does not exist that could certify the witness
6 in the particular field or matter at issue.

7 * Sec. 21. AS 09.30.065 is amended to read:

8 Sec. 09.30.065. Offers of judgment. At any time more than 10 days before
9 the trial begins, either the party making a claim or the party defending against a claim
10 may serve upon the adverse party an offer to allow judgment to be entered in complete
11 satisfaction of the claim for the money or property or to the effect specified in the
12 offer, with costs then accrued. If within 10 days after the service of the offer the
13 adverse party serves written notice that the offer is accepted, either party may then file
14 the offer and notice of acceptance together with proof of service, and the clerk shall
15 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
16 evidence of that offer is not admissible except in a proceeding to determine the form
17 of judgment after verdict. If the judgment finally entered on the claim as to which an
18 offer has been made under this section is at least five percent, less [NOT MORE]
19 favorable to the offeree than the offer, the offeree, whether the party making the
20 claim or defending against the claim, shall pay all costs as allowed under the
21 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
22 incurred by the offeror from the date the offer was made, [THE INTEREST
23 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
24 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

25 (1) if the offer was served no later than 60 days after both parties
26 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
27 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
28 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
29 REDUCED BY FIVE PERCENT A YEAR];

30 (2) if the offer was served more than 60 days after both parties
31 made the disclosures required by the Alaska Rules of Civil Procedure but more

1 than 90 days before the trial began, the offeree shall pay 75 percent of the
 2 offeror's reasonable actual attorney fees;

3 (3) if the offer was served 90 days or less but more than 10 days
 4 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
 5 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
 6 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
 7 YEAR].

8 * Sec. 22. AS 09.30.065 is amended by adding new subsections to read:

9 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
 10 of this section, that offeror shall be considered the prevailing party for purposes of an
 11 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
 12 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
 13 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
 14 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
 15 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
 16 this section. A party who receives attorney fees under this section may not also
 17 receive attorney fees under the Alaska Rules of Civil Procedure.

18 (c) If an offeror makes more than one offer of judgment, the last offer served
 19 on the adverse party shall be considered to be a revocation of any prior offer of
 20 judgment.

21 * Sec. 23. AS 09.30.070(a) is amended to read:

22 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
 23 and decrees for the payment of money, including prejudgment interest, is three
 24 percentage points above the 12th Federal Reserve District discount rate in effect
 25 on January 2 of the year in which the judgment or decree is entered [10.5
 26 PERCENT A YEAR], except that a judgment or decree founded on a contract in
 27 writing, providing for the payment of interest until paid at a specified rate not
 28 exceeding the legal rate of interest for that type of contract, bears interest at the rate
 29 specified in the contract if the interest rate is set out in the judgment or decree.

30 * Sec. 24. AS 09.30.070 is amended by adding a new subsection to read:

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or punitive damages.

2 * Sec. 25. AS 09.50.280 is amended to read:

3 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
4 rendered for the plaintiff, it shall be for the legal amount found due from the state with
5 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME
6 DUE] and without punitive damages.

7 * Sec. 26. AS 09.55.440(a) is amended to read:

8 (a) Upon the filing of the declaration of taking and the deposit with the court
9 of the amount of the estimated compensation stated in the declaration, title to the estate
10 as specified in the declaration vests in the plaintiff, and that property is condemned
11 and taken for the use of the plaintiff, and the right to just compensation for it vests in
12 the persons entitled to it. The compensation shall be ascertained and awarded in the
13 proceeding and established by judgment. The judgment must include interest at the
14 rate of 10.5 percent a year [SET OUT IN AS 09.30.070] on the amount finally
15 awarded that [WHICH] exceeds the amount paid into court under the declaration of
16 taking. The interest runs from the date title vests to the date of payment of the
17 judgment.

18 * Sec. 27. AS 09.55.535(k) is amended to read:

19 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
20 apply to arbitrations under this section if they do not conflict with the provisions of
21 this section; arbitrations under this section shall be conducted in accordance with
22 procedures established by any rules of court which may be adopted and according to
23 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
24 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

25 * Sec. 28. AS 09.55.536(a) is amended to read:

26 (a) In an action for damages due to personal injury or death based upon
27 the provision of professional services by a health care provider, including a person
28 providing services on behalf of a governmental entity, when the parties have not
29 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
30 20 days after filing of answer to a summons and complaint a three-person expert
31 advisory panel unless the court decides that an expert advisory opinion is not necessary

1 for a decision in the case. When the action is filed, the court shall, by order,
 2 determine the professions or specialties to be represented on the expert advisory panel,
 3 giving the parties the opportunity to object or make suggestions.

4 * Sec. 29. AS 09.55.536(c) is amended to read:

5 (c) Not more than 30 days after selection of the panel, the panel [IT] shall
 6 make a written report to the parties and to the court, answering the following questions
 7 and other questions submitted to the panel by the court in sufficient detail to explain
 8 the case and the reasons for the panel's answers:

9 (1) Why did the claimant seek [WHAT WAS THE DISORDER FOR
 10 WHICH THE PLAINTIFF CAME TO] medical care?

11 (2) Was a correct diagnosis made? If not, what was incorrect
 12 about the diagnosis [WHAT WOULD HAVE BEEN THE PROBABLE OUTCOME
 13 WITHOUT MEDICAL CARE]?

14 (3) Was the treatment or lack of treatment [SELECTED] appropriate?
 15 If not, what was inappropriate about the treatment or lack of treatment [FOR
 16 THE CASE]?

17 (4) Was the claimant injured during the course of evaluation or
 18 treatment or by failure to diagnose or treat [DID AN INJURY ARISE FROM THE
 19 MEDICAL CARE]?

20 (5) If the answer to question 4 is "yes," what [WHAT] is the nature
 21 and extent of the medical injury?

22 (6) What specifically caused the medical injury?

23 (7) Was the medical injury caused by unskillful care? Explain.

24 (8) If a medical injury had not occurred, what would have been the
 25 likely outcome of the medical case [HOW WOULD THE PLAINTIFF'S
 26 CONDITION DIFFER FROM THE PLAINTIFF'S PRESENT CONDITION]?

27 * Sec. 30. AS 09.55.536(f) is amended to read:

28 (f) Discovery may not be undertaken in a case until the report of the expert
 29 advisory panel is received or 60 days after selection of the panel, whichever occurs
 30 first. However, the court may relax this prohibition upon a showing of good cause by
 31 any party. If the panel has not completed its report within the 30-day period

prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
an additional 30 days.

* Sec. 31. AS 09.55.536 is amended by adding a new subsection to read:

(i) This section applies regardless of whether a party in the action or the health
care provider whose professional services are the subject of the action is a
governmental entity or in the public or private sector.

* Sec. 32. AS 09.55.560(1) is amended to read:

(1) "health care provider" means an acupuncturist licensed under
AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under
AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under
AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under
AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under
AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational
therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist;
a psychologist and a psychological associate licensed under AS 08.86; [AND] a
hospital as defined in AS 18.20.130, including a governmentally owned or operated
hospital; [AND] an employee of a health care provider acting within the course and
scope of employment; an ambulatory surgical facility and other organizations
whose primary purpose is the delivery of health care, including a health
maintenance organization, individual practice association, integrated delivery
system, preferred provider organization or arrangement, and a physical hospital
organization.

* Sec. 33. AS 09.55.560 is amended by adding new paragraphs to read:

(4) "professional negligence" means a negligent act or omission by a
health care provider in rendering professional services;

(5) "professional services" means service provided by a health care
provider that is within the scope of services for which the health care provider is
licensed and that is not prohibited under the health care provider's license or by a
facility in which the health care provider practices.

* Sec. 34. AS 09.60 is amended by adding a new section to read:

Sec. 09.60.080. Contingent fee agreements. If an attorney contracts for or

collects a contingency fee in connection with an action for personal injury, death, or property damage and the damages awarded by a court or jury include an award of punitive damages, the contingent fee due the attorney shall be calculated after that portion of punitive damages due the state under AS 09.17.020(d) has been deducted from the total award of damages.

* Sec. 35. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.096. Civil liability of hospitals for certain physicians. (a) A hospital is not liable for civil damages as a result of an act or omission by an emergency room physician who is not an employee or actual agent of the hospital if the hospital provides notice that the emergency room physician is an independent contractor and the emergency room physician is insured as described under (c) of this section. The hospital is responsible for exercising reasonable care in granting privileges to practice in the hospital, for reviewing those privileges on a regular basis, and for taking appropriate steps to revoke or restrict privileges in appropriate circumstances. The hospital is not otherwise liable for the acts or omissions of an emergency room physician who is an independent contractor. The notice required by this subsection must be posted conspicuously in all admitting areas of the hospital, published at least annually in a newspaper of general circulation in the area, and must be in substantially the following form:

Notice of Limited Liability

The following emergency room physicians are independent contractors and are not employees of the hospital:

(List specific emergency room physicians)

(b) This section does not preclude liability for civil damages that are the proximate result of the hospital's negligence or intentional misconduct.

(c) A hospital is not immune from liability under (a) of this section for an act or omission of an emergency room physician who is an independent contractor unless the emergency room physician has liability insurance coverage in the amount of at least \$500,000 for each incident and the coverage is in effect and applicable to those health care services offered by the emergency room physician that the hospital is required to provide by law or by accreditation requirements.

1 (d) In this section,

2 (1) "emergency room physician" means a physician who provides health
3 care services in a hospital emergency room;

4 (2) "hospital" has the meaning given in AS 18.20.130 and includes a
5 governmentally owned or operated hospital;

6 (3) "independent contractor" means an emergency room physician who
7 is not an employee or actual agent of the hospital in connection with the rendition of
8 the health care services.

9 * Sec. 36. AS 09.65.210 is repealed and reenacted to read:

10 **Sec. 09.65.210. Damages resulting from commission of a felony or while**
11 **under the influence of alcohol or drugs.** A person who suffers personal injury or
12 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
13 recover damages for the personal injury or death if the injury or death occurred while
14 the person was

15 (1) engaged in the commission of a felony, the person has been
16 convicted of the felony, including conviction based on a guilty plea or plea of nolo
17 contendere, and the felony substantially contributed to the personal injury or death;

18 (2) engaged in conduct that would constitute the commission of an
19 unclassified felony, a class A, or a class B felony for which the person was not
20 convicted and the conduct

21 (A) substantially contributed to the personal injury or death; and

22 (B) is proven by the defendant in the civil trial by clear and
23 convincing evidence;

24 (3) fleeing after the commission, by that person, of conduct that would
25 constitute an unclassified felony, a class A felony, or a class B felony or being
26 apprehended for conduct that would constitute an unclassified felony, a class A felony,
27 or a class B felony if the conduct

28 (A) during the flight or apprehension substantially contributed
29 to the injury or death; and

30 (B) is proven by the defendant in the civil trial by clear and
31 convincing evidence;

1 (4) operating a vehicle, aircraft, or watercraft while under the influence
 2 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
 3 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
 4 the conduct substantially contributed to the personal injury or death; or

5 (5) engaged in conduct that would constitute a violation of
 6 AS 28.35.030 for which the person was not convicted if the conduct substantially
 7 contributed to the personal injury or death and the conduct is proven by the defendant
 8 in the civil trial by clear and convincing evidence.

9 * Sec. 37. AS 09.68 is amended by adding a new section to read:

10 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
 11 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
 12 information relating to the compromise or other settlement of all civil litigation. The
 13 information, including the case name and file number, a general description of the
 14 claims being settled, the dollar amount of the settlement, to whom the settlement was
 15 paid, and any nonmonetary terms, shall be collected on a form developed by the
 16 council for that purpose.

17 (b) The information received by the council under (a) of this section is
 18 confidential. This restriction does not prevent the disclosure of summaries and
 19 statistics in a manner that does not allow the identification of particular cases or
 20 parties.

21 (c) The requirements of (a) of this section do not apply to the following types
 22 of cases:

- 23 (1) divorce and dissolution;
- 24 (2) adoption, custody, support, visitation, and emancipation of children;
- 25 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
 26 cases under 47.12;
- 27 (4) domestic violence protective orders under AS 18.66.100 -
 28 18.66.180;
- 29 (5) estate, guardianship, and trust cases filed under AS 13;
- 30 (6) small claims under AS 22.15.040.

31 * Sec. 38. AS 21.06 is amended by adding a new section to read:

1 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of
 2 and shall compile information necessary to evaluate the effect of the measures enacted
 3 in this Act on the availability and cost of insurance in the state.

4 (b) Information described in (a) of this section shall be provided by all insurers
 5 doing business in this state in the format specified by the director and must include
 6 factual information stating premiums, claims, losses, expenses, and solvency of the
 7 company as a whole. Information shall be compiled by the division in a way that
 8 protects the identity of individual insureds.

9 (c) The director shall adopt regulations to implement and interpret this section,
 10 including requiring insurers doing business in the state to provide information
 11 necessary for the division to carry out its responsibilities under (a) and (b) of this
 12 section. If there are indications of market disruption, the director may waive all or
 13 part of the reporting requirements in this section.

14 (d) Beginning June 1, 2000, the information compiled under (a) of this section
 15 shall be reported annually to the governor and the judiciary committees of both houses
 16 of the legislature.

17 (e) The division may consult with the Alaska Judicial Council when
 18 determining what information to require to be reported under (a) - (c) of this section
 19 and when implementing the compilation required under (a) of this section.

20 * **Sec. 39.** AS 21.89.100(d) is amended to read:

21 (d) If the insured selects independent counsel at the insurer's expense, the
 22 insurer may require that the independent counsel have at least four years of experience
 23 in civil litigation, including defense experience in the general subject area at issue in
 24 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
 25 policy, the obligation of the insurer to pay the fee charged by the independent counsel
 26 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
 27 course of business in the defense of a similar civil action in the community in which
 28 the claim arose or is being defended. In providing independent counsel, the insurer
 29 is not responsible for the fees and costs of defending an allegation for which
 30 coverage is properly denied and shall be responsible only for the fees and costs
 31 to defend those allegations for which the insurer either reserves its position as to

coverage or accepts coverage. The independent counsel shall keep detailed records allocating costs accordingly. A dispute between the insurer and insured regarding attorney fees that is not resolved by the insurance policy or this section shall be resolved by arbitration under AS 09.43.

* Sec. 40. AS 21.89.100 is amended by adding a new subsection to read:

(h) When an insured is represented by independent counsel, the insurer may settle directly with the plaintiff if the settlement includes all claims based upon the allegations for which the insurer previously reserved its position as to coverage or accepted coverage, regardless of whether the settlement extinguishes all claims against the insured.

* Sec. 41. AS 23.30.015(g) is amended to read:

(g) If the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the employer the total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)] of this section [,] insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter. If the employer is allocated a percentage of fault under AS 09.17.080, the amount due the employer under this subsection shall be reduced by an amount equal to the employer's equitable share of damages assessed under AS 09.17.080(c).

* Sec. 42. AS 44.77.015(a) is amended to read:

(a) For the purposes of filing claims for medical services provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1) within six months after the date of service, or as provided in (b) of this section, if there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

* Sec. 43. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

(c) Motion to Set Trial and Certificate. Unless otherwise ordered by the court, a [A] motion to set trial may not be filed until after the meeting of parties

under (n) of this rule has occurred and the scheduling order under Rule 16(b) has been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to set trial together with a certificate, signed by counsel, stating:

- (1) That the issues in the case have actually been joined;
- (2) That all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;
- (3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;
- (4) Whether trial by jury has been timely demanded;
- (5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;
- (6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;
- (7) Which, if any, statute or rule entitles the case to preference on the trial calendar;
- (8) That the parties have complied with [PARAGRAPH] (k) of this rule.

*** Sec. 44.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

(n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and to develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the proposed discovery plan. The proposed discovery plan shall indicate the parties' views and proposals concerning

- (1) what changes should be made in the timing or forms of subsequent

disclosures under the rules, including a statement as to when the disclosures required under Rule 26(a) were made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes should be made in the limitations on discovery imposed under these rules and what other limitations should be imposed;

(4) whether a scheduling conference is unnecessary;

(5) whether there will be dispositive or partially dispositive motions filed in the case and whether other deadlines should be set aside pending resolution of the dispositive or partially dispositive motions by the court; and

(6) any other orders that should be entered by the court under Civil Rule 16(b) and (c).

* Sec. 45. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new paragraph to read:

(3) **Settlement Information.** If a voluntary dismissal under this rule is the result of compromise or other settlement of the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A notice of dismissal made under (1)[a] of this subsection must be accompanied by a certification signed by or on behalf of the plaintiff that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of dismissal made under (1)[b] of this subsection must be accompanied by a certification signed by or on behalf of all parties who have appeared in the action. The requirements of this paragraph do not apply to the types of cases listed in AS 09.68.130(c).

* Sec. 46. Rule 72.1(g), Alaska Rules of Civil Procedure, 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 [80] days after selection of the Panel [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. 47. Rule 95(b), Alaska Rules of Civil Procedure, 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. 48. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new subsection to read:

(c) If the trier of fact determines that a party to a civil action has intentionally made a false statement of a material fact in connection with the prosecution or defense of a civil action, the court shall enter judgment against the party making the false statement on the issue to which the false statement relates. If the civil action involves multiple claims and the false statement does not apply to all claims, the judgment required under this subsection shall apply only to those claims to which the false statement relates.

* Sec. 49. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new 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 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. 50. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

* Sec. 51. AS 09.55.548 is repealed.

* Sec. 52. AS 09.17.020(d), as enacted by sec. 10 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain percentage of an award of punitive damages be deposited into the general fund.

1 * **Sec. 53.** AS 09.17.040(a), as amended by sec. 11 of this Act, has the effect of amending
2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
3 damages by certain tax rates in effect on the date of injury or death if taxable.

4 * **Sec. 54.** AS 09.17.040(d), as amended by sec. 12 of this Act, has the effect of amending
5 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
6 periodically if requested by a party, with a lump sum payment for certain attorney fees.

7 * **Sec. 55.** AS 09.17.040(e), as amended by sec. 13 of this Act, has the effect of amending
8 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
9 is paid by periodic payments.

10 * **Sec. 56.** AS 09.17.040(f), as amended by sec. 14 of this Act, has the effect of amending
11 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
12 increases for future inflation.

13 * **Sec. 57.** AS 09.17.080(a), as amended by sec. 16 of this Act, has the effect of amending
14 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
15 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
16 among the claimants, defendants, third-party defendants, persons who have been released from
17 liability, or other person who is responsible for the damages.

18 * **Sec. 58.** AS 09.20.185, enacted by sec. 20 of this Act, has the effect of amending
19 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
20 testifying as an expert witness.

21 * **Sec. 59.** AS 09.30.065, as amended by secs. 21 and 22 of this Act, has the effect of
22 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
23 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
24 eliminating provisions relating to interest and by providing that a subsequent offer revokes
25 prior offers.

26 * **Sec. 60.** AS 09.30.070(c), added by sec. 24 of this Act, has the effect of amending
27 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
28 awarded for future economic or noneconomic damages.

29 * **Sec. 61.** ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
30 legislation to create a pilot alternative dispute resolution procedure within the existing civil
31 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil

1 disputes.

2 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
3 Association, review court sanctioned alternative dispute resolution programs in other states and
4 in the federal court system, and make recommendations to assist the legislature and the Alaska
5 Court System in the establishment of a pilot program for alternative dispute resolution within
6 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
7 legislature and to the Alaska Supreme Court within six months after the effective date of this
8 Act. The report must include specific types of programs, specific types of cases within each
9 program that are amenable to alternative dispute resolution, the cost to the parties and to the
10 Alaska Court System under these programs, and the qualifications of the neutral parties,
11 including nonlawyers, who will provide dispute resolution services under the program.

12 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
13 and early neutral evaluation.

14 * Sec. 62. APPLICABILITY. This Act applies to all causes of action accruing on or after
15 the effective date of this Act.

16 * Sec. 63. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
17 application of a provision of this Act to any person or circumstance is held invalid, the
18 remainder of this Act and the application to other persons shall not be affected.

19 * Sec. 64. This Act takes effect July 1, 1997.