SCOMM

101A:14

To: Senator Tim Kelly

Fm: Representative Brian Porter,
by Jim Sourant

April 13, 1997

Re: Side by side analysis of HB 58: Senate Finance version v. Senate Rules version.

The Senate Finance Committee version will be referred to as the "Finance version", and the Senate Rules Committee version will be called "Rules version".

Section 1. **Legislative intent.** The Finance version is as stated. The Rules version moves the bill's nonapplicability to the Exxon Valdez case language from the beginning of the intent section to the end of the intent section.

Sections 2-4. Identical and noncontroversial.

Section 5. **Statute of Repose.** A statute of repose prevents causes of action from being brought a certain number of years after the conduct has occurred, since it is almost impossible to defend against claims when so many years have gone by that documents have been destroyed, witnesses have moved, and memories have faded. The Finance version makes it a tough 8 years, while the Rules version gives a significant concession by allowing 10 years.

The Rules version adds a new exclusion to the operation of the statute of repose: "if the facts that would give notice of a potential cause of action are not discoverable in the exercise of reasonable care by the minor or the minor's parent or guardian". This should quell fears that the bill is unfair to minors.

Sections 6-7. Identical and noncontroversial.

Section 8. **Minority statute of limitations.** Both versions make a change to the tolling provisions of the minority statute of limitations. The Finance version only tolls it for injuries or death occurring during a child's first six years of

life. The Rules version tolls it only for injuries (not death) occurring during a child's first eight years of life, thereby giving an extra two years to bring an action for birth injuries. It makes no sense to toll the statute of limitations in the case of death.

Section 9. **Noneconomic damages.** Both versions put a finite cap on noneconomic damages. The Finance version caps noneconomic damages at $300,000 per occurrence, and, in the case of severe injuries, $500,000 per occurrence. The Rules version raises the cap for noneconomic damages to $$500,000 per occurrence, and, for severe injuries, $1,500,000 per occurrence.

In addition to the substantial increase in amounts available for noneconomic damages, the Rules version also allows potentially higher caps where the injured person is very young, and has a longer life expectancy. For the lower cap, the Rules version allows the greater of $10,000 multiplied times the life expectancy of the injured person in years or $$500,000. For the upper cap, the Rules version allows the greater of $30,000 multiplied by the life expectancy of the injured person in years or $1,500,000.

The Rules version has also broadened the higher cap to include claims for "loss of, or loss of functional use of, one or more limbs", as well as for total deafness.

Section 10/11. **Punitive damages**. Both versions include reckless conduct as a basis for punitive damages, using about the same language found in Senator Sean Parnell's amendment. Both versions provide that 50% of punitive damage recoveries go to the State.

The Finance version puts its caps provisions in Section 11. There, caps for punitives, including punitives for unlawful employment practices, is set at the greater of three times compensatory damages or $300,000. Where there has been "Ford pinto" type of conduct, the caps are raised to the greater of four times compensatory damages or $600,000.

The Rules version punitive caps appear in Section 11. The language is mostly taken from the Governor's Task Force recommendation and HB 60, but slightly modified. Here the punitives damage caps are set significantly higher than in the Finance version. It is the greater of three times compensatory damages or $500,000. The same "Ford pinto" language found in the Finance version is used here, but the caps are raised very substantially to the greater of four times compensatory damages or $3,000,000

The Rules version has added new caps on punitive damages in the area of unlawful employment practice. The caps vary on a sliding scale from a low of $50,000 if the employer has less than 15 employees, to a high of $500,000 if the employer has 500 or more employees in this state.

Sections 12, 13, 14,15, and 16 of the Finance version have been deleted in the Rules version. Reducing judgments by the amount of **income taxes** that would have been paid; **periodic payments**; and **collateral benefits** have been

deleted from the Rules version. This is a substantial concession to the trial lawyers.

Sections 17-19 of the Finance version, dealing with the **allocation of fault** and damages, appears in sections 11-13 of the Rules version. Under both versions of this bill, fault cannot be allocated against a person against whom the statute of repose has run. In order to allocate fault under the Rules version, a defendant must join a third person, unless the third person is unavailable. A third person is unavailable if (a) not subject to the jurisdiction of the court, (b) cannot be joined because of statute or rule, or (c) is not reasonably locatable. The rationale is that if a third person is identified as a potentially responsible party, and is available to be joined, but a choice is made not to join that third person, the party which fails to join that person should not be able to allocate fault to the "empty chair" he or she has created by not joining the third person.

Section 20 of the Finance version and Section 14 of the Rules version are identical and noncontroversial.

Section 21 of the Finance version and Section 15 of the Rules version deal with **expert witness qualifications** in professional malpractice cases. They are basically the same, except that the Rules version excludes the requirements where the profession is not licensed in this state.

Section 22 of the Finance version and Section 16 of the Rules version deal with **offers of judgment.** They are almost identical, except that in the Rules version the percentage of attorney fees awarded, depending upon how early the offer was made, was reduced. What was 100% is now 75%; what was 75% is now 50%; and what was 50% is now 30%. The Rules version also provided that where there are multiple defendants, the plus or minus 5% figure to determine if the sanctions kick in was expanded to plus or minus 10%.

Section 23 of the Finance version and Section 17 of the Rules version are also offer of judgment provisions which are identical except for the subsection (c) of the Finance version. That subsection is duplicative of existing rules, and was stricken as surplusage.

Sections 24-27 of the Finance version and Sections 18-21 of the Rules version are identical and noncontroversial.

Section 28 of the Finance version was deleted, since it was only put there because we earlier repealed collateral benefits in medical arbitrations. We have now put back the medical collateral benefits because of the deletion of the other collateral benefits section. Forget this. Consistency change.

Sections 29-34 of the Finance version and Sections 22-27 of the Rules version are identical and noncontroversial.

Section 35 of the Finance version and Section 28 of the Rules version are identical, but controversial to the tort lawyers, since it makes clear that the **half of punitive damages which go to the state** pass free and clear of contingent attorney fees.

Section 36 of the Finance version and Section 29 of the Rules version are identical and so far uncontroversial. It codifies the common law and prevents strict liability being used as a basis of liability against electric utility companies..

Section 37 of the Finance version and Section 30 of the Rules version are similar, in dealing with **emergency room physicians,** except that the Rules version expands the insurance to $500,000 for each incident and $1,500,000 for all incidents in a year.

The Rules version does not have the enhanced notice (four foot by two foot sign) requirements of the Finance version.

The Rules version broadens which physicians may use the emergency room without triggering liability on the part of the hospital. It defines "emergency room physician" as 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.

Section 38 of Finance version and Section 31 of the Rules version deal with barring the **tort claims of one who was committing a felony, or while operating a motor vehicle, aircraft or boat while under the influence of alcohol or drugs.** The Rules version responded to criticisms by tightening up the language to show that there is clear and convincing evidence that the improper activity substantially caused the plaintiff's own injuries. It allows a driver who had two glasses of wine with dinner to sue someone who crossed over the line in a head on collision case.

Section 39 of Finance version and Section 32 of the Rules version relate to **collection of settlement information.** The Rules version, at the initial suggestion of Jeff Feldman and Botelho last week, was expanded to include data from all covered cases, whether settled, tried, disposed of by summary judgment, etc. It requires information from both sides, and not just from plaintiffs. It is an excellent way to get the facts for future legislative actions.

Sections 40-46 of the Finance version and Sections 33-39 of the Rules version are identical and relatively uncontroversial.

Section 40 of the Rules version is **new.** It expedites **Superior Court cases** by requiring that in cases **involving less than $100,000** the parties take only two depositions, and then try the case quickly.

Sections 47-48 of the Finance version and Sections 41-42 of the Rules version are identical and uncontroversial.

Section 49 of the Finance version and Section 43 of the Rules version are similar in assessing **fines against lawyers.** The Rules version raised the amount from $10,000 to **$50,000.**

Sections 50-62 of the Finance version are consistent with the Rules version, and are mostly technical/consistency stuff.

Sections 44, 47-54 of the Rules version are consistent with the Finance version, and are mostly technical/consistency stuff.

Sections 45-46 of the Rules version are new, and incorporate what Charlie Cole and the Task Force wanted: **District Court cases limited to two depositions and then an expedited trial date.**

Section 63 of the Finance version and Section 55 of the Rules version both relate to **Alternative Dispute Resolution.** The Rules version improves it. The Rules version goes further and requires the Alaska Judicial Council to confer with the Alaska Supreme Court and actually present an ADR plan, to be operational by July 1, 1998, complete with proposed rules and statutes, by the time the legislature convenes next year. It is also directed to do so within the existing $19,400 fiscal note.

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Ford
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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

(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.

(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.

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

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (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) and (h) of this section, 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) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or $3,000,000, whichever amount is greater, if

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

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

(h) Notwithstanding any other provision of law, 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 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**

and is

(A) within the jurisdiction of the court;

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

or

(C) reasonably locatable [UNDER AS 09.16.040].

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

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

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

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

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

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, **or intentional** toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise

would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

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

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

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

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

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

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

*** 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 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 50 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 30 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. 17.** AS 09.30.065 is amended by adding a new subsection 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.

*** Sec. 18.** 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. 19.** 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. 20.** 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. 21.** 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. 22.** 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 governmental 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, giving the parties the opportunity to object or make suggestions.

*** Sec. 23.** 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. 24.** 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 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 08.68; 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 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 convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

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

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

(A) the felonious conduct; and

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

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, 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 conduct substantially contributed to the personal injury or death; or

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

(A) the violation of AS 28.35.030; and

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

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

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

(1) the case name and file number;

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

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

(A) the gross dollar amount of the settlement;

(B) to whom the settlement was paid;

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

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

(E) the total costs and attorney fees paid by defending parties; and

(F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an 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;

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

(A) the gross dollar amount of the judgment;

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

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

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

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

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

(G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an 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

shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

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

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

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance 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. 35.** 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. 36.** 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. 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.

* **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

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

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

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

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

*** Sec. 47.** 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. 48.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

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

*** Sec. 50.** AS 09.17.020(j), 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.

*** Sec. 51.** AS 09.17.080(a), as amended by sec. 11 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 among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is potentially responsible for the damages.

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

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

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

*** Sec. 55.** ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil

litigation system in order to promote the timely, inexpensive, and efficient resolution of civil disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the alternative dispute resolution procedure not later than July 1, 1998.

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

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

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

*** Sec. 57.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application of a provision of this Act to any person or circumstance is held invalid, the 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( )

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

(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.

(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.

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

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (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) and (h) of this section, 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) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or $3,000,000, whichever amount is greater, if

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

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

(h) Notwithstanding any other provision of law, 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 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**

and is

(A) within the jurisdiction of the court;

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

or

(C) reasonably locatable [UNDER AS 09.16.040].

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

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

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

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

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

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless**, or intentional** toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise

would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

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

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

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

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

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

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

*** 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 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 50 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 30 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. 17.** AS 09.30.065 is amended by adding a new subsection 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.

*** Sec. 18.** 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**

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 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 50 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 30 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. 17.** AS 09.30.065 is amended by adding a new subsection 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.

*** Sec. 18.** 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**

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. 23.** 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. 24.** 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 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 08.68; 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 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 convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

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

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

(A) the felonious conduct; and

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

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, 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 conduct substantially contributed to the personal injury or death; or

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

(A) the violation of AS 28.35.030; and

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

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

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

(1) the case name and file number;

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

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

(A) the gross dollar amount of the settlement;

(B) to whom the settlement was paid;

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

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

(E) the total costs and attorney fees paid by defending parties; and

(F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an 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;

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

(A) the gross dollar amount of the judgment;

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

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

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

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

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

(G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an 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

shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

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

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

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance 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. 35.** 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. 36.** 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. 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.

* **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

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

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

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

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

*** Sec. 47.** 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. 48.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

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

*** Sec. 50.** AS 09.17.020(j), 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.

*** Sec. 51.** AS 09.17.080(a), as amended by sec. 11 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 among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is potentially responsible for the damages.

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

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

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

*** Sec. 55.** ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil

litigation system in order to promote the timely, inexpensive, and efficient resolution of civil disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the alternative dispute resolution procedure not later than July 1, 1998.

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

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

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

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

0-LS0056\R
Ford
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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

(5) the facts that would give notice of a potential cause of action 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 ~~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 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.

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

(e) Unless that evidence is relevant to another issue in the case, discovery of evidence that is relevant to the amount of punitive damages to be determined under (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) and (h) of this section, 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) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or $3,000,000, whichever amount is greater, if

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

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

(h) Notwithstanding any other provision of law, 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 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 and is

(A) within the jurisdiction of the court;

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

or

(C) reasonably locatable [UNDER AS 09.16.040].

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

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

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

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

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

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, **or intentional** toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an

enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

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

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

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

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

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

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

*** 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 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 50 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 30 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. 17.** AS 09.30.065 is amended by adding a new subsection 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.

*** Sec. 18.** 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. 19.** 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. 20.** 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 wit [LEGAL] interest **as provided under AS 09.30.070** [FROM THE DATE IT BECAME DUE] and without punitive damages.

*** Sec. 21.** 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. 22.** 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 governmental 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, giving the parties the opportunity to object or make suggestions.

*** Sec. 23.** 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. 24.** 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**

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 08.68; 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 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 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 convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

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

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

(A) the felonious conduct; and

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

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, 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 conduct substantially contributed to the personal injury or death; or

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

(A) the violation of AS 28.35.030; and

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

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

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

must include

(1) the case name and file number;

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

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

(A) the gross dollar amount of the settlement;

(B) to whom the settlement was paid;

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

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

(E) the total costs and attorney fees paid by defending parties; and

(F) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an 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;

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

(A) the gross dollar amount of the judgment;

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

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

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

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

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

(G) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement or upon an

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 shall be reported annually to the governor and the judiciary committees of both houses of the legislature.

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

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

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance 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. 35.** 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. 36.** 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. 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.

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

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

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

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

*** Sec. 47.** 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. 48.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

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

*** Sec. 50.** AS 09.17.020(j), 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.

*** Sec. 51.** AS 09.17.080(a), as amended by sec. 11 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 among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is potentially responsible for the damages.

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

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

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

*** Sec. 55. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this

legislation to create a pilot alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive, and efficient resolution of civil disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the alternative dispute resolution procedure not later than July 1, 1998.

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

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

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

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

LEGAL SERVICES

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

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

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

MEMORANDUM April 14, 1997

SUBJECT: Civil actions (SCS CSSSHB 58)

TO: Representative Brian Porter
Attn: Jim

FROM: Michael F. Ford
Legislative Counsel

The draft you requested is enclosed. There are two points I wanted to bring to your attention. First, in sec. 5, under AS 09.10.055(d)(5), the language seems directed to a claimant who is a minor, but the section of course applies to claimants of all ages. This paragraph should probably be changed to limit the provisions to actions involving a person under age 18. Second, the exception to expert witness testimony contained in subsection (b), in sec. 15, should be reviewed. This may be so broad as to preclude expert witness testimony in a manner you do not intend.

Please contact me if you have further questions.

MFF:lmb
97-053.lmb

Enclosure

Mike: ① I did not renumber the numbers, to keep it convenient.
② I have identified most of the changes, but not all — so proof carefully.
Tim

FOP

LS0056\L.a

DRAFT 3: April 12, 1997

SCS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE
Amended:
Offered:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL FOR AN ACT ENTITLED
"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

Need to include check after all else is done

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

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

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

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

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

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

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

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

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

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

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

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

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

(& OR ANY other federal Admiralty ACTION NOW OR IN the Future.

not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D. Alaska); and

~~(12) ensure that this Act does not apply to or in any way have an effect on any maritime or admiralty actions arising under federal law.~~ JAK

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

(c) In an action for personal injury ~~or death~~ of a person who was under the age of eight years at the time of the injury or death, 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 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 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 injured person's body; or

(4) is totally deaf or 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.

~~(e) In subsection (b), "all claims of a person" means claims of a spouse, dependent children, or other dependents of the injured person.~~

* 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~~

AMENDMENT

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

p. 5, ln. 25-27 **Delete all material**

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

three times the amount of compensatory damages awarded or $500,000, whichever amount is greater.

(c) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or $1,500,000, whichever amount is greater, if

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

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

(d) If a 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.

Delete

* 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 $500,000 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 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 United States city average, all urban consumers, all items indices, compiled by the Bureau ~~of Labor Statistics, United States Department of Labor~~.

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

(a) In all actions involving fault of more than one person [PARTY TO THE ACTION], including third-party defendants and persons who have ~~been~~ settled or otherwise 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.~~ so long as any such other responsible person is identified to the plaintiff within 120 days of the service of the complaint. In this paragraph, "other person responsible" does not include a person protected from a civil action under ~~AS 09.10.055 [UNDER AS†09.16.040]~~.

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

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

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

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

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

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, or intentional toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable

assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

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

Sec. 09.20.185. Expert witness qualification. (a) Except as provided under (b) of this section, an action based on professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness

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

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

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

* 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 favorable to the offeree than the offer, or in the case of multiple defendants, ten percent less [NOT MORE] favorable to the offeree than the offer, the

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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 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 50 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 30 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:

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 governmental 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, 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 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. 32. 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. 33. 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. 34. 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. 35. 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. 36. 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. 37. 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 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. 38. AS†09.65.210 is repealed and reenacted to read:

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

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

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

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

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

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

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

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

(4) operating a vehicle, aircraft, or watercraft, and it is proven by the defendant in the civil trial by clear and convincing evidence that the person did so while under the influence of intoxicating liquor or any controlled substance in violation of AS†28.35.030, or was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the conduct substantially contributed to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS†28.35.030 for which the person was not convicted if the defendant by clear and convincing evidence proves the violation of AS 28.35.030 and that the conduct substantially contributed to the personal injury or death.

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

Sec. 09.68.130. Collection of settlement information. (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect from counsel for all parties information relating to the compromise or other ~~settlement~~ resolution of all civil litigation. The information, including the

(1) case name and file number;

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

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

(i) the gross dollar amount of the settlement,

(ii) to whom the settlement was paid,

(iii) the dollar amount of (a) advanced costs and (b) attorney fees that were deducted from the gross dollar amount of the settlement prior to disbursement to the claimant;

(iv) the net amount actually disbursed to the claimant;

(v) the total costs and attorney fees paid by defending parties, and;

(vi) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement (report percentages) or upon an hourly rate (report hourly rates);

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

(i) the gross dollar amount of the judgment;

(ii) the amount of attorney fees awarded, and to which party;

(iii) the amount of costs awarded, and to which party;

(iv) the net amount, after deduction of (ii) and (iii), for which the prevailing party has judgment;

(v) the dollar amount of (a) advanced costs and (b) attorney fees that were deducted from the gross dollar amount of the judgment prior to distribution to the claimant;

(vi) the total costs and attorney fees paid by defending parties, and;

(vii) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement (report percentages) or upon an hourly rate (report hourly rates);

shall be collected on a form developed by the council for that purpose.

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

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

(1) divorce and dissolution;

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

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

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

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

(6) small claims under AS†22.15.040.

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

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

(b) Information described in (a) of this section shall be provided by all insurers doing business in this state in the format specified by the director and

must include factual information stating premiums, claims, losses, expenses, and solvency of the company as a whole. Information shall be compiled by the division in a way that protects the identity of individual insureds.

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

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

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

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

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance 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 there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from AS†09.10.053 [AS 09.10.050], AS†09.50.250 - 09.50.300, or AS†37.25.010.

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

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

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

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

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

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

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

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

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

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

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

(n) Meeting of Parties. Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and 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 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. 48. 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. 49. 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.

New

* Sec. 50. 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. 51. 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. 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. 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 a 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 among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is responsible for the damages.

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

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

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

* Sec. 63. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this legislation to create an alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive, and efficient resolution of civil disputes. It is further the intent of this section than the Alaska Supreme Court implement this alternative dispute resolution procedure no later than July 1, 1998.

New Sec.

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

program that are amenable to alternative dispute resolution, the cost to the parties and to the Alaska Court System under these programs, and the qualifications of the neutral parties, including nonlawyers, who will provide dispute resolution services under the program. The entire task shall be accomplished for no more than the amounts appearing on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

*Sec. 63A. District Court Civil Rule 1(a)(1) is amended to read:

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

*Sec. 63B. District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all all parties to the case. The memorandum shall contain a certification that each party has exchanged the information described in Civil Rule 26(a) and may state their separate positions if they do not agree concerning information or estimates to be provided in the memorandum. After the court satisfies itself that the information described in Rule 26(a) has been disclosed, it shall set the case for trial as soon as practicable but no less than 30 days thereafter.

*Sec. 63C. Civil Rule 26 is amended by adding a new subsection to read:

(g) **Limited Discovery; ~~Expedited and~~ Expedited Calendaring.** In cases involving less that $100,000 in claims, or less than $100,000 in counterclaims, the parties may agree, by written stipulation filed with the court, to limit discovery to that allowed under District Court Rule 1(a)(1), and to avail themselves of the expedited calendaring procedures allowed under District Court Rule 4.

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

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

0-LS0056\L.a

AMENDMENT - 6

Rules Committee Substitute

BY THE SENATE RULES COMMITTEE

TO: CSSSHB 58(FIN) am

SENATOR KELLY

Page 19, following line 6:

Insert a new bill section to read:

"* **Sec. 40.** AS 18.80 is amended by adding a new section to read:

Sec. 18.80.225. Punitive damages for unlawful employment practices. (a) Notwithstanding any other provision of law, 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) $10,000 if the employer has fewer than 15 employees in this state;

(2) $50,000 if the employer has 15 or more employees but fewer than 100 employees in this state;

(3) $100,000 if the employer has 100 or more employees but fewer than 200 employees in this state;

(4) $200,000 if the employer has 200 or more employees but fewer than 500 employees in this state;

(5) $300,000 if the employer has 500 or more employees in this state.

(b) This section may not be construed to allow an award of punitive damages against the state or a party immune under another provision of law.

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

Renumber the following bill sections accordingly.

Mike: ① I did not renumber the Numbers, to keep it convenient.
② I have identified most of the changes, but not all — so proof carefully.
Tim

LS0056\L.a

FOR 2

DRAFT 3: April 12, 1997

SCS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE
Amended:
Offered:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL FOR AN ACT ENTITLED
"An Act relating to civil actions; relating to independent counsel provided under an insurance policy; relating to attorney fees; amending Rules 16.1, 41, 49, 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rule 702, Alaska Rules of Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

Need to include Check AHFC

All else is done

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

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

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

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

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

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

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

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

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

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

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

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

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

< OR ANY other federal Admiralty ACTION NOW OR IN the Future.

not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D. Alaska); and

~~(12) ensure that this Act does not apply to or in any way have an effect on any maritime or admiralty actions arising under federal law.~~

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

(5) ~~(3)~~

(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 eight years at the time of the injury ~~or death~~, 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 ~~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 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 injured person's body; or

(4) is totally deaf or 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.

~~(e) In subsection (b), "all claims of a person" means claims of a spouse, dependent children, or other dependents of the injured person.~~

* 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~~

AMENDMENT

OFFERED IN THE SENATE BY SENATOR PARNELL
TO: CSSSHB 58(FIN) am

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

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

three times the amount of compensatory damages awarded or $500,000, whichever amount is greater.

(c) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or $1,500,000, whichever amount is greater, if

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

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

(d) If a 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.

Delete

* 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 $500,000 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 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 United States city average, all urban consumers, all items indices, compiled by the Bureau of Labor Statistics, United States Department of Labor.

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

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

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

(2) the percentage of the total fault [OF ALL OF THE PARTIES TO EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant, [AND] person who has been released from liability, or other person responsible for the damages to each claimant, ~~regardless of whether the other person, including an employer, is or could have been named as a party to the action, so long as any such other responsible person is identified to the plaintiff within 120 days of the service of the complaint~~. In this paragraph, ~~"other person responsible"~~ does not include a person protected from a civil action under AS 09.10.055 [UNDER AS†09.16.040].

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

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

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

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

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

Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions that are in any measure negligent, [OR] reckless, or intentional toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable

assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

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

Sec. 09.20.185. Expert witness qualification. (a) Except as provided under (b) of this section, an action based on professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness

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

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

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

* 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 favorable to the offeree than the offer, or in the case of multiple defendants, ten percent less [NOT MORE] favorable to the offeree than the offer, the

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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 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 50 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 30 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:

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 governmental 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, 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 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. 32. 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. 33. 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. 34. 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. 35. 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. 36. 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. 37. 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.

does not have an ongoing physician – patient relationship with the emergency room patient, and who ~~provides~~

(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 provides [redacted] 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.

use 2 next sheets as a guide

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

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

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

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

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

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

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

Refer to HBCC58e.

Section 38: (Damages From Commission of Felony)

Page 17, line 24 after "the" insert:

"defendant proves by clear and convincing evidence the"

Page 17, line 27 after "the" delete:

The remainder of line 27 and lines 28-30.

Insert:

"defendant proves by clear and convincing evidence

(A) the felonious conduct; and

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

Page 18, line 3 after "the" delete:

The remainder of line 3 and lines 4-7.

Insert:

"defendant proves by clear and convincing evidence

(A) the felonious conduct; and

(B) conduct during the flight or apprehension substantially contributed to the injury or death;"

Page 18, line 11 after "the" insert:

"defendant proves by clear and convincing evidence the"

Page 18, line 13 after "if" delete:

The remainder of line 13 and lines 14 and 15.

Insert:

"the defendant proves by clear and convincing evidence

(A) the violation of AS 28.35.030; and

(B) the conduct substantially contributed to the personal injury or death"

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

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

(4) operating a vehicle, aircraft, or watercraft, and it is proven by the defendant in the civil trial by clear and convincing evidence that the person did so while under the influence of intoxicating liquor or any controlled substance in violation of AS†28.35.030, or was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the conduct substantially ~~contri~~buted to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS†28.35.030 for which the person was not convicted if the defendant by clear and convincing evidence proves the violation of AS 28.35.030 and that the conduct substantially contributed to the personal injury or death.

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

Sec. 09.68.130. Collection of settlement information. (a) Except as provided in (c) of this section, the Alaska Judicial Council shall collect from counsel for all parties information relating to the compromise or other ~~settlement~~ Resolution of all civil litigation. The information, including the

(1) case name and file number;

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

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

(i) the gross dollar amount of the settlement,

(ii) to whom the settlement was paid,

(iii) the dollar amount of (a) advanced costs and (b) attorney fees that were deducted from the gross dollar amount of the settlement prior to disbursement to the claimant;

(iv) the net amount actually disbursed to the claimant;

(v) the total costs and attorney fees paid by defending parties, and;

(vi) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement (report percentages) or upon an hourly rate (report hourly rates);

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

(i) the gross dollar amount of the judgment;

(ii) the amount of attorney fees awarded, and to which party;

(iii) the amount of costs awarded, and to which party;

(iv) the net amount, after deduction of (ii) and (iii), for which the prevailing party has judgment;

(v) the dollar amount of (a) advanced costs and (b) attorney fees that were deducted from the gross dollar amount of the judgment prior to distribution to the claimant;

(vi) the total costs and attorney fees paid by defending parties, and;

(vii) any nonmonetary terms, including whether the attorney fees incurred by the claimant were based on a contingent fee agreement (report percentages) or upon an hourly rate (report hourly rates);

shall be collected on a form developed by the council for that purpose.

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

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

(1) divorce and dissolution;

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

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

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

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

(6) small claims under AS†22.15.040.

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

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

(b) Information described in (a) of this section shall be provided by all insurers doing business in this state in the format specified by the director and

must include factual information stating premiums, claims, losses, expenses, and solvency of the company as a whole. Information shall be compiled by the division in a way that protects the identity of individual insureds.

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

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

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

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

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance 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 there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from AS†09.10.053 [AS 09.10.050], AS†09.50.250 - 09.50.300, or AS†37.25.010.

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

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

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

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

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

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

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

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

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

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

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

(n) Meeting of Parties. Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and 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 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. 48. 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. 49. 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.

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* Sec. 50. 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. 51. 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. 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. 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 a 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 among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is responsible for the damages.

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

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

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

* Sec. 63. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this legislation to create an alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive, and efficient resolution of civil disputes. It is further the intent of this section than the Alaska Supreme Court implement this alternative dispute resolution procedure no later than July 1, 1998.

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

program that are amenable to alternative dispute resolution, the cost to the parties and to the Alaska Court System under these programs, and the qualifications of the neutral parties, including nonlawyers, who will provide dispute resolution services under the program. The ~~entire task~~ shall be accomplished for no more than the amounts appearing on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

*Sec. 63A. District Court Civil Rule 1(a)(1) is amended to read:

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

*Sec. 63B. District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all all parties to the case. The memorandum shall contain a certification that each party has exchanged the information described in Civil Rule 26(a) and may state their separate positions if they do not agree concerning information or estimates to be provided in the memorandum. After the court satisfies itself that the information described in Rule 26(a) has been disclosed, it shall set the case for trial as soon as practicable but no less than 30 days thereafter.

*Sec. 63C. Civil Rule 26 is amended by adding a new subsection to read:

(g) **Limited Discovery; ~~Expedited and~~ Expedited Calendaring.** In cases involving less that $100,000 in claims, or less than $100,000 in counterclaims, ~~the parties may agree, by written stipulation filed with the court, to~~ limit discovery to that allowed under District Court Rule 1(a)(1), and ~~to~~ avail themselves of the expedited calendaring procedures allowed under District Court Rule 4.

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

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

0-LS0056\L.a

S 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b) This section does not apply if~~

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

~~(A) prolonged exposure to hazardous waste;~~

~~(B) an intentional act or gross negligence;~~

~~(C) fraud or fraudulent misrepresentation;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) is totally blind.

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

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

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

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

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

is greater.

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

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

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

(d) If a 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. 12.** AS 09.17.040(a) is amended to read:

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

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

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

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

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

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

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

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

*** 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

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 United States city average, all urban consumers, all items indices, compiled by the Bureau of Labor Statistics, United States Department of Labor**.

*** Sec. 16.** 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. 17.** AS 09.17.080(a) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is re. 'ered 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 governmental 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,

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 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. 32.** 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. 33.** 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. 34.** 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. 35.** 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. 36.** 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. 37.** 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.

(d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) divorce and dissolution;

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

New Text Underlined [DELETED TEXT BRACKETED]

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

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

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

(6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 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. 48.** 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. 49.** 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. 50.** 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. 51.** 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. 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 a 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 among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is responsible for the damages.

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

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

prior offers.

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

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

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

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

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

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