

HB

58

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

Senate Rules Committee 3/15/97 8:08 am

FISCAL NOTE

No. 6
 Bill Version: SCS CSSHB 58 (FIN)
 (S) Publish Date: 4-14-97

STATE OF ALASKA
 1997 LEGISLATIVE SESSION

Revision Date: _____
 Title: "An Act relating to civil actions; independent counsel provided under an insurance policy; amending Rules 16.1, 41, 49, 58, 68, and _____"
 Sponsor: Representatives Porter, Cowdery, Bunde
 Requestor: Senate Finance

Department Affected: Administration
 BRU: Risk Management
 Component: Risk Management
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

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

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability exposure and the amount Risk Management will ultimately pay in future liability loss settlements and allocated loss adjustment expense (defense costs) will be reduced by this legislation.

The extent of such savings is difficult to forecast, due to the uncertainty that the limitations in the type of claims that may be filed or the amounts of damages that can be awarded will be realized in future liability claims filed against State agencies.

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

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

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

Prepared by: J. Brad Thompson, Director Phone: 465-5723
 Division: Risk Management Date: _____

Approved by Commissioner: Mark Boyer Date: 4/8/97
 Agency: Department of Administration

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Mary Pagenkopf

Senate Rules Committee 4/15/97 8:08 a.m.

Alaska State Legislature



Official Business

House Majority Leader

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

MEMORANDUM

DATE: April 18, 1997
TO: Senator Tim Kelly
FROM: Representative Brian Porter *Brian*
House Majority Leader
SUBJECT: HB 58 Tort Reform

Please accept my sincere thanks for your support and vote on HB 58. To say that this area of the law is contentious is the understatement of the session.

As I write this (6:30 PM) Thursday. I do not have a sense of what the 3rd Floor is doing with the "agreement proposal". Will know on Friday.

Again, thanks. The long road is almost at the end.

Cordova District Fishermen United

Celebrating 62 Years of Service to Commercial Fishermen in Cordova, Alaska
P.O. Box 939 Cordova, Alaska 99574 / Telephone (907) 424-3447 / Fax (907) 424-3430

April 15, 1997

Written testimony submitted re: Differences between Senate Finance and Senate Rules Committee amendments to HB 58 (Tort Reform)

Sent via facsimile to Senate Rules Committee

Good afternoon. Chairmen and committee members, my name is Cheri Shaw. I hold the position of executive director for Cordova District Fishermen United (CDFU) and occupy the chairmanship of the tort reform committee for United Fishermen of Alaska (UFA). I am testifying on behalf of both organizations today.

I will begin by saying that UFA and CDFU appreciate the efforts by the legislature to accommodate the concerns of the commercial fishing industry. With this said, we would also like to voice the industry's opposition to House Bill 58 as written and amended.

UFA and CDFU agree that the legislative intent amendment is still not sufficient in upholding the Exxon Valdez litigation decision as it reads regardless if it is included in the beginning of Section 1 or the end. One suggestion would be to change the wording in Section 1 to read:

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

Our professional interpretation of this amendment is that even with the word federal deleted and action changed to claim, this section will be debatable in a court of law. We strongly suggest once again that a blanket exemption be included in cases where there is damage to natural resources and/or ecosystem disruptions.

UFA and CDFU also vehemently oppose the punitive damage portion of HB 58. Section 10. AS 09.17.020 reads as follows:

(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 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.....

Our interpretation is that this section would not apply in any admiralty case. And is the operative word objected to in this section.

Punitive damages are a deterrent to illegal, malicious and/or reckless behavior. To cap punitive awards at three times the amount of compensatory damages or \$500,000 (Senate Rules Committee amended bill), when dealing with a corporation whose net profits for one year is \$7 billion (1996 Exxon Corporation net profits) is ludicrous. A corporation that large will absorb a capped award as a cost of doing business. Does

SENATE FINANCE VERSION
VS. ADOPTED & AMEND.
RULES C.S.
(0-LS0056/C)

COMPARISON

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58</u> <u>(WORK DRAFT Z AS AMENDED)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 1.</u> <u>INTENT</u>	Same.	Same.
<u>SECTION 2.</u> <u>LIQUIDATION OF A STATE</u> <u>BANK</u>	Same.	Same.
<u>SECTION 3.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 4.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 5.</u> <u>STATUTE OF REPOSE</u>	* Increased to 10 years. * Excepts from the statute of repose the situation where the facts which would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.	*8 years.
<u>SECTION 6.</u> <u>STATUTE OF</u> <u>LIMITATIONS FOR TORT</u> <u>AND OTHER CLAIMS</u>	Same.	Same.
<u>SECTION 7.</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.
<u>SECTION 8.</u> <u>ADDITION TO</u> <u>DISABILITY OF</u> <u>MINORITY</u>	* 8 years	* 6 years.

<p><u>VERSION Z</u> <u>SECTION NUMBER</u></p>	<p>SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)</p>	<p>SENATE CS FOR CS FOR SS FOR HB 58(FIN)</p>
<p><u>SECTION 9.</u> <u>NON-ECONOMIC</u> <u>DAMAGES</u></p>	<p>* Lower limit increases to \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater.</p> <p>* Upper limit increases to \$1.5 million or the person's life expectancy multiplied by \$30,000, whichever is greater.</p> <p>* Provides that these limits are the maximum amount that can be recovered for all claims arising out of a single injury.</p>	<p>*Lower limit of \$300,000.</p> <p>*Upper limit of \$500,000.</p>

<p><u>VERSION Z</u> <u>SECTION NUMBER</u></p>	<p>SENATE CS FOR CS FOR SS FOR HB 58 (WORK DRAFT Z AS AMENDED)</p>	<p>SENATE CS FOR CS FOR SS FOR IIB 58(FIN)</p>
<p><u>SECTION 10.</u> <u>PUNITIVE DAMAGES</u></p>	<p>*Adopts the Task Force recommendations for subsections a through e.</p> <p>*Retains the three times compensatory damage limit contained in the Senate Finance CS, but increases that limit to a maximum of \$500,000.</p> <p>* Increases the secondary limit to four times compensatory or \$3 million, whichever is greater.</p> <p>*Adds additional limits for punitive damages against an employer for violation of an unlawful employment practices prohibited by AS 18.80.220.</p> <p>*Limits are \$50,000 if the employer has less than fifteen employces; \$100,000 if fifteen or more but less than one hundred employces, \$300,000 if one hundred or more but less than two hundred employces; \$400,000 if 200 or more but less than five hundred employces; \$500,000 if more than 500 employces.</p>	<p>*Limit for most cases is three times compensatory damages or \$300,000, whichever is greater.</p> <p>*Secondary limit is four times compensatory damages or \$600,000, whichever is greater.</p>
	<p>Deleted.</p>	<p>Section 12. (Income taxes)</p>
	<p>Deleted.</p>	<p>Sections 13-15 (Periodic payments)</p>
	<p>Deleted.</p>	<p>Section 16 (Collateral benefits)</p>

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58</u> <u>(WORK DRAFT Z AS AMENDED)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 11.</u> <u>ALLOCATION OF FAULT</u>	*Requires the person to be joined in order to allocate fault unless the person is not within the jurisdiction of the court, or is precluded from being joined by law or court rules or is cannot be reasonably located.	*Appears as section 17 in the Senate Finance CS. *Provides that fault would be allocated to all persons, regardless of whether they are joined as a party unless they cannot be sued because of the statute of repose.
<u>SECTION 12.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 18 in Senate Finance CS.
<u>SECTION 13.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 19 of Senate Finance CS.
<u>SECTION 14.</u> <u>INTENTIONAL CONDUCT</u>	No change.	*Appears as section 20 of Senate Finance CS.
<u>SECTION 15.</u> <u>EXPERT WITNESS</u> <u>QUALIFICATION</u>	*Substantially the same as section 21 of Senate Finance CS.	*Appears as section 21 of Senate Finance CS.
<u>SECTION 16.</u> <u>OFFERS OF JUDGMENT</u>	* Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer. * Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made.	*Appears as section 22 in Senate Finance CS.
<u>SECTION 17.</u> <u>OFFERS OF JUDGMENT</u>	Same.	* Appears as section 23 of Senate Finance CS

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58</u> <u>(WORK DRAFT Z AS AMENDED)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 18.</u> <u>PREJUDGMENT</u> <u>INTEREST</u>	Same.	* Appears as section 24 of Senate Finance CS.
<u>SECTION 19.</u> <u>PREJUDGMENT</u> <u>INTEREST ON FUTURE</u> <u>DAMAGES</u>	Same.	* Appears as Senate Finance CS Section 25.
<u>SECTION 20.</u> <u>JUDGMENT FOR</u> <u>PLAINTIFF</u>	Same.	* Appears as section 26 of Senate Finance CS.
<u>SECTION 21.</u> <u>CONDEMNATION</u>	Same.	* Appears as section 27 of Senate Finance CS.
<u>SECTIONS 22 - 29.</u>	Same.	* Appears as sections 29-36 of Senate Finance CS.
<u>SECTION 30.</u> <u>CIVIL LIABILITY OF</u> <u>HOSPITALS</u>	<p>* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year."</p> <p>* Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.</p>	* Appears as section 37 in Senate Finance CS.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR HB 58</u> <u>(WORK DRAFT Z AS AMENDED)</u>	<u>SENATE CS FOR CS FOR SS FOR HB 58(FIN)</u>
<u>SECTION 31.</u> <u>DAMAGES FROM</u> <u>COMMISSION OF FELONY</u>	* Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death.	* Appears as section 38 in Senate Finance CS.
<u>SECTION 32.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	* Adds collection of attorney fees and costs information.	* Appears as section 39 in the Senate Finance CS.
<u>SECTION 33.</u> <u>INSURANCE REPORT</u>	Same.	* Appears as section 40 of Senate Finance CS.
<u>SECTIONS 34-39.</u>	Same.	* Appears as sections 41- 46.
<u>SECTION 40 (NEW)</u> <u>LIMITED DISCOVERY</u>	* Provides for limited discovery in personal injury or property damage claims of less than \$100,000.	* Not present.
<u>SECTION 41.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Includes attorney fee information.	* Appears as section 47 of Senate Finance CS.
<u>SECTION 42.</u> <u>DISCOVERY IN MEDICAL</u> <u>MALPRACTICE</u>	Same.	* Appears as section 48 of Senate Finance CS.
<u>SECTION 43.</u> <u>RULE 95</u>	*Increases sanctions to \$50,000.	* Appears as section 49 of Senate Finance CS. * Sanctions remain \$1,000.
<u>SECTION 44</u> <u>TRUTH PROVISION</u>	*Limited to Personal Injury and Property Damage cases.	* Appears as section 50 of Senate Finance CS. * Unlimited.
<u>SECTION 45-46.</u> <u>DISTRICT COURT</u> <u>PROCEDURES</u>	*Provides for expedited procedure in certain cases.	*Not present.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58</u> <u>(WORK DRAFT Z AS AMENDED)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 47</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Same as section 51 of Senate Finance CS, except that it includes attorney fee information.	* Appears as section 51 of Senate Finance CS.
<u>SECTION 48-54</u> <u>RULES CHANGES</u>	*Substantially the same.	*Appears as section 52-62 Repealers of Senate Finance CS.
<u>SECTION 55</u> <u>ALTERNATIVE DISPUTE</u> <u>RESOLUTION</u>	*Substantially the same.	*Appears as section 63 of Senate Finance CS.
<u>SECTION 56.</u>	Same.	*Appears as section 64 of Senate Finance CS.
<u>SECTION 57.</u>	Same.	*Appears as section 65 of Senate Finance CS.

DRAFT #2: SUBJECT TO REVIEW AND REVISION

April 16, 1997

Sectional Summary
of
SENATE CS FOR CS FOR SS FOR HB 58 ()

→ for RLS C.S.
(adopted and
amended version
(O-LS0056/C)

An Act Relating to Civil Actions

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

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

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

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

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

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

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to ten, although the ten years may be waived by contract. The national average among the many states which have a statute of repose is 6 years.

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

In medical malpractice cases involving children, the statute of repose does not apply if the facts that would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

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

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

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

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

Section 8. Disabilities of minority and incompetency. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of eight years at the time of the injury, until the minor's eighth birthday. This means the minor may bring an action for birth trauma injuries, or other injuries sustained before the age of eight, anytime before the minor's tenth birthday. This is consistent with the operation of the statute of repose.

Section 9. Noneconomic damages. This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places caps on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought. Under existing

law, there are no caps on noneconomic damages for "disfigurement or severe physical impairment."

This section leaves intact the existing recovery cap of \$500,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage. However, it now takes into consideration injuries to children and young adults by allowing the greater of \$500,000 or the injured person's life expectancy in years multiplied by \$10,000. These caps are per occurrence, and not per claimant.

In more serious cases, such as loss of, or loss of functional use of one or more limbs, or permanent brain damage, or third degree burns over one-half or more of the claimant's body, or total deafness or total blindness, the recovery cap is substantially raised from previous versions of the bill to \$1,500,000. Again, in the case of injuries to children or young adults, the cap now is the greater of \$1,500,000 or the injured person's life expectancy in years multiplied by \$30,000. These caps are per occurrence, and not per claimant.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts, including reckless conduct. Under existing law, there are no quantifiable caps on punitive damages.

Subsections (a) through (f) are substantially identical to the language recommended by the Governor's task force.

Subsection (f) generally imposes a cap on punitive damages of the greater of three times compensatory damages or \$500,000.

Subsection (g) places a higher cap on punitive damages in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be the greater of four times compensatory damages or \$3,000,000.

Subsection (h) caps punitive damages in unlawful employment practice cases. It is generally taken from SB 15, except that it takes into consideration small businesses in this state. The amount of the caps varies in five categories, depending upon the number of employees in the state. Where employers have fewer than 15 employees, the punitive damage is capped at \$50,000. Where employers have 500 or more employees, the punitive damage cap is \$500,000.

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

Section 11. Apportionment of damages.

Under present law, fault can be allocated only to parties who are present in the lawsuit. This section would allow allocation of fault to a person who is not a party to the action, if the person has been identified as a potentially responsible person, but (a) the person is outside the jurisdiction of the court; or, (b) the person is precluded from being joined by law or court rule; or (c) is a person who is not reasonably locatable. The rationale is that if a person is identified as a potentially responsible party, and is available to be joined, but the defendant chose not to, it would be unfair to the defendant to allocate fault to an "empty chair" he or she has created by not joining that person. Under this section, fault cannot be allocated to a person who cannot be joined because of the statute of repose.

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

Section 12. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

Section 13. Apportionment of damages; worker's compensation lien. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

Section 14. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 15. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

This section does not apply if the state has not recognized a board that has certified the witness in the particular field or matter in issue.

Section 16. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer (or at least 10% less favorable if there are multiple defendants), whether the offer is tendered by the party making the claim, or the party defending against the claim.

The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees imposed, based on how soon after the commencement of the action the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 75% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 17. Offers of judgment. This subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

Section 18. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the Alaska usury statute, AS 45.45.010(b).

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

Section 19. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 20. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 19 interest rate to judgments against the State of Alaska.

Section 21. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 19.

Section 22. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 23. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 24. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 25. Expert advisory panel; public sector provider. This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 26. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 27. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 28. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery.

Section 29. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 30. Civil liability of hospitals for certain physicians. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room independent contractor physicians. Current law allows a claimant to sue only the hospital rather than the emergency room physician who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident, and \$1,500,000 for all incidents in a year.

Section 31. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

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

conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section requires clear and convincing evidence that the claimant's conduct substantially contributed to the personal injury or death.

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

Section 32. Collection of settlement information. This approach of this section is generally taken from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle, or otherwise dispose of cases, to file information about the settlements or judgments, including the amounts received by the attorneys on both sides. This data will be essential in assessing the efficiency of the civil justice system in the future.

Section 33. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 34. Appointment of independent counsel; conflicts of interest.

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

Section 35. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 36. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 19 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 37. Claims against the state for medical claims. This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 38. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 39. Alaska Rule of Civil Procedure 16.1(n). This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 40. Limited Discovery; Expedited Calendaring. This section applies the District Court streamlined provisions found in sections 45 and 46 of this bill to Superior Court personal injury and property damage cases involving \$100,000 in claims or less.

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

Section 42. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 43. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$50,000 against attorneys, increased from \$1,000 under the existing rule.

Section 44. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 45. District Court; Deposition limitation. This section requires that in District Court personal injury and property damage cases depositions be limited to two for each side, unless the parties otherwise agree, or the court for good cause otherwise directs.

Section 46. District Court; Expedited Trials. This section requires that in District Court personal injury and property damage cases, all parties must file

a memorandum to set the case for trial within six months after service of the complaint, and that the court shall set the case for trial "as soon as practicable" after confirming that all parties have exchanged the discovery materials required by Rule 26(a).

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 48. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 39.

Sections 49-54. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 55. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. It is further directed to work with the Alaska Supreme Court to prepare proposed rules and statutes to implement such a program, and submit the proposal in time for the second term of this 20th Legislature. The intent is to have an alternative dispute resolution program in effect by July 1, 1998.

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

Section 56. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 57. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Alaska State Legislature



Official Business

House Majority Leader

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

MEMORANDUM

DATE: April 16, 1997

TO: Senator Tim Kelly
Senate Rules Chairman

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

SUBJECT: HB 58 Proposed Resolution Package

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

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

FELDMAN - HOLMES AGREEMENT

HB 58 PROPOSED RESOLUTION PACKAGE

Section	Topic	Comment
1	Purpose	Will need cleaning up after the final content of the bill is determined [See Sections 3, 5, 6, 7, and 9]
2	Bank Interest rate	OK
3	6 yr S/Limitations	OK
4	3 yr S/Limitations	OK
5	S/Repose	11 years Add "grossly negligent" to (a)(1) to keep parallel with exclusions in (b)(1)(B) Add minority/juvenile tolling exclusion to (c) Change "prolonged exposure to hazardous waste" to "exposure to hazardous substance" in (b)(1)(A) Insert "reckless act" in (b)(1)(B) Change "fraudulent misrepresentation" to "misrepresentation" in (b)(1)(C)
6	2 yr S/Limitations	OK
7	Juvenile Tolling	Delete; unnecessary if Section 8 is deleted

8	Juvenile Tolling	Statute of limitations on juvenile claims is 10 years from the date the parent or guardian reasonably knew or should have known of all of the elements of the juvenile's claim, including, but not limited to, the extent of the injury and damages sustained, or until the age of 18, whichever occurs first.
9	Non-economic Damages	<p>Retain existing cap at \$500K for non-serious injuries.</p> <p>Modify language in Task-Force Bill, setting threshold for exceeding cap as "serious, permanent physical impairment or serious disfigurement"</p> <p>Impose new cap for serious injuries as the greater of:</p> <ul style="list-style-type: none"> (a) \$1.5M, or (b) Three-times the total of special damages (defined as past and future economic losses, medical expenses, etc.), or (c) \$75K times the number of years of projected life expectancy
10	Punitives Damages Standard	Delete; restore Supreme Court standard for punitives.
11	Punitive Damages	<p>Retain Task Force approach; provision in subsection (g)(2) applies only if average net income exceeds \$1M/per year</p> <p>Add allocation of punitives to State provision:</p> <ul style="list-style-type: none"> Recovery less than \$1M, 0% to State Recovery of amounts over \$1M, but less than \$5M, 20% to State Recovery of amounts over \$5M, but less than \$10M, 30% to State Recovery of amounts over \$10M, 40% to State

All amounts to State, after payment of all costs and fees incurred in connection with securing the award

The schedule applies to the amount of punitive damages recovered by each individual litigant, not the aggregate of all amounts awarded to all litigants in a case

12	Taxes	Delete
13	Periodic Pmts	Delete
14	Periodic Pmt::	Delete
15	Periodic Pmts	Delete
16	Collateral Benefits	Delete
17	Allocation of fault	New Proposal: <ul style="list-style-type: none">(a) Fault can be allocated to a person or entity the court dismisses from the action for lack of jurisdiction.(b) Exceptions: "Non-party" fault can not be allocated to either the U.S. Government (or any agency, affiliate, representative, or instrumentality of the U.S. Government) or to any component part manufacturer in a products case.(c) Third-parties must be identified within 180 days from service of complaint.(d) Statute of limitations extended for 6 months from date of service of complaint to allow defendant time to name third-parties; plaintiff shall be entitled to judgment against any third-parties named and found liable in accordance

with their allocated portion of fault.

18	Allocation of fault	<u>See</u> Section 17 above
19	Allocation of fault	<u>See</u> section 17 above
20	Allocation of Fault To Intentional Tortfeasor	Limited to claims arising after the effective date of the act.
21	Expert witness	Delete; Substitute: Any physician testifying in a civil or criminal action or rendering any medical services within the State of Alaska, including performing Independent Medical Examinations, shall be subject to the provisions of AS 08.64.010 et seq.
22	O/J	Delete
23	O/J	Delete
24	Interest Rate	OK [check w/Mike Burns]
25	Interest on Future Damages	OK [confirm existing law]
26	Interest state	OK
27	Interest rate	OK
28	Arbitration	OK

29	Govt health care	OK
30	Med Adv Panel	OK
31	Med Adv Panel	OK
32	Med Adv Panel	OK
33	Health Care Prof Defined	OK
34	Prof Negligence Defined	OK [probably, but need to confirm effect]
35	Contingent Fee on Punitives	Delete
36	Electric Utilities	OK
37	Jackson/Powers	Increase insurance requirement to \$1M/\$2M
		Applies to all physicians, other than those expressly selected by the patient or serving at the patient's express request for a particular/specific physician.
38	Felony/alcohol	OK
39	Settlement Info	OK; but both Roger and Jeff believe that collection of data on attorneys fees is likely to be burdensome and unhelpful (since plaintiffs' fees can be discerned from the amounts of judgments, which already will be reported to the Judicial Council under other provisions of this section).
		Whatever information is collected, this section should

be narrowed and applied to personal injury and wrongful death cases.

If attorneys fee information is collected, change fees paid to fees charged/billed

40	Insurance info	OK
41	Independent Counsel	OK
42	Indep counsel	OK
43	Adjustment of Workers' Comp Lien	Delete
44	6 month notice	OK
45	Trial setting	OK
46	Meeting of parties	OK
47	Settlement Info	OK; but see Section 39 notes
48	Discovery in Med cases	OK
49	Sanctions	Increase to \$50,000
50	Material Misstatements	Delete
51	Settlement	

51	Settlement Info	OK; see section 39
62-62	Rule clean ups	OK (need to be checked)
63	ADR	OK
64-65	Applic/Saverab	OK (check applicability of intentional tortfeasor issue - see Section 20)
—	Exxon Valdez Non- Applicability	New language added Fri night in Senate Finance to attempt to preclude any effect on the Exxon Valdez verdict or federal admiralty cases
—	District Court Procedures	Incorporate compromise by which Task Force recommendations on changes in procedures are included, but jurisdictional limit stays the same.

4/13/97
Proposed
Adoption
[Signature]

Draft
 April 13 @ 12:15AM

STATE OF ALASKA, DEPARTMENT OF LAW
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5190

FAX COVER SHEET

To: Attorney General Bruce M. Botelho
(907) 465-2075

From: Assistant Attorney General Gail T. Voigtlander

Date: April 13, 1997

No. of Pages: 8

Message: See attached signed version of resolutions
agreement

0-LS0056Z
Ford/Utermohle
4/14/97

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) This section does not apply if

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

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

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

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

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

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

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

22 (a) Except as otherwise provided by law, a [A] person may not bring an
 23 action (1) for libel, slander, assault, battery, seduction, or false imprisonment; (2)
 24 [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights
 25 of another not arising on contract and not specifically provided otherwise; (3) for
 26 taking, detaining, or injuring personal property, including an action for its
 27 specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or
 28 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless
 29 the action is commenced within two years of the accrual of the cause of action.

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

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

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

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

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

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

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

18 (b) Except as provided under (c) of this section, the damages awarded by a
19 court or a jury under (a) of this section for all claims, including a loss of consortium
20 claim, arising out of a single injury or death may not exceed \$500,000 or the injured
21 person's life expectancy in years multiplied by \$10,000, whichever is greater.

22 (c) In an action for personal injury, the damages awarded by a court or jury
23 that are described under (b) of this section may not exceed \$1,500,000 or the person's
24 life expectancy in years multiplied by \$30,000, whichever is greater, when the injured
25 person, as a result of the injury,

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

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

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

30 or

31 (4) is totally blind or totally deaf.

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

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

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

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

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

13 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and is

2 (A) within the jurisdiction of the court:

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

4 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 allowed under the Alaska Rules of Civil Procedure and shall pay reasonable
2 actual attorney fees incurred by the offeror from the date the offer was made.
3 [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE
4 DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

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

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

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

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

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

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

30 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
31 and decrees for the payment of money, including prejudgment interest, is three

1 percentage points above the 12th Federal Reserve District discount rate in effect
2 on January 2 of the year in which the judgment or decree is entered [10.5
3 PERCENT A YEAR], except that a judgment or decree founded on a contract in
4 writing, providing for the payment of interest until paid at a specified rate not
5 exceeding the legal rate of interest for that type of contract, bears interest at the rate
6 specified in the contract if the interest rate is set out in the judgment or decree.

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

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

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

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

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

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

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

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

1 advisory panel unless the court decides that an expert advisory opinion is not necessary
2 for a decision in the case. When the action is filed, the court shall, by order,
3 determine the professions or specialties to be represented on the expert advisory panel,
4 giving the parties the opportunity to object or make suggestions.

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

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

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

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

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

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

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

23 (6) What specifically caused the medical injury?

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

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

28 * Sec. 24. AS 09 55.536(f) is amended to read:

29 (f) Discovery may not be undertaken in a case until the report of the expert
30 advisory panel is received or 60 days after selection of the panel, whichever occurs
31 first. However, the court may relax this prohibition upon a showing of good cause by

1 any party. If the panel has not completed its report within the 30-day period
2 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
3 an additional 30 days.

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

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

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

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

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

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

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

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

1 contractors and are not employees of the hospital:

2 (List specific emergency room physicians)

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

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

12 (d) In this section,

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

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

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

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

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

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

31 (2) engaged in conduct that would constitute the commission of an

1 unclassified felony, a class A, or a class B felony for which the person was not
2 convicted and the party defending against the claim proves by clear and convincing
3 evidence

4 (A) the felonious conduct; and

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

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

12 (A) the felonious conduct; and

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

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

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

23 (A) the violation of AS 28.35.030; and

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

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

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

1

(1) the case name and file number;

2

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

3

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

4

(A) the gross dollar amount of the settlement;

5

(B) to whom the settlement was paid;

6

(C) the dollar amount of advanced costs and attorney fees that

7

were deducted from the gross dollar amount of the settlement before

8

disbursement to the claimant;

9

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

10

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

11

and

12

(F) any nonmonetary terms, including whether the attorney fees

13

incurred by the claimant were based on a contingent fee agreement or upon an

14

hourly rate; if a contingent fee was paid, the percentage of the total settlement

15

represented by the fee must be included; or, if an hourly rate, the hourly rate

16

paid;

17

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

18

otherwise,

19

(A) the gross dollar amount of the judgment;

20

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

21

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

22

(D) the net amount, after deduction of (B) and (C) of this

23

paragraph, for which the prevailing party has judgment;

24

(E) the dollar amount of advanced costs and attorney fees that

25

were deducted from the gross dollar amount of the judgment before distribution

26

to the claimant;

27

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

28

and

29

(G) any nonmonetary terms, including whether the attorney fees

30

incurred by the claimant were based on a contingent fee agreement or upon an

31

hourly rate; if a contingent fee was paid, the percentage of the total settlement

1 represented by the fee must be included; or, if an hourly rate, the hourly rate
2 paid.

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

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

9 (1) divorce and dissolution;

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

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

13 (4) domestic violence protective orders under AS 18.66.100 -
14 18.66.180;

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

16 (6) small claims under AS 22.15.040.

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

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

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

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

31 (d) Beginning June 1, 2000, the information compiled under (a) of this section

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

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

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

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

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

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

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

29 (g) If the employee or the employee's representative recovers damages from
30 the third person, the employee or representative shall promptly pay to the employer the
31 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (4) whether a scheduling conference is unnecessary;

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

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

31 * Sec. 40. Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new

1 subsection to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
30 result of compromise or other settlement between the parties, the parties shall submit
31 to the Alaska Judicial Council the information required under AS 09.68.130. A

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

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

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

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

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

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

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

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

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

1 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
2 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
3 alternative dispute resolution procedure not later than July 1, 1993.

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SCS CSSSHB 58 (RLS)

Revision Date: 04/15/97

Dept. Affected: Alaska Court System

Title: Tort Reform

BRU: Trial Courts

Component: _____

Sponsor: Rep. Porter

Requestor: Hours Judiciary

COMPONENT SERIAL NO. 768

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	34.6	173.1	173.1	173.1	173.1	173.1
TRAVEL						
CONTRACTUAL	19.5	72.6	72.6	72.6	72.6	72.6
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	54.1	245.8	245.8	245.8	245.8	245.8

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

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

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	54.1	245.8	245.8	245.8	245.8	245.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	54.1	245.8	245.8	245.8	245.8	245.8

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	3.0	3.0	3.0	3.0	3.0	3.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 04/15/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Agency: Alaska Court System

Date: 04/15/97

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

Alaska Court System
Fiscal Analysis
SCS CSSH 58 (RLS)

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

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

Section 18 of SCS CSSH 58 (RLS) modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed thousands of times per year, so even small increases in time spent per case can have a major impact on clerical staff. This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 22 of SCS CSSH 58 (RLS) increases the number of medical malpractice three-person expert advisory panels which will be paid for each year by the court system, by requiring the appointment of such panels in cases involving claims against government doctors. The number of additional panels appointed each year should be relatively low, and this note does not include costs for payments to the panel members.

Sections 40, 45, and 46 of SCS CSSH 58 (RLS) provide that in tort cases involving less than \$100,000 in claims (approximately 90 percent of tort cases), the parties shall limit discovery to two depositions and an exchange of documents. By strictly limiting discovery, there will be a reduction in the amount of information upon which parties base settlement decisions, and a reduction in the amount of costs and attorney's fees incurred during the discovery process. This can be expected to substantially increase the trial rate for torts, currently under five percent. During subcommittee meetings of the Task Force on Civil Justice Reform, it was explained that a purpose of this proposal was to allow parties to be able to afford to take a case to trial by not wasting time and money on discovery; supporters of this proposal on the Task Force agreed that it would increase the trial rate. Moreover, because parties will be doing much of their discovery during trial (calling a witness not previously deposed, for example, only to find out that the witness has nothing useful to add), all trials will be longer. Of course, trial is where the court system uses the bulk of the resources and contractual funds expended on tort cases. A significant increase in the rate and length of tort trials can be expected to impact the system's ability to handle all types of cases (such as domestic relations and CINA) in a timely fashion. This note conservatively assumes that the trial time spent on tort cases under \$100,000 will double, due to a combination of greater trial rate and longer trials. Note that substantial trial rate increases are not unprecedented. When the Department of Law banned plea bargaining in the 1970's, the trial rate for felonies doubled the first year, and tripled the second year.

SCS CSSH 58 (RLS) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and

Alaska Court System
Fiscal Analysis
SCS CSSSHB 58 (RLS)

substantive changes made by SCS CSSSHB 58 (RLS). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

In superior court in FY 96, there were 1005 tort cases filed, and approximately 42 tort trials were held. In district court in FY 96, there were 515 tort cases filed (other than small claims), and approximately 21 tort trials were held. This note assumes that the court system will incur only 20 percent of a typical year's costs during the first year the legislation is in effect.

Alaska Court System
Fiscal Analysis
SCS CSSSHB 58 (RLS)

Personal Services

<u>Position</u>	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Pro Tem Judge, Anchorage, permanent part-time, 4.8 months	\$23,400	\$14,241	\$37,641
Pro Tem Judge, Anchorage, permanent part-time, 12 months	58,500	35,602	94,102
In-Court Clerk, 12A, Anchorage, permanent full-time, 12 months	28,500	12,898	<u>41,398</u>
Total Personal Services			<u>173,141</u>

Contractual Services

Jury Fees

Superior Court-

165 trial days with 14 jurors at \$25 a day.

72,625
57,750

District Court-

85 trial days with 7 jurors at \$25 a day.

14,875

Programming

(one-time cost)

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

5,000

Total Contractual Services

77,625

Estimated Total Ongoing Cost (excludes one-time cost)

\$245,766

First year costs are comprised of the following:

20% of Personal Services Costs	\$34,628
20% of Jury Fees	14,525
100% of one-time Programming Costs	5,000

SENATE RULES COMMITTEE REPORT

DATE: 4/14/97

FURTHER:

DATE TURNED IN TO OFFICE: 4-15-97

Rules Committee considered **CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL 58(FIN) am CIVIL ACTIONS & ATTY PROVIDED BY INS CO**

and recommends it be placed on the calendar:

replace with S CS CS SS HB 58 (RULES)

attaches amendment(s)

adopts _____ Letter of Intent

same title new title
 technical title change (HB only)

All Pauls chairs and tech change m. found phone 4/16

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<i>Courts</i>	<i>4/15</i>		<i>54.1</i>

PREVIOUS FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<i>DOA, LAW, REED</i>			<input checked="" type="checkbox"/>
<i>jud e</i>			<i>26.1</i>

appropriation (no fiscal note)

MEMBERS SIGNING FOR PLACEMENT ON THE CALENDAR:

Bryan A. Lewan

John Ferguson

Tim Kelly - Do Pan

 Chair: Signature

OTHER RECOMMENDATIONS:

JDuncan - No Rec. Needs Amendment

Calendar on: 4-16-97

Approved by: *Tom Benintendi*

AMENDMENT

1

Sen. Kelly

OFFERED IN THE SENATE

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

1 Page 4, line 4:

2 Delete "fraudulent"

passed
adopted

3 Page 4, line 15:

4 Delete "the minor or"

5 Page 8, line 29, following "responsible person":

6 Insert "the person is not a person protected from a civil action under
7 AS 09.10.055."

8 Page 8, line 31, through page 9, line 1:

9 Delete "is not a person protected from a civil action under AS 09.10.055 and"

10 Page 10, lines 14 - 16:

11 Delete all material and insert:

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

15 Page 18, line 10:

16 Delete "defending"

17 Insert "or owed by all"

18 Page 25, line 31:

19 Delete "a pilot"

1

Insert "an"

AMENDMENT

2

Sen. Kelly

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056VZ, Dated 4/14/97)

- 1 Page 23, line 2:
- 2 Delete "cases"
- 3 Insert "a civil action for personal injury or property damage"

- 4 Page 23, line 31, following "action":
- 5 Insert "involving personal injury or property damage"

- 6 Page 24, line 10, following "However.":
- 7 Insert "in a civil action for personal injury or property damage."

- 8 Page 24, line 17:
- 9 Delete "Unless"
- 10 Insert "In a civil action for personal injury or property damage, unless"

passed
adopted

AMENDMENT

#3

Sen. Kelly

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056VZ, Dated 4/14/97)

- 1 Page 8, line 28:
- 2 Delete "to each claimant"

- 3 Page 9, line 4:
- 4 Delete "or"
- 5 Insert "and"

passed
adopted

#4

AMENDMENT NO. -- "AMENDED TASK FORCE PROPOSAL ON
PUNITIVE DAMAGES"

DUNCAN

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58() (Version Z)

filed

Page 7, lines 18 - 27:

Delete all material and insert:

"(g) If the fact finder finds that the conduct proven under (b) of this section was motivated by financial gain and the average annual net income earned by the defendant for the five years before the date the trial began exceeded \$1,000,000 per year, it may award an amount of punitive damages not to exceed the greatest of

(1) the amount calculated under the limitation in (f) of this section;

(2) the average net annual income earned by the defendant for the five years before the date the trial began; or

(3) two times the amount of financial gain that the defendant received or expected to receive as a result of the defendant's misconduct."

#5

DUNCAN

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

OFFERED IN SENATE RULES COMMITTEE

BY:

failed

TO: SCS CSSSHB 58() (Version Z)

Page 7, line 21:

Delete "(1)"

Page 7, line 22:

Delete "; and"

Insert "."

Page 7, lines 23 - 27:

Delete all material

#6
DUNCAN

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

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58() (Version Z)

failed

Page 8, line 1:

Following "(1)":

Delete "\$50,000"

Insert "\$200,000"

Following "less than":

Delete "15"

Insert "100"

Page 8, lines 2 - 3:

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

AMENDMENT NO. -- "NONECONOMIC DAMAGES CAP"

#7

DUNCAN

failed

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58() (Version Z)

Page 5, line 24:

Delete "injured"

Page 5, lines 25 - 31:

Delete all material and insert:

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

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

#8
DUNCAN

filed

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58() (Version Z)

Page 16, line 8:

Delete "\$500,000"

Insert "\$1,000,000"

Delete "\$1,500,000"

Insert "\$2,000,000"

DRAFT: SUBJECT TO REVISION

April 15, 1997

Sectional Summary
of
SENATE CS FOR CS FOR SS FOR HB 58 ()

of 0-LS 0056/Z
4-14-97

An Act Relating to Civil Actions

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

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

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

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

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

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

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to ten, although the ten years may be waived by contract. The national average among the many states which have a statute of repose is 6 years.

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

In medical malpractice cases involving children, the statute of repose does not apply if the facts that would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

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

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

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

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

Section 8. Disabilities of minority and incompetency. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of eight years at the time of the injury, until the minor's eighth birthday. This means the minor may bring an action for birth trauma injuries, or other injuries sustained before the age of eight, anytime before the minor's tenth birthday. This is consistent with the operation of the statute of repose.

Section 9. Noneconomic damages. This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places caps on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought. Under existing

law, there are no caps on noneconomic damages for "disfigurement or severe physical impairment."

This section leaves intact the existing recovery cap of \$500,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage. However, it now takes into consideration injuries to children and young adults by allowing the greater of \$500,000 or the injured person's life expectancy in years multiplied by \$10,000. These caps are per occurrence, and not per claimant.

In more serious cases, such as loss of, or loss of functional use of one or more limbs, or permanent brain damage, or third degree burns over one-half or more of the claimant's body, or total deafness or total blindness, the recovery cap is substantially raised from previous versions of the bill to \$1,500,000. Again, in the case of injuries to children or young adults, the cap now is the greater of \$1,500,000 or the injured person's life expectancy in years multiplied by \$30,000. These caps are per occurrence, and not per claimant.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts, including reckless conduct. Under existing law, there are no quantifiable caps on punitive damages.

Subsections (a) through (f) are substantially identical to the language recommended by the Governor's task force.

Subsection (f) generally imposes a cap on punitive damages of the greater of three times compensatory damages or \$500,000.

Subsection (g) places a higher cap on punitive damages in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be the greater of four times compensatory damages or \$3,000,000.

Subsection (h) caps punitive damages in unlawful employment practice cases. It is generally taken from SB 15, except that it takes into consideration small businesses in this state. The amount of the caps varies in five categories, depending upon the number of employees in the state. Where employers have fewer than 15 employees, the punitive damage is capped at \$50,000. Where employers have 500 or more employees, the punitive damage cap is \$500,000.

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

Section 11. Apportionment of damages.

Under present law, fault can be allocated only to parties who are present in the lawsuit. By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby partially overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, consistent with the 1988 voters' initiative, this section generally requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

This section would allow allocation of fault to a person who is not a party to the action, however, unless the person has been identified as a potentially responsible person, and (a) the person is outside the jurisdiction of the court; or, (b) the person is precluded from being joined by law or court rule; or (c) is a person who is not reasonably locatable. The rationale is that if a person is identified as a potentially responsible party, and is available to be joined, but the defendant chose not to, it would be unfair to the injured plaintiff to allocate fault to an "empty chair" he or she has created by not joining the that person.

However, under this section if someone were identified as a potentially responsible person who could not be named a party to the lawsuit because the statute of repose had run, thereby granting immunity from suit, fault may not be allocated to that person.

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

Section 12. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

Section 13. Apportionment of damages; worker's compensation lien. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

Section 14. Definition; intentional torts. This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 15. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

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

If there is a profession that does not require licensing in this state, this section does not apply.

Section 16. Offers of judgment. This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer (or at least 10% less favorable if there are multiple defendants), whether the offer is tendered by the party making the claim, or the party defending against the claim.

The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees imposed, based on how soon after the commencement of the action the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 75% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

Section 17. Offers of judgment. This subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

Section 18. Interest on judgments; prejudgment interest. This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the Alaska usury statute, AS 45.45.010(b).

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

Section 19. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 20. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 19 interest rate to judgments against the State of Alaska.

Section 21. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 19.

Section 22. Medical advisory panels. This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 23. Expert advisory panel; panel questions. This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

Section 24. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 25. Expert advisory panel; public sector provider. This section

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

Section 26. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

Section 27. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 28. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery.

Section 29. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 30. Civil liability of hospitals for certain physicians. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room independent contractor physicians. Current law allows a claimant to sue only the hospital rather than the emergency room physician who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powell, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident, and \$1,500,000 for all incidents in a year.

Section 31. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

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

This section requires clear and convincing evidence that the claimant's conduct substantially contributed to the personal injury or death.

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

Section 32. Collection of settlement information. This approach of this section is generally taken from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle, or otherwise dispose of cases, to file information about the settlements or judgments, including the amounts received by the attorneys on both sides. This data will be essential in assessing the efficiency of the civil justice system in the future.

Section 33. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 34. Appointment of independent counsel; conflicts of interest.

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

Section 35. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 36. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 19 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 37. Claims against the state for medical claims. This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 38. Motion to set trial and certificate. This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 39. Alaska Rule of Civil Procedure 16.1(n). This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 40. Limited Discovery; Expedited Calendaring. This section applies the District Court streamlined provisions found in sections 45 and 46 of this bill to Superior Court personal injury and property damage cases involving \$100,000 in claims or less.

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

Section 42. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 43. Sanctions for rule violations. This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$50,000 against attorneys, increased from \$1,000 under the existing rule.

Section 44. Sanctions for rules violations. This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 45. District Court; Deposition limitation. This section requires that in District Court personal injury and property damage cases depositions be limited to two for each side, unless the parties otherwise agree, or the court for good cause otherwise directs.

Section 46. District Court; Expedited Trials. This section requires that all parties must file a memorandum to set the case for trial within six months after service of the complaint, and that the court shall set the case for trial "as soon as practicable" after confirming that all parties have exchanged the discovery materials required by Rule 26(a).

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 48. Civil Rule 16.1(k)(4). This rule is repealed as a consistency change to Section 39.

Sections 49-54. Technical changes. These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 55. Alternative dispute resolution. This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. It is further directed to work with the Alaska Supreme Court to prepare proposed rules and statutes to implement such a program, and submit the proposal in time for the second term of this 20th Legislature. The intent is to have an alternative dispute resolution program in effect by July 1, 1998.

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

Section 56. Applicability. This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 57. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

COMPARISON

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 1.</u> <u>INTENT</u>	Same.	Same.
<u>SECTION 2.</u> <u>LIQUIDATION OF A STATE</u> <u>BANK</u>	Same.	Same.
<u>SECTION 3.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 4.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 5.</u> <u>STATUTE OF REPOSE</u>	* Increased to 10 years. * Excepts from the statute of repose the situation where the facts which would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.	*8 years.
<u>SECTION 6.</u> <u>STATUTE OF</u> <u>LIMITATIONS FOR TORT</u> <u>AND OTHER CLAIMS</u>	Same.	Same.
<u>SECTION 7.</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.
<u>SECTION 8.</u> <u>ADDITION TO</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 9.</u> <u>NON-ECONOMIC</u> <u>DAMAGES</u>	<p>* Lower limit increases to \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater.</p> <p>* Upper limit increases to \$1.5 million or the person's life expectancy multiplied by \$30,000, whichever is greater.</p> <p>*Provides that these limits are the maximum amount that can be recovered for all claims arising out of a single injury.</p>	<p>*Lower limit of \$300,000.</p> <p>*Upper limit of \$500,000.</p>

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 10.</u> <u>PUNITIVE DAMAGES</u>	<p>*Adopts the Task Force recommendations for subsections a through e.</p> <p>*Retains the three times compensatory damage limit contained in the Senate Finance CS, but increases that limit to a maximum of \$500,000.</p> <p>* Increases the secondary limit to four times compensatory or \$3 million, whichever is greater.</p> <p>*Adds additional limits for punitive damages against an employer for violation of an unlawful employment practices prohibited by AS 18.80.220.</p> <p>*Limits are \$50,000 if the employer has less than fifteen employees; \$100,000 if fifteen or more but less than one hundred employees, \$300,000 if one hundred or more but less than two hundred employees; \$400,000 if 200 or more but less than five hundred employees; \$500,000 if more than 500 employees.</p>	<p>*Limit for most cases is three times compensatory damages or \$300,000, whichever is greater.</p> <p>*Secondary limit is four times compensatory damages or \$600,000, whichever is greater.</p>
	Deleted.	Section 12. (Income taxes)
	Deleted.	Sections 13-15 (Periodic payments)
	Deleted.	Section 16 (Collateral benefits)

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB 58(FIN)</u>
<u>SECTION 11.</u> <u>ALLOCATION OF FAULT</u>	*Requires the person to be joined in order to allocate fault unless the person cannot be sued because of the statute of repose, is not within the jurisdiction of the court, or is precluded from being joined by law or court rules or is cannot be reasonably located.	*Appears as section 17 in the Senate Finance CS. *Provides that fault would be allocated to all persons, regardless of whether they are joined as a party unless they cannot be sued because of the statute of repose.
<u>SECTION 12.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 18 in Senate Finance CS.
<u>SECTION 13.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 19 of Senate Finance CS.
<u>SECTION 14.</u> <u>INTENTIONAL CONDUCT</u>	No change.	*Appears as section 20 of Senate Finance CS.
<u>SECTION 15.</u> <u>EXPERT WITNESS QUALIFICATION</u>	*Substantially the same as section 21 of Senate Finance CS.	*Appears as section 21 of Senate Finance CS. *Substantially the same.
<u>SECTION 16.</u> <u>OFFERS OF JUDGMENT</u>	* Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer. * Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made.	*Appears as section 22 in Senate Finance CS.
<u>SECTION 17.</u> <u>OFFERS OF JUDGMENT</u>	Same.	* Appears as section 23 of Senate Finance CS

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 18.</u> <u>PREJUDGMENT</u> <u>INTEREST</u>	Same.	* Appears as section 24 of Senate Finance CS.
<u>SECTION 19.</u> <u>PREJUDGMENT</u> <u>INTEREST ON FUTURE</u> <u>DAMAGES</u>	Same.	* Appears as Senate Finance CS Section 25.
<u>SECTION 20.</u> <u>JUDGMENT FOR</u> <u>PLAINTIFF</u>	Same.	* Appears as section 26 of Senate Finance CS.
<u>SECTION 21.</u> <u>CONDEMNATION</u>	Same.	* Appears as section 27 of Senate Finance CS.
<u>SECTIONS 22 - 29.</u>	Same.	* Appears as sections 29-36 of Senate Finance CS.
<u>SECTION 30.</u> <u>CIVIL LIABILITY OF</u> <u>HOSPITALS</u>	<p>* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year."</p> <p>* Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.</p>	* Appears as section 37 in Senate Finance CS.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 31.</u> <u>DAMAGES FROM</u> <u>COMMISSION OF FELONY</u>	* Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death.	* Appears as section 38 in Senate Finance CS.
<u>SECTION 32.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	* Adds collection of attorney fees and costs information.	* Appears as section 39 in the Senate Finance CS.
<u>SECTION 33.</u> <u>INSURANCE REPORT</u>	Same.	* Appears as section 40 of Senate Finance CS.
<u>SECTIONS 34-39.</u>	Same.	* Appears as sections 41- 46.
<u>SECTION 40 (NEW)</u> <u>LIMITED DISCOVERY</u>	* Provides for limited discovery.	* Not present.
<u>SECTION 41.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Includes attorney fee information.	* Appears as section 47 of Senate Finance CS.
<u>SECTION 42.</u> <u>DISCOVERY IN MEDICAL</u> <u>MALPRACTICE</u>	Same.	* Appears as section 48 of Senate Finance CS.
<u>SECTION 43.</u> <u>RULE 95</u>	*Increases sanctions to \$50,000.	* Appears as section 49 of Senate Finance CS. * Sanctions remain \$1,000.
<u>SECTION 44</u> <u>TRUTH PROVISION</u>	*Limited to Personal Injury and Property Damage cases.	* Appears as section 50 of Senate Finance CS. * Unlimited.
<u>SECTION 45-46.</u> <u>DISTRICT COURT</u> <u>PROCEDURES</u>	*Provides for expedited procedure in certain cases.	*Not present.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 47</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Same as section 51 of Senate Finance CS, except that it includes attorney fee information.	* Appears as section 51 of Senate Finance CS.
<u>SECTION 48-54</u> <u>RULES CHANGES</u>	*Substantially the same.	*Appears as section 52-62 Repealers of Senate Finance CS.
<u>SECTION 55</u> <u>ALTERNATIVE DISPUTE</u> <u>RESOLUTION</u>	*Substantially the same.	*Appears as section 63 of Senate Finance CS.
<u>SECTION 56</u>	Same.	*Appears as section 64 of Senate Finance CS.
<u>SECTION 57</u>	Same.	*Appears as section 65 of Senate Finance CS.

match to work
draft 0-LS0056/Z
4-14-97

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 **finer 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.

TORT REFORM LIST - AMENDMENT DIST.

LEGISLATURE - • MILLER • TAYLOR
• LEMAN • PORTER
• TORGERSON

ADMINISTRATION - • JEFF BUSH • BOTELHO

ALASKA ACTION TRUST

• JEFF FELDMAN - FX - 276-7185
• MIKE SCHNIDER "
• JOHN SUDDOCK "

ALASKANS FOR LIABILITY REFORM

• BILL ALLEN - FX - 264-8130
• ROGER HOLMES - FX - 248-6695
• PAM LABOLLE - FX - 463-5515

OTHER

• CHARLIE COLE - FX - 456-2523
• MARY GORE (HAND DELIVER)
• PORTIA PARKER (" ")

Tort Reform Summit Participants
April 5, 1997
Juneau Court House

Legislature

- ~~Senator Miller~~
- ~~Senator Taylor~~
- ~~Senator Leman~~
- ~~Representative Porter~~

~~SEN. TORGERSON~~

HAND

Administration

- ~~Bruce Botelho~~ H
- ~~Jeff Bush~~ H

Alaska Action Trust

- ~~Jeff Feldman~~
- ~~Mike Schneider~~
- ~~John Suddock~~

FTF

Alaskans for Liability Reform

- ~~Bill Allen~~ F
- ~~Roger Holmes (possibility)~~ F
- ~~Pam LaBolle~~ F

Other

- ~~Charlie Cole~~ F

Staff

- ~~Mary Gore~~ H
- ~~Portia Parker~~ H
- ~~Annette Kritzer?~~ H

Tort Reform Summit Participants
April 5, 1997
Juneau Court House

Legislature

- ✓ Senator Miller
- ✓ Senator Taylor
- ✓ Senator Leman
- ✓ Representative Porter

Administration

- ✓ Bruce Botelho
- Jeff Bush

Alaska Action Trust

- ✓ Jeff Feldman
- ✓ Mike Schnider
- ✓ John Suddock

Alaskans for Liability Reform

- ✓ Bill Allen - 69222 - 264-8130
- ✓ Roger Holmes (possibility) 243-6695
- ✓ Pam LaBolle 463-5515

Other

- ✓ Charlie Cole - 452-1124
456-2523

Staff

- ✓ Mary Gore - 465-3883
- ✓ Portia Parker - 465-3883
- ✓ Annette Kritzer? - 465-3818

To: Legislative aides to:
Senator Drue Pearce
Senator Bert Sharp
Senate Finance Committee

Fm: Jim Sourant, legislative aide to:
Representative Brian Porter

Date: March 29, 1997
Re: HB 58 Tort reform

I bring to your attention a very important matter which has not been publicly disclosed during this session about the Governor' Task Force on Civil Justice Reform. At every stage through the House, the opponents of HB 58 have touted the recommendations of the task force as being the product of a blue ribbon bipartisan group which represents "the interests of large and small businesses, doctors...." This assertion has gone unchallenged to the present time. The fact of the matter is that nothing could be further from the truth.

The best evidence of misrepresentation is found in the attached letter from State Farm Insurance Company, which has over 200,000 automobile and homeowner insurance policies in effect in the state. The letter was written after the task force was created, but several months before the first meetings ever took place. The letter speaks for itself, but it is clear that State Farm was asking to be put on the task force. The "oversight" was not corrected, even though there was ample time to do so. Consequently, there were no representatives of the insurance industry on the task force.

Also conspicuously absent from the task force was the Division of Insurance. Had it been directly represented, there would have been evidence that over the past few years, ALL domestic insurance companies have withdrawn from high risk areas of coverage, such as the marine highway.

The task force then erroneously concluded that there was "no evidence of a crisis in insurance cost or availability, nor did it hear from the insurance industry in the course of its debate." Pages 2 and 7 of the task force report. First the insurance industry was arrogantly excluded from participation on the task force, then the task force cavalierly implied that the insurance industry was not interested in participating. Whatever the Division of Insurance could have contributed was not heard.

On those same pages of the task force report, the task force erroneously concluded that since insurance rates are not set by claims experience within Alaska, "the task force found no evidence that changes in Alaska law would affect Alaska insurance rates."! A look at the compendium of 25 letters

AS,
BRIAN
AUTHORIZED ME
TO RELEASE THE
LETTER ATTACHED,
BUT THAT'S ALL?
THE EXPLANATION OF THE
IMPLICATIONS OF THAT
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AND RESPONSIBILITY FOR
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ANYTHING COORDINATE
WITH GOOD WITH
BEFORE BUREAU

DO YOU
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IF MAY BE
BRIAN
LET
WILL
THIS
SLEEPING
HE FOR
VERY
GOOD
REASONS.
Jim

(USAA Insurance Company's letter and Mike Lessmeier's letter for State Farm) previously furnished to your offices makes clear that just the opposite is true: insurance rates in Alaska are determined in part by claims experience in Alaska, and insurance rates and rebates will benefit from HB 58!

These egregious misrepresentations go a lot further than mere "spinmeistering"; they appear to be intentionally false and misleading. This is much more than "politics as usual" in my book.

It is also clear that the one physician on the task force did not represent the 500 physicians who belong to the Alaska State Medical Association. Also conspicuously absent from the composition of the task force were the 100 airlines represented by the Alaska Air Carriers Association; the 4500 Alaska small business members of the NFIB; the 700 businesses statewide represented by the Alaska State Chamber of Commerce; the 25 companies represented by the Alaska Trucker's Association; the 250 companies represented by the Alaska Forest Association; the 1000 members of the Alaska Miner's Association; the 135 municipalities represented by the Alaska Municipal League; 18 electric utility cooperatives statewide; the 33 hospitals and nursing homes represented by the Alaska State Hospital and Nursing Home Association; and the 550 general contractors represented by the Association of General Contractors.

These groups, and the tens of thousands of employees they represent, were not given a slot on the task force. The composition of the task force was skillfully skewed. Add to that a 2/3 majority required to pass meaningful tort reform measures, and it becomes apparent that the deck was carefully stacked to prevent a result not favored by the trial lawyers.

Don't be fooled. If someone starts touting the recommendations of the task force, just ask them if it is not true that the insurance industry wanted to be a part of it. If anyone denies it, show them the letter. If anyone admits it, ask them why the insurance industry was not allowed to participate. The answer will be interesting, especially since the trial lawyers were not only allowed to participate, but were allowed to dominate and write the report.

The point is that the recommendations of the task force are not credible. To date, the touting of the objectivity of the task force has gone unchallenged during this session. It is speculation on my part, but if the governor wants to veto this bill, he will do it under the political cover of the task force recommendations. Whether you or your bosses choose to preempt the governor's ability to shield himself is up to you. But record should be corrected sometime, and this is the only chance we'll have to do it.

cc: Portia Parker
cc: Annette Kreitzer

State Farm Insurance Companies

GARY L. METHNER
REGIONAL VICE PRESIDENT
PACIFIC NORTHWEST OFFICE

1000 WILMINGTON DRIVE
DUPONT, WASHINGTON 98527

4000 ESTER AVENUE, NORTHEAST
SALEM, OREGON 97313

July 18, 1996

The Honorable Tony Knowles
Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001

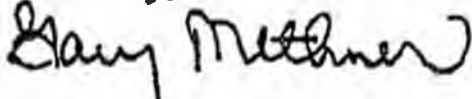
Dear Governor Knowles,

On behalf of Alaskans holding over 200,000 State Farm Insurance policies, I wish to express my disappointment at the composition of the Governor's Advisory Task Force on Civil Justice Reform (Advisory Task Force) that you created by means of Administrative Order Number 165.

In spite of the facts that insurance provides most of the money used to pay civil liability claims; that the Advisory Task Force is directed to assess the effects of insurance reforms on insurance rates in both Alaska and the Nation; and that State Farm and other insurers played a major role in the passage of HB 158, the Advisory Task Force has no direct representation from any member of the insurance industry. This omission is troubling and challenges the balance of the Advisory Task Force. None of the other members selected, business or otherwise, has the background, information, or concern to represent adequately the interests of policyholders and their insurers.

Failure to grant insurers seats on the Advisory Task Force has denied a voice to the hundreds of thousands of Alaskans whose premiums pay for the civil justice system that the Governor agrees needs reformation. Hopefully, you will recognize the gravity of this oversight and expand the Advisory Task Force to include as many of Alaska's major insurers as wish to participate. State Farm, for one, volunteers to sit on the Advisory Task Force should you choose to expand it. I await your response.

Sincerely,



Gary Methner

GM:la

GOVERNOR'S ADVISORY TASK FORCE ON CIVIL JUSTICE REFORM

August 5, 1996

Name	Business	Mailing Address	City	Phone-work	Phone-home/ other	Fax	e-mail	Contact person	Comments
Judge Thomas Stewart	Retired Superior Court Judge	Box 114100	Juneau, AK 99811-4100	463-4741 (court)	586-1220	463-5016 (court)			
Marlene Johnson	Huna Totem Heritage Foundation	9505 Antler Way	Juneau, AK 99801	789-1773 790-4937	789-4833	789-1896 789-4833 (home)			
Bill Allen	VECO	813 Northern Lights Blvd.	Anchorage, AK 99503	264-8101	276-2266 (h); 244-6266 (cell)	264-8130		Dee Walker	
Judy Brady	Alaska Oil and Gas Association	121 Fireweed Lane	Anchorage, AK	272-1481	243-2533	279-8114		Theresa [own schedule]	
David H. Bundy	Bundy & Christianson	911 W. 8th Avenue, Suite 302	Anchorage, AK 99501	258-6016	248-8431(h); 440-4688 (cell)	258-2026		Ramona	
Mike Burns	Key Bank	P.O. B100420	Anchorage, AK 99510	564-0250	346-3276	563-1764		Sue Day	
Charlie Cole		406 Cushman Street	Fairbanks, AK 99701	452-1124	479-5201	456-2523			gone 9/14-10/4
Jeffrey M. Feldman	Young, Sanders & Feldman	500 L Street, Suite 400	Anchorage, AK 99501	272-3538	272-8084	274-0819		Stephanie	
Roger Holmes	Biss & Holmes	3948 Clay Products Drive	Anchorage, AK 99517	248-8013		243-6695		Bruce Neilsen	

Name	Business	Mailing Address	City	Phone-work	Phone-home/ other	Fax	e-mail	Contact person	Comments
Jerry Hood	Alaska Teamsters Union	4300 Boniface Parkway	Anchorage, AK 99504	269-4101	274-9258	269-4468		Julie [own sched]	
Julie Kitka	Alaska Federation of Natives	1577 C Steet, Suite 201	Anchorage, AK 99501	274-3611	349-7143	274-7989			
Julian L. Mason	Ashburn & Mason	1130 W. 6th Avenue	Anchorage, AK 99501	276-4331	346-3326	277-8235		Paula [own sched]	
Don Slone, PE	Livingston Slone Inc	3900 Arctic Blvd	Anchorage, AK	562-2058		561-4528	lsi@alaska.net	own sched	
Stephan H. Williams		500 L Street, Suite 400	Anchorage, AK 99501	276-6922	274-6328	276-2109		own sched	
Mark Williams	Carr Gottstein Foods Co.	6411 A Street	Anchorage, AK 99518	564-2320	364-3411	564-2580		Patti Bernard (Carol)	
Dr. Rodman Wilson	Alaska State Medical Assoc.	4107 Laurel St.	Anchorage, AK 99508	562-2662	276-6142	561-2063			Acting Exec. Director
EX OFFICIO									
Bruce M. Botelho	Attorney General	P.O. Box 110300	Juneau, AK 99811-0300	465-2133	364-2334	465-2075	botelhob@law.state.ak.us	Kathy Henderson	
Jeff Bush	Department of Commerce & Economic Development	P.O. Box 110800	Juneau, AK 99811-0800	465-5459	586-3708	465-5442	jeff_bush@commerce.state.ak.us	Elizabeth - 465-2500	

Name	Business	Mailing Address	City	Phone-work	Phone-home/ other	Fax	e-mail	Contact person	Comments
The Honorable Johnny Ellis	Alaska State Senate	716 4th Avenue, Suite 440	Anchorage, AK 99501-1233	258-8182		258-5571			
The Honorable Brian Porter	Alaska State House of Representatives	716 W. 4th Street, Suite 360	Anchorage, AK 995012133	258-8197		258-5510			
Brad Thompson	Division of Risk Management	P.O. Box 110218	Juneau, AK 99811-0218	465-2180		465-3690			
STAFF									
Marcia Vandercook	Task Force Legal Researcher	1272 North Martha Washington Drive	Wauwatosa, WI 53213	414-774-7572	same	same (call first)	mvandercoo@aol.com		
Nancy Gordon	Alaska Department of Law	1031 W. 4th Ave., Suite 200	Anchorage, AK 99501-1994	269-5152	274-6328	258-4978		Ann Wilde 269-5135	
Gail Voigtlander	Alaska Department of Law	1031 W. 4th Ave., Suite 200	Anchorage, AK 99501-1994	269-5191	694-9658	258-0760		Sandy Orcutt 269-5187	
Chrystal Smith	Attorney General's Office	P.O. Box 110300	Juneau, AK 99811-0300	465-2132	463-5175	465-2075	smithc@law.state.ak.us		