

LEG. FINANCE - BILLS 1985 - 1986 2251

SB 377

2251

*5/10/86 Review & Approval of Senate
Fiscal Note of 465729*

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

FISCAL DETAIL

Bill/Resolution No. : CS SB 377 (Finance)
 Title : Act relating to civil
actions

Agency Affected : Alaska Court System
 BRU : Trial Courts

Sponsor : Kelly, Ahood, Bennett et al
 Requester : Senate Finance Committee
 Date of Request : May 10, 1986

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		80.7	80.7	80.7	80.7	80.7
TRAVEL		2.0	2.0	2.0	2.0	2.0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		6.7				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		90.4	83.7	83.7	83.7	83.7

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
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FUNDING : (Thousands of Dollars)

GENERAL FUND		90.4	83.7	83.7	83.7	83.7
FEDERAL FUNDS						
OTHER						
TOTAL		90.4	83.7	83.7	83.7	83.7

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : _____
 Division : Senator Jan Faiks, Co-chairman
Senate Finance Committee

Phone : 465-4523
 Date : May 10, 1986

Approved by Commissioner : _____
 Agency : _____

Date : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

COMMITTEE REPORT

SENATE

FURTHER:

4/18/86

Date 4/30/86

Mr. President

The Committee on FINANCE considered SB 377
relating to civil actions; amending Alaska Rules of Civil Procedure 11,
49, 52, 58, 68 and 82; efd.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 377 (Fin)
- new title
- same title and recommends Do Pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
Law 250.0
Admin (460.3)
Court 225.4
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

Rick Halford
McLain
Jensen
Johott

MEMBERS HAVING
OTHER RECOMMENDATIONS

Wittich NO Pass
Paul Fink N. Pass

Co - Chairman
do pass
Chairman recommendation

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB337 (FIN)
 Title : "An Act relating to civil actions:
 amending Alaska Rules of Civil
 Procedure 49,52,58,60;..."
 Sponsor : Sen. Kelly
 Requestor : Senate FIN
 Date of Request : April 29, 1986

FISCAL DETAIL

Agency Affected : Department of Law
 BRU : Legal Services
 Components : Legal Services Component

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		250.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		250.0				

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		250.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-				
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by : Richard I. Pegues, Director Phone : 465-3672
 Division : Administrative Services Division Date : 4/29/86
 Approved by Commissioner : Richard I. Pegues / FUR /
Harold M. Brown, Attorney General Date : 4/29/86
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 337

The committee substitute for this bill calls for a study of the current insurance crisis.

First, a detailed and thorough examination will be undertaken of closed claims by line in Alaska for insurance companies doing business in Alaska. Second, a thorough examination will be made of insurance company financial operations, expenditures, and profitability.

From the closed claims study we will be able to identify:

- (a) the extent to which the legal system has or has not been the cause of dramatic liability insurance premium increases and coverage reduction in crisis lines in Alaska;
- (b) how victims are faring under the present system; and
- (c) what the various specific tort reform proposals will actually accomplish.

The analysis of insurance company finances will enable us to determine:

- (a) the extent to which dramatic liability insurance rate increases and coverage limitations in Alaska are -- or are not -- cost-justified,
- (b) what alternatives exist to limiting coverage and raising rates; and
- (c) the legislative and/or regulatory actions which may be necessary to resolve the State's liability insurance crisis.

In order to undertake the study the Department of Law will hire outside financial management experts to determine the causes of the existing insurance situation, and to advise of possible corrective actions.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST Bill/Resolution No.: <u>CSSB 377 (4/23/86)</u> Title: <u>An Act Relating to Civil</u> Actions: _____ Sponsor: <u>Kelly, Abood, Bennett, et al.</u> Requestor: <u>Faiks</u> Date of Request: <u>April 28, 1986</u>	FISCAL DETAIL Agency Affected: _____ BRU: _____ Components: _____
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	(460.8)	(986.4)	(1,769.4)	(2,715.5)	(3,772.2)
MISCELLANEOUS						
TOTAL OPERATING	-0-	(460.8)	(986.4)	(1,769.4)	(2,715.5)	(3,772.2)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	-0-	(460.8)	(986.4)	(1,769.4)	(2,715.5)	(3,772.2)
TOTAL	-0-	(460.8)	(986.4)	(1,769.4)	(2,715.5)	(3,772.2)

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary. The final benefit is impossible to accurately project, given that it will only affect liability claims not yet incurred. Based on the State's past liability claims experience, we project a 30% reduction in estimated ultimate loss and loss expense per fiscal year. The attached projection details the calculations using the State of Alaska's actuarial analysis of past claims experience.

Prepared By: *Don Hitchcock* Phone: 465-2180
 Division: Risk Management Date: April 28, 1986
 Approved by Commissioner: *Eleanor Andrews* Date: 4/28/86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

	YEAR OF OCCURRENCE						TOTAL
	1986	1987	1988	1989	1990	1991	
FY 86	-0-						
FY 87		460.8					460.8
FY 88		410.4	576.0				986.4
FY 89		536.4	513.0	720.0			1,769.4
FY 90		504.0	670.5	641.3	899.7		2,715.5
Y E A R O F S A V I N G F Y 91		378.0	630.0	838.1	801.3	1,124.7	3,772.2
FY 92		284.4	472.5	787.5	1,047.3	1,001.7	*
FY 93		262.8	355.5	590.6	984.1	1,309.3	*
FY 94		237.6	328.5	444.4	738.0	1,230.2	*
FY 95		216.0	297.0	410.6	555.3	922.6	*
FY 96		165.6	270.0	371.3	513.1	694.2	*
FY 97		97.2	207.0	337.5	463.9	641.5	*
FY 98		46.8	121.5	258.8	421.7	579.9	*
FY 99			58.5	151.9	323.3	527.2	*
FY 2000				73.1	189.8	404.2	*
FY 2001					91.4	237.2	*
FY 2002						114.2	*
YEARLY TOTALS		3,600.0	4,500.0	5,625.0	7,029.0	8,787.0	

* Additional occurrence years will reflect an increase in savings.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 4/24/86

REQUEST

Bill/Resolution No. : CSSB 377 (Finance -4/23/86
 Title : An Act Relating to work draft)
Civil Actions

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Sponsor : Kelly, Abood, Bennett, et al
 Requestor : _____
 Date of Request : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		80.7	80.7	80.7	80.7	80.7
TRAVEL		2.0	2.0	2.0	2.0	2.0
CONTRACTUAL		135.0	135.0	135.0	135.0	135.0
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		6.7				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		225.4	218.7	218.7	218.7	218.7

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		225.4	218.7	218.7	218.7	218.7
FEDERAL FUNDS						
OTHER						
TOTAL		225.4	218.7	218.7	218.7	218.7

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe/Robert G. Fisher
 Division : Alaska Court System

Phone : 264-8215
 Date : 4/24/86

Approved by Commissioner : Arthur H. Snowden, II
 Agency : Alaska Court System

Date : 4/24/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CSSB 377 (Finance - 4/23/86 Work Draft) Fiscal Note Narrative

This legislation impacts the court system in two areas: expanded judicial workload and mandatory arbitration.

Expanded Judicial Workload

It is estimated that the cumulative effect of the provisions of this bill will increase the court's workload by 20% for each trial. This estimate includes judge time expended on additional litigation which will result from attempts to transfer proportional liability to persons who have signed releases before trial. Also, more cases will go to trial because of diminished incentives to settle resulting from restrictions on the award of Civil Rule 82 attorneys fees.

It is anticipated that the increased workload could be handled statewide by funding the equivalent of a pro tem judge. Pro tem funding is less costly than funding new judge positions because salary and benefits for retired pro tem judges are significantly lower. Additionally, since these judges are not permanently assigned to one court location, normal space and staffing requirements are avoided.

The provisions of this legislation which establish new procedures for the court come into play only when a case goes to trial. According to figures provided by the Anchorage trial court, approximately 5% of the cases filed go to trial, resulting in 105 personal injury trials statewide.

It is estimated that a personal injury trial averages two weeks. The total number of personal injury trials multiplied by two weeks of a judge's time total 210 judge weeks.

The estimated 20% additional judicial workload attributable to these expanded proceedings totals 42 judge weeks. Since a standard judicial work year averages 40 work weeks (excluding holidays, vacation and training), it is estimated that one judge would be required to process the additional statewide workload.

Mandatory arbitration of claims under \$25,000

The court system assumes for purposes of this fiscal note that under AS 09.43 the court would be required to bear the cost of arbitrators for those parties who are unable to afford this expense. It is estimated that 1000 personal injury and property cases statewide would be subject to the mandatory arbitration provision because they fall under \$25,000. It is assumed that 15% of the parties will not be able to afford the expenses of arbitrators. Thus, the court system will be required to bear these expenses in 150 cases.

Assuming an arbitration lasting 6 hours and an estimated average hourly compensation rate for the arbitrator of \$150, the cost of an arbitration totals \$900. The estimated total cost of an arbitrator for all cases under \$25,000 is \$135,000. Additionally, the court system assumes that for parties in outlying rural areas who are unable to afford the costs of arbitrators, it will be less costly to fly these persons to central urban areas rather than to fly arbitrators to the outlying areas and pay for their room and board. The additional air fare and per diem costs total \$2,066. Based on these assumptions, the total costs of mandatory arbitration of civil damage claims under \$25,000 is \$137,166.

ALASKA COURT SYSTEM

CSSB 377 (Finance - 4/23/86 Work Draft) - TORT REFORM

FISCAL IMPACT

Personnel:

	Salary	Benefits	Total
Pro Tem, Superior Court Judge (PFT, using fully-vested retired judge) (See Schedule #2)	\$19,332	\$26,779	\$46,111
In-Court Clerk (PFT, 12B)	25,740	8,863	<u>34,603</u>
Total Personnel			80,714
Travel costs for indigent bush parties in mandatory arbitration cases. (See Schedule #3)			2,066
Contractual cost of arbitrators for indigent parties in mandatory arbitration cases. (See Schedule #3)			135,000
Supplies			1,000
Equipment: (one-time items)			
New employee equipment - office furniture and reference materials			<u>6,759</u>
Total FY 87 Cost			<u>\$225,400</u>

ALASKA COURT SYSTEM

ESTIMATION OF JUDICIAL RESOURCES
NEEDED TO PROCESS INCREASED WORKLOAD

CSSB 377 (Finance - 4/23/86 Work Draft.) - TORT REFORM

	Anchorage	Rest of State	Total
Number of civil damage cases (a)	1,458	638	2,096
Estimated percentage of cases going to trial	5%	5%	5%
Estimated number of trials	73	32	105
Estimated length of trial in weeks	2	2	2
Estimated judicial time in weeks	146	64	210
Estimated workload increase from legislation	20%	20%	20%
Estimated additional judicial workload in weeks	29	13	42
Estimated average number of work- weeks in judicial year (b)	40	40	40
Estimated number of judges needed to process additional workload	0.73	0.33	1.05

Notes:

- (a) Based on FY 85 case filings. All civil damage case filings assumed to be personal injury cases.
- (b) Estimated number of work-weeks, net of holidays, vacation and training.

ALASKA COURT SYSTEM

ESTIMATED FISCAL IMPACT OF MANDATORY ARBITRATION

CSSB 377 (Finance - 4/23/86 Work Draft) - TORT REFORM

	Anchorage	Rest of State	Total
Number of district court civil cases (a)	7,168	2,832	10,000
Estimated percentage of personal injury and property damage	10%	10%	10%
Estimated number of personal injury and property damage cases	716	283	1,000
Estimated percentage of indigent parties	15	15	15
Estimated number of cases involving indigent parties	107	42	150
Estimated average length of arbitration hearing in hours	6	6	6
Estimated average hourly rate of arbitrator	\$150	\$150	\$150
Estimated average cost of each case	\$900	\$900	\$900
Estimated total cost of arbitrators	\$96,300	\$37,800	\$135,000
Estimated travel cost for indigent parties living in bush areas. (See Schedule #4)	\$0	\$2,066	\$2,066
Estimated total cost of mandatory arbitration	\$96,300	\$39,866	\$137,066

Notes:

- (a) Based on estimated FY 86 case filings. All district court civil case filings assumed to be under \$25,000.

ALASKA COURT SYSTEM

Schedule #4

ESTIMATED TRAVEL COSTS FOR INDIGENT BUSH PARTIES

CSSB 377 (Finance - 4/23/86 Work Draft) - TORT REFORM

Bush Courts	Number of Civil Case Filings	Percent Indigent Defendants	Number of Indigent cases	Air Fare to Nearest Urban Court (a)	Estimated Air Fare Cost	Estimated Per Diem Cost (b)	Estimated Total Travel Cost
Barrow	4	50%	2	\$500	\$500	\$315	\$1,630
Bethel	1		0				
Kotzebue	0		0				
Nome	0		0				
Valdez	2	50%	1	156	156	280	436
						Total Cost	\$2,066

Notes:

(a) Bush courts served by urban courts:

Barrow served by Fairbanks
 Bethel served by Anchorage
 Kotzebue served by Anchorage
 Nome served by Anchorage
 Valdez served by Anchorage

(b) Estimated to require three and one half days of per diem.

4/29/86

AMENDMENTS TO CSSB 377 (Finance) Version 2

✓ Amendment #1 (Offered and Pending) By: Sackett

MS

Page 2, lines 12 - 17 Delete Section 2

Page 10, lines 9 -14 Delete Section 8

Renumber remaining sections accordingly

Amendment #1A By: Sackett

Sackett 3-5-1-1 Kentucky

If the amendment #1 is adopted, then, on

Page 10, lines 27 - Page 11, line 3 Delete Section 11

Renumber remaining sections accordingly.

Amendment #2 By: Ferguson

Ferg. 3-4-3 Fairly Not Fische

Page 8, lines 3 -13 Delete all material and insert a new section to read:

"Sec. 09.17.080. ATTORNEY FEE AGREEMENTS. (a) An attorney may not contract for or collect a contingency fee for representing a person seeking damages in connection with an action for personal injury based on negligence in excess of 25 percent of the amount recovered.

(b) If periodic payments for future damages are awarded, the present value of the periodic payments must be included in computing the total award from which attorney fees are calculated under (a) of this section.

(c) An attorney may not contract for or receive a fee

for defending a person against a claim for damages in connection with an action for personal injury based on negligence in excess of 25 percent of the amount in controversy or the amount recovered by the plaintiff.

(d) The limitations of (a) and (b) of this section apply whether the recovery is by settlement, arbitration, or judgement."

Amendment #3 *Ferguson 3-*

By: Ferguson

14- (7)
Page 4, line 21, after "made," insert the following:

"Periodic payments shall be cumulatively adjusted annually by applying each year the annual rate of change in the consumer price index for all urban consumers for the Anchorage Metropolitan Area as published by the Bureau of Labor Statistics of the United States Department of Labor for the immediately preceding year."

Amendment #4 *Eliason 3-*

By: Eliason

Adopted 4/29/80
Page 8, line 2 After the word "discharge." add the following language:

"However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.060."

Amendment #5

By: Eliason

Adopted

Page 10, line 15 Delete Sec. 9 and renumber the following sections accordingly.

Amendment #6

By: Halford

Adopted

Page 6, line 11 Delete Section 09.17.055 and insert the following new section:

Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder has rendered an award to a claimant, and after the court has awarded costs and attorney fees, a defendant may introduce evidence of amounts received or to be received by the claimant as compensation for the same injury from collateral sources that do not have a right of subrogation against the claimant by law or contract.

(b) If the defendant elects to introduce evidence under (a) of this section, the claimant may introduce evidence of

(1) the amount that the actual attorney fees incurred by the claimant exceed the amount of the attorney fees awarded to the claimant; and

(2) the amount that the claimant has paid or contributed to secure the right to an insurance benefit introduced by the defendant as evidence.

(c) If the total amount of collateral benefits introduced as evidence under (a) of this section exceeds

the total amount that the claimant introduced as evidence under (b) of this section, the court shall deduct from the amount awarded the claimant, the amount by which the value of the benefits under (a) of this section exceeds the amount of payments under (b) of this section.

(d) Notwithstanding (a) of this section, the defendant may not introduce evidence of

- (1) benefits that cannot be reduced or offset by federal law;
- (2) a deceased's life insurance policy; or
- (3) gratuitous benefits provided to the claimant.

~~Amendment #7~~

~~By: Halford~~

~~*Withdrawn*~~

~~Page 8, line 2 After the word "discharge." insert new language to read: "Evidence of release and settlement may be presented as evidence to the jury or to the finder of fact."~~

Amendment #8

By: Halford

Adopted

Page 9, line 29, after the word "defendant" insert "or the defendant has received a written notification of a claim"

as which was adopted

and language adopted

57C-86

4/30/86

Ferguson
3

4
9

REVISED AMENDMENT NO. 7

Page 5, lines 28-29, delete all material and insert the following:

"(4) a member of ^a ~~the~~ governing body ^{board, commission or citizen advisory} of a municipality ^{committee} in the state."

p. 5 ~~or~~ 18 - 26

revised

4

5 FC-86
4/30/86

Halford
3
4

April 29, 1986

PROPOSED AMENDMENTS FCSCS 377

SENATOR HALFORD

Reconsideration
5-2
4
2nd
time

PAGE 9

After Amendment #8 insert new sentence to read:

" Evidence to be considered by the jury or finder of fact may include the amount of the prejudgement interest which may be added to the award."

PAGE 2

Halford 3-

Fair Elio P. Fis. Opposed.

LINE 26

4

Delete: \$250,000

Insert: \$500,000

4/29/86

200

SFC-86

4/30/86

Forrest

3-

89-

A M E N D M E N T

By Eliason

Offered in the SENATE

TO: CSSB377 (Finance) Version #2

Page 10, line 25 After the word "action" insert the following language:

"for personal injury, death or property damage related to or arising out of fault as defined in AS 09.17.900"

by: Sackett

Adopted

AMENDMENT #3

To: CSSB-377 (Fin) Version 2

DELETE: Sec. 23, page 13, lines 17-23 and replace with:

"The Department of Law shall with the assistance of the Department of Commerce and Economic Development contract for a study of closed insurance claims to identify:

- a) the extent to which the legal system has or has not been the cause of dramatic liability insurance increases and coverage reduction in crisis lines in Alaska;
- b) how victims are faring under the present system; and
- c) what the various specific tort reform proposals will actually accomplish,

and a study of insurance company finances to determine:

- a) the extent to which dramatic liability insurance rate increases and coverage limitations in Alaska are - or are not - cost-justified;
- b) what alternatives exist to limiting coverage and raising rates; and
- c) the legislative and/or regulatory actions which may be necessary to resolve the State's liability insurance crisis.

AMEND EXISTING TITLE OF THE BILL TO READ:

"An Act relating to civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; and authorizing the Department of Law to conduct studies; and providing for an effective date."

Seckett - by request

Adopted

AMENDMENT 6

Delete material beginning at page 8, line 24 through page 9, line 16, and insert the following:

Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more
RH: ~~More~~ INSERT 10 ~~PROVIDE~~
than ~~30~~ ¹⁰ days before the trial begins [ON OR BEFORE THE 60TH
DAY FOLLOWING THE FILING OF AN ANSWER IN A CIVIL ACTION, AND
ON THE FIFTH DAY FOLLOWING THE DAY DISCOVERY CLOSES AS
ORDERED BY THE COURT], either the party making a claim or
the party defending against a claim may serve upon the
adverse party an offer to allow judgment to be entered in
complete satisfaction of the claim for the money or property
or to the effect specified in the offer, with cost then
accrued. If within 10 days after the service of the offer
the adverse party serves written notice that the offer is
accepted, either party may then file the offer and notice of
acceptance together with proof of service, and the clerk
shall enter judgment. An offer not accepted within 10 days
is considered withdrawn and evidence of that offer is not
admissible except in a proceeding to determine the form of
judgment after verdict. If the judgment finally entered on
the claim as to which an offer has been made under this
section is not more favorable to the offeree than the offer,
the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
and accrued up to the date judgment is entered shall be
adjusted as follows:

(1) if the offeree is the party making the claim,
the interest rate shall be reduced by five [TWO] percent a
year;
of the amount
(1000000)

(2) if the offeree is the party defending against
the claim, the interest rate shall be increased by five
[TWO] percent a year.

Original sponsors: Kelly, Abcod,
Bennett, et al

IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 377 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; directing the Department of Law to conduct a study; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has generally been developed by the courts on a case-by-case basis. While this process has resulted in some significant changes in the law, including amelioration of the harshness of many common law doctrines, the legislature has periodically intervened in order to bring about needed reforms. The purpose of this Act is to enact further reforms in order to create a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.

(b) The legislature finds that boroughs, cities, and other governmental entities are faced with increased exposure to lawsuits and awards and dramatic increases in the cost of insurance coverage. These escalating costs ultimately affect the public through higher taxes, loss of essential services, and loss of the protection provided by adequate insurance. In order to improve the availability and affordability of quality governmental services, comprehensive reform is necessary.

(c) The legislature also finds comparable cost increases in professional liability insurance. Escalating malpractice insurance premiums discourage physicians and other health care providers from initiating or continuing their practice or offering needed services to the public and

1 contribute to the rising costs of consumer health care. Other profession-
2 als, such as architects and engineers, face similar difficult choices,
3 financial instability, and unlimited risk in providing services to the
4 public.

5 (d) The legislature also finds that general liability insurance is
6 becoming unavailable or unaffordable to many businesses, individuals, and
7 nonprofit organizations in amounts sufficient to cover potential losses.
8 High premiums have discouraged socially and economically desirable activ-
9 ities and encourage many to go without adequate insurance coverage.

10 (e) It is the intent of the legislature to reduce costs associated
11 with the tort system, while ensuring that adequate and appropriate compen-
12 sation for persons injured through the fault of others is available.

13 * Sec. 2. AS 09 is amended by adding a new chapter to read:

14 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

15 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
16 recover damages for personal injury based on negligence, damages for
17 noneconomic losses shall be limited to compensation for pain, suffer-
18 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-
19 ment of life and other nonpecuniary damage.

20 (b) The amount of damages awarded by a court or jury under (a)
21 of this section may not exceed \$500,000 for each claim based on a
22 separate incident or injury.

23 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
24 be awarded in an action, whether in tort, contract, or otherwise,
25 unless the claimant proves by clear and convincing evidence that the
26 party defending the claim caused injury to the claimant by an act
27 constituting the commission of a felony under state or federal law, or
28 the act constituted deliberate or malicious conduct.

29 (b) A person may not claim punitive damages in a civil action,

1 unless the claimant first establishes a prima facie claim under (a) of
2 this section.

3 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISS-
4 SION OF A CRIME. (a) A person who suffers personal injury or death
5 may not bring an action to recover damages for the personal injury or
6 death if the injuries or death occurred while the person was

7 (1) voluntarily under the influence of intoxicating liquor
8 or under the influence of a controlled substance listed in AS 11.71.-
9 140 - 11.71.190 and the condition of being under the influence of the
10 intoxicating liquor or controlled substance contributed more than 50
11 percent to the person's injuries or death; if there was 0.10 percent
12 or more by weight of alcohol in the person's blood or 0.10 grams or
13 more of alcohol per 210 liters of the person's breath, it is presumed
14 that the person was under the influence of intoxicating liquor; or

15 (2) engaged in the commission of a felony, if the felony
16 was causally related to the injury or death in time, place, or activi-
17 ty; however, nothing in this paragraph shall affect a right of action
18 under 42 U.S.C. 1983.

19 (b) The provisions of (a)(1) of this section do not apply to a
20 person who suffers personal injury or death caused by the intentional
21 act of another person or persons.

22 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
23 for personal injury are awarded by the court or jury, the verdict
24 shall be itemized between economic loss and noneconomic loss, if any,
25 as follows:

- 26 (1) past economic loss;
27 (2) past noneconomic loss;
28 (3) future economic loss;
29 (4) future noneconomic loss; and

1 (5) punitive damages.

2 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover
3 damages, the court shall, at the request of a party, enter judgment
4 ordering that amounts awarded a judgment creditor for future damages
5 be paid to the maximum extent feasible by periodic payments rather
6 than by a lump-sum payment if the award equals or exceeds \$100,000 in
7 future damages.

8 (b) The court may require security be posted, in order to ensure
9 that funds are available as periodic payments become due. The court
10 may not require security to be posted if an authorized insurer, as
11 defined in AS 21.90.900, acknowledges to the court its obligation to
12 discharge the judgment.

13 (c) A judgment ordering payment of future damages by periodic
14 payment shall specify the recipient, the dollar amount of the pay-
15 ments, the interval between payments, and the number of payments or
16 the period of time over which payments shall be made. Periodic pay-
17 ments shall be cumulatively adjusted annually by applying each year
18 the annual rate of change in the consumer price index for all urban
19 consumers for the Anchorage Metropolitan Area as published by the
20 Bureau of Labor Statistics of the United States Department of Labor
21 for the immediately preceding year. Payments may be modified only in
22 the event of the death of the judgment creditor, in which case pay-
23 ments may not be reduced or terminated, but shall be paid to persons
24 to whom the judgment creditor owed a duty of support, as provided by
25 law, immediately before death. In the event the judgment creditor
26 owed no duty of support to dependents at the time of the judgment
27 creditor's death, the money remaining shall be distributed in accor-
28 dance with a will of the deceased judgment creditor accepted into
29 probate or under the intestate laws of the state if the deceased had

no will.

(d) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments required under (c) of this section, the court shall, in addition to the required periodic payments, order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees.

Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the attorney of the party shall sign and verify each complaint, answer, cross-claim, and counterclaim that the party files. The verification must include a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counterclaim was knowingly untrue, and upon motion of a party the person signing the pleading shall be compelled to show cause why the person signing the pleading should not be held in contempt of court.

Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. (a) Unless the act or omission constituted gross negligence, a person may not recover damages for an act or omission to act, in the course and scope of official duties, from the following:

(1) a member of the board of directors or an officer of a nonprofit corporation;

(2) a member of the board of directors of a public or nonprofit hospital or a community-based advisory board of a hospital;

(3) a member of a school board of a school district;

(4) a member of a governing board, commission, or citizen advisory committee of a municipality in the state.

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the

corporation or the corporation's shareholders may not be limited or modified.

Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action based on fault seeking to recover damages for injury or death to a person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for the injury attributable to the claimant's contributory fault, but does not bar recovery.

Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder has rendered an award to a claimant, and after the court has awarded costs and attorney fees, a defendant may introduce evidence of amounts received or to be received by the claimant as compensation for the same injury from collateral sources that do not have a right of subrogation against the claimant by law or contract.

(b) If the defendant elects to introduce evidence under (a) of this section, the claimant may introduce evidence of

(1) the amount that the actual attorney fees incurred by the claimant exceed the amount of the attorney fees awarded to the claimant; and

(2) the amount that the claimant has paid or contributed to secure the right to an insurance benefit introduced by the defendant as evidence.

(c) If the total amount of collateral benefits introduced as evidence under (a) of this section exceeds the total amount that the claimant introduced as evidence under (b) of this section, the court shall deduct from the amount awarded the claimant, the amount by which the value of the benefits under (a) of this section exceeds the amount of payments under (b) of this section.

(d) Notwithstanding (a) of this section, the defendant may not

1 introduce evidence of

2 (1) benefits that cannot be reduced or offset by federal
3 law;

4 (2) a deceased's life insurance policy; or

5 (3) gratuitous benefits provided to the claimant.

6 (e) This section does not apply to a medical malpractice action
7 filed under AS 09.55.

8 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
9 involving fault of more than one party to the action, including third-
10 party defendants and persons who have been released under AS 09.17.-
11 070, the court, unless otherwise agreed by all parties, shall instruct
12 the jury to answer special interrogatories or, if there is no jury,
13 shall make findings, indicating

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

16 (2) the percentage of the total fault of all of the parties
17 to each claim that is allocated to each claimant, defendant, third-
18 party defendant, and person who has been released from liability under
19 AS 09.17.070; for this purpose the court may determine that two or
20 more persons are to be treated as a single party.

21 (b) In determining the percentages of fault, the trier of fact
22 shall consider both the nature of the conduct of each party at fault
23 and the extent of the causal relation between the conduct and the
24 damages claimed.

25 (c) The court shall determine the award of damages to each
26 claimant in accordance with the findings, subject to a reduction under
27 AS 09.17.070, and enter judgment against each party liable on the
28 basis of rules of several liability. The court shall also determine
29 and state in the judgment each party's equitable share of the

1 obligation to each claimant in accordance with the respective
2 percentages of fault.

3 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
4 sue, or similar agreement entered into by a claimant and a person
5 liable discharges that person from liability to the claimant, but it
6 does not discharge another person liable upon the same claim unless
7 the release, covenant not to sue, or similar agreement provides for
8 discharge. However, the claim of the releasing person against other
9 persons is reduced by the amount of the released person's equitable
10 share of the obligation, determined in accordance with the provisions
11 of AS 09.17.060.

12 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
13 not contract for or collect a contingency fee for representing a
14 person seeking damages in connection with an action for personal
15 injury based on negligence in excess of 25 percent of the amount
16 recovered.

17 (b) If periodic payments for future damages are awarded, the
18 present value of the periodic payments must be included in computing
19 the total award from which attorney fees are calculated under this
20 section.

21 (c) An attorney may not contract for or receive a fee for de-
22 fending a person against a claim for damages in connection with an
23 action for personal injury based on negligence, in excess of 25 per-
24 cent of the amount recovered or if no amount is recovered by the
25 plaintiff, 25 percent of the amount in controversy.

26 (d) The limitations in (a) - (c) of this section apply whether
27 the recovery is by settlement, arbitration, or judgment.

28 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
29 acts or omissions that are in any measure negligent or reckless toward

1 the person or property of the actor or others, or that subject a
2 person to strict tort liability; the term also includes breach of
3 warranty, unreasonable assumption of risk not constituting an enforce-
4 able express consent, misuse of a product for which the defendant
5 otherwise would be liable, and unreasonable failure to avoid an injury
6 or to mitigate damages; legal requirements of causal relation apply
7 both to fault as the basis for liability and to contributory fault.

8 * Sec. 3. AS 09.30.065 is amended to read:

9 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
10 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
11 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
12 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
13 making a claim or the party defending against a claim may serve upon
14 the adverse party an offer to allow judgment to be entered in complete
15 satisfaction of the claim for the money or property or to the effect
16 specified in the offer, with cost then accrued. If within 10 days
17 after the service of the offer the adverse party serves written notice
18 that the offer is accepted, either party may then file the offer and
19 notice of acceptance together with proof of service, and the clerk
20 shall enter judgment. An offer not accepted within 10 days is con-
21 sidered withdrawn and evidence of that offer is not admissible except
22 in a proceeding to determine the form of judgment after verdict. If
23 the judgment finally entered on the claim as to which an offer has
24 been made under this section is not more favorable to the offeree than
25 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
26 and accrued up to the date judgment is entered shall be adjusted as
27 follows:

28 (1) if the offeree is the party making the claim, the
29 interest rate shall be reduced by five [TWO] percent a year;

1 (2) if the offeree is the party defending against the
2 claim, the interest rate shall be increased by five [TWO] percent a
3 year.

4 * Sec. 4. AS 09.30.070 is amended to read:

5 Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on
6 judgments and decrees for the payment of money is equal to the 12th
7 Federal Reserve district discount rate as determined under AS 45.45.-
8 010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded
9 on a contract in writing, providing for the payment of interest until
10 paid at a specified rate not exceeding the legal rate of interest for
11 that type of contract, bears interest at the rate specified in the
12 contract if the interest rate is set out in the judgment or decree.

13 * Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

14 (b) Except when the court finds that the parties have agreed
15 otherwise, prejudgment interest accrues from the day process is served
16 on the defendant or the day the defendant received written notifica-
17 tion of the claim, whichever is earlier. Evidence to be considered by
18 the finder of fact may include the amount of the prejudgment interest
19 that may be added to the award.

20 * Sec. 6. AS 09.55.548(a) is repealed and reenacted to read:

21 (a) Except as provided in (b) of this section and AS 09.17,
22 damages in a malpractice shall be awarded in accordance with
23 principles of the common law.

24 * Sec. 7. AS 09.60.010 is repealed and reenacted to read:

25 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
26 PARTY. The supreme court shall determine by rule or order the costs,
27 if any, that may be allowed a prevailing party in a civil action.
28 Unless specifically authorized by statute or by agreement between the
29 parties, attorney fees may not be awarded to a party in a civil action

1 for personal injury, death or property damage related to or arising
2 out of fault, as defined in AS 09.17.900.

3 * Sec. 3. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
4 09.16.060 are repealed.

5 * Sec. 9. AS 09.17.030 and 09.17.060 enacted in sec. 2 of this Act have
6 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
7 jury to answer the special interrogatories listed in AS 09.17.060 regarding
8 the amount of damages and the percentages of fault to be allocated among
9 the parties and to itemize the verdict regarding economic and noneconomic
10 loss as specified in AS 09.17.030.

11 * Sec. 10. AS 09.17.060 enacted in sec. 2 of this Act has the effect of
12 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
13 specific findings regarding the amount of damages and the percentages of
14 fault to be allocated among the parties.

15 * Sec. 11. AS 09.17.030 and 09.17.060 enacted in sec. 2 of this Act
16 have the effect of amending Alaska Rule of Civil Procedure 53 by requiring
17 the court to include a specific item in its judgment.

18 * Sec. 12. AS 09.17.040 enacted in sec. 2 of this Act has the effect of
19 amending Alaska Rule of Civil Procedure 11 by requiring verification of
20 certain pleadings.

21 * Sec. 13. AS 09.17.080 enacted in sec. 2 of this Act has the effect of
22 amending Alaska Rule of Civil Procedure 32 by limiting the amount that
23 could be awarded as attorney fees in an action for personal injury or
24 property damage.

25 * Sec. 14. AS 09.30.070(b) as added by sec. 5 of this Act has the
26 effect of amending Alaska Rule of Civil Procedure 68 by providing that
27 prejudgment interest accrues from the day process is served on the defen-
28 dant or the day the defendant receives written notice of the claim.

29 * Sec. 15. AS 09.60.010 as amended by sec. 7 of this Act has the effect

1 of amending Alaska Rule of Civil Procedure 32 by prohibiting the award of
2 attorney fees in certain civil actions based on fault, unless allowed by
3 statute or by agreement of the parties.

4 * Sec. 16. APPLICABILITY. Sections 1 - 8 of this Act apply to all
5 causes of action accruing after the effective date of this Act, except that
6 AS 09.17.055(a) enacted in sec. 2 of this Act applies to all contracts for
7 the provision of collateral benefits that are formed or renewed after the
8 effective date of this Act.

9 * Sec. 17. SEVERABILITY. If any provision of this Act, or the applica-
10 tion thereof to any person or circumstance is held invalid, the remainder
11 of this Act and the application to other persons or circumstances shall not
12 be affected thereby.

13 * Sec. 18. The Department of Law, with the assistance of the Department
14 of Commerce and Economic Development, shall contract for

15 (1) a study of closed insurance claims to identify

16 (A) the extent to which the legal system has or has not
17 been the cause of dramatic liability insurance increases and coverage
18 reduction in crisis lines in Alaska;

19 (B) how victims are faring under the present system; and

20 (C) what the various specific tort reform proposals will
21 actually accomplish;

22 (2) a study of insurance company finances to determine

23 (A) the extent to which dramatic liability insurance rate
24 increases and coverage limitations in Alaska are, or are not, cost-
25 justified in relation to awards, settlements, and relevant court
26 decisions in Alaska involving personal injury, death, or property
27 damage based on fault; and

28 (B) the extent to which legislative or regulatory actions
29 affecting the tort system in Alaska are necessary to resolve the

state's liability insurance crisis.

* Sec. 19. Except for AS 09.17.080, added by sec. 2 of this Act, this Act takes effect immediately in accordance with AS 01.10.070(c).

* Sec. 20. AS 09.17.080, added by sec. 2 of this Act, only takes effect if sec. 15 of this Act does not pass each house of the legislature by at least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HCS CSSB 377 (Jud.)
 Title : "An Act relating to civil actions;
 amending Alaska Rules of Civil
 Procedure 49, 52, 58, 60;..."
 Sponsor : Sen. Kelly
 Requestor : House Judiciary Committee
 Date of Request : May 7, 1986

FISCAL DETAIL

Agency Affected : Department of Law
 BRU : Legal Services

 Components : Legal Services Operations

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

The committee substitute substantially reduces the scope of the study to be conducted by the Department of Law eliminating the need for fiscal note funds.

Prepared by : Richard I. Pegues, Director Phone : 465-3672
 Division : Administrative Services Division Date : 5/7/86
 Approved by Commissioner : Harold G. Brown, Attorney General Date : 5/7/86
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: May 7, 1986

REQUEST

Bill/Resolution No.: House CS for SSSB 377 (JUD)

Title: An act relating to civil actions, etc.

Sponsor: Kelly, Abood, Bennett, et al.

Requestor: _____

Date of Request: May 7, 1986

FISCAL DETAIL

Agency Affected: _____

BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary House CS for SSSB 377 (JUD) removes or modifies the original bill language to delete any fiscal benefit to the State of Alaska's estimated ultimate loss and loss expense, i.e., "noneconomic damages" limit changed from \$250,000 to \$1,000,000, "punitive" damages not mentioned in revised bill, "periodic payment" provision changed, "joint and several" provision change, "release or covenant not to sue" provision change, "offers of judgment" provision change.

Prepared By: Donald Hitchcock, Director

Phone: 465-2180

Division: Risk Management

Date: May 7, 1986

Approved by Commissioner: Eleanor Andrews

Date: _____

Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 377 (HCC) *Final*
 Title : An Act Relating to Tort
Re form

Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		80.7	80.7	80.7	80.7	80.7
TRAVEL		6.2	6.2	6.2	6.2	6.2
CONTRACTUAL		797.4	797.4	797.4	797.4	797.4
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		6.7				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		892.0	885.3	885.3	885.3	885.3

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		892.0	885.3	885.3	885.3	885.3
FEDERAL FUNDS						
OTHER						
TOTAL		892.0	885.3	885.3	885.3	885.3

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe/Robert G. Fisher Phone : 264-8215
 Division : Alaska Court System Date : 4/9/85

Approved by Commissioner : Arthur H. Snowden, IV *AHS IV* Date : 4/9/85
 Agency : Alaska Court System

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CSSB 377 (L & C) Fiscal Note Narrative

This legislation impacts the court system in two areas: expanded judicial workload and mandatory arbitration.

Expanded Judicial Workload

The presiding judge for the third judicial district anticipates that new procedures incorporated in this bill (such as hearings to determine whether defendants who have defaulted on periodic payments should be held in contempt and the amount of related damages which should be assessed) will increase the court's workload by 20% for each trial. This estimate also includes judge time expended on additional litigation which will result from attempts to transfer proportional liability to persons who have signed releases before trial, and litigation to resolve interpretation questions with the legislation. Also, more cases will go to trial because of diminished incentives to settle resulting from restrictions on the award of Civil Rule 82 Attorneys Fees.

It is anticipated that the increased workload could be handled statewide by funding the equivalent of a pro tem judge. Pro tem funding is less costly than funding new judge positions because salary and benefits for retired pro tem judges are significantly lower. Additionally, since these judges are not permanently assigned to one court location, normal space and staffing requirements are avoided.

The provisions of this legislation which establish new procedures for the court come into play only when a case goes to trial. According to figures provided by the Anchorage trial court, approximately 5% of the cases filed go to trial, resulting in 105 personal injury trials statewide.

It is estimated that a personal injury trial averages two weeks. The total number of personal injury trials multiplied by two weeks of a judge's time total 210 judge weeks.

The estimated 20% additional judicial workload attributable to these expanded proceedings totals 42 judge weeks. Since a standard judicial work year averages 40 work weeks (excluding holidays, vacation and training), it is estimated that one judge would be required to process the additional statewide workload.

In order to avoid duplicative hearings, the court system favors binding arbitration rather than the option of de novo court trials. In the event that this legislation is not amended to provide for binding arbitration, the court system assumes for purposes of this fiscal note that the court would be required to bear the cost of arbitrators for those parties who are unable to afford this expense. It is estimated that 1341 personal injury cases statewide would be subject to the mandatory arbitration provision because they fall under \$100,000. It is assumed that a third of the parties will not be able to afford the expenses of arbitrators. Thus, the court system will be required to bear these expenses in 443 cases.

Assuming an arbitration lasting 12 hours and an estimated average hourly compensation rate for the arbitrator of \$150, the cost of an arbitration totals \$1,800. The estimated total cost of an arbitrator for all cases under \$100,000 is \$797,400. Additionally, the court system assumes that for parties in outlying rural areas who are unable to afford the costs of arbitrators, it will be less costly to fly these persons to central urban areas rather than to fly arbitrators to the outlying areas and pay for their room and board. The additional air fare and per diem costs total \$6,155. Based on these assumptions, the total costs of mandatory arbitration is \$803,555.

ALASKA COURT SYSTEM
used
 CSSB 377 (~~377~~C) - TORT REFORM
 FISCAL IMPACT

Personnel:

	Salary	Benefits	Total
Pro Tem, Superior Court Judge (PFT, using fully-vested retired judge) (See Schedule #2)	\$19,332	\$26,779	\$46,111
In-Court Clerk (PFT, 12B)	25,740	8,863	34,603

Total Personnel			80,714
Travel costs for indigent bush parties in manda- tory arbitration cases. (See Schedule #3)			6,155
Contractual cost of arbitrators for indigent parties in mandatory arbitration cases. (See Schedule #3)			797,400
Supplies			1,000
Equipment: (one-time items)			
New employee equipment - office furniture and reference materials			6,759

Total FY 87 Cost			\$892,028
			=====

ALASKA COURT SYSTEM

ESTIMATION OF JUDICIAL RESOURCES
NEEDED TO PROCESS INCREASED WORKLOADCSSB 377 (~~DA~~ C) - TORT REFORM

	Anchorage	Rest of State	Total
Number of civil damage cases (a)	1,458	638	2,096
Estimated percentage of cases going to trial	5%	5%	5%
Estimated number of trials	73	32	105
Estimated length of trial in weeks	2	2	2
Estimated judicial time in weeks	146	64	210
Estimated workload increase from legislation	20%	20%	20%
Estimated additional judicial workload in weeks	29	13	42
Estimated average number of work- weeks in judicial year (b)	40	40	40
Estimated number of judges needed to process additional workload	0.73	0.33	1.05

Notes:

- (a) Based on FY 85 case filings. All civil damage case filings assumed to be personal injury cases.
- (b) Estimated number of work-weeks, net of holidays, vacation and training.

ALASKA COURT SYSTEM
 ESTIMATED FISCAL IMPACT OF MANDATORY ARBITRATION
 CSSB 377 (~~1985~~ ¹⁹⁸⁶) - TORT REFORM

	Anchorage	Rest of State	Total
Number of civil damage cases (a)	1,458	638	2,096
Estimated percentage of cases under \$100,000	64%	64%	64%
Estimated number of cases under \$100,000	933	408	1,341
Estimated percentage of indigent parties	33%	33%	33%
Estimated number of cases involving indigent parties	308	135	443
Estimated average length of arbi- tration hearing in hours	12	12	12
Estimate average hourly rate of arbitrator	\$150	\$150	\$150
Estimated average cost of each case	\$1,800	\$1,800	\$1,800
Estimated total cost of arbitrators	\$554,400	\$243,000	\$797,400
Estimated travel cost for indigent parties living in bush areas. (See Schedule #4)	\$0	\$6,155	\$6,155
Estimated total cost of mandatory arbitration	\$554,400	\$249,155	\$803,555

Notes:

- (a) Based on FY 85 case filings. All civil damage case filings assumed to be personal injury cases.

ALASKA COURT SYSTEM
ESTIMATED TRAVEL COSTS FOR INDIGENT BUSH PARTIES
CSSB 377 ~~(S-C)~~ - TORT REFORM

Bush Courts	Number of Case Filings	Percent Under \$100,000	Number of Cases Under \$100,000	Percent Indigent Defendants	Number of Indigent Cases	Air Fare to Nearest Urban Court (a)	Estimated Air Fare Cost	Estimated Per Diem Cost (b)	Estimated Total Travel Cost
Barrow	5	64%	3	33%	1	\$500	\$500	\$315	\$815
Bethel	30	64%	19	33%	6	302	1,812	1,680	3,492
Kotzebue	5	64%	3	33%	1	426	426	280	706
Nome	6	64%	4	33%	1	426	426	280	706
Valdez	6	64%	4	33%	1	156	156	280	436
								Total Cost	\$6,155

Notes:

(a) Bush courts served by urban courts:

Barrow served by Fairbanks
Bethel served by Anchorage
Kotzebue served by Anchorage
Nome served by Anchorage
Valdez served by Anchorage

(b) Estimated to require three and one half days of per diem.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSB 377(L&C)
Title : Relating to civil actions; amending Alaska Rules of Civil Procedure 49, 52, 58 68, and 82; and providing for an eff date"
Sponsor : Sen Kelly, et al
Requestor : _____
Date of Request : _____

FISCAL DETAIL

Agency Affected : Court System
BRU : _____
Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	

CAPITAL	0	0	0	0	0	
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REVENUE	0	0	0	0	0	
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FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : Michael Thill, Aide
Division : Senate Labor and Commerce Committee

Phone : 3244
Date : 4/1/86

Approved by Commissioner : Senator Zikaroff, Chairman
Agency : Senate Labor and Commerce

Date : 4/1/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Incorrect title

p. 12 2/18

*delete: "7, 8, 11"
"4"*

Original sponsors: Kelly, Abood,
Bennett, et al

IN THE SENATE

BY THE FINANCE COMMITTEE

CS FOR SENATE BILL NO. 377 (Finance)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; requesting a study of insurance rates; and providing for an effective date."

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

* Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has generally been developed by the courts on a case-by-case basis. While this process has resulted in some significant changes in the law, including amelioration of the harshness of many common law doctrines, the legislature has periodically intervened in order to bring about needed reforms. The purpose of this Act is to enact further reforms in order to create a more equitable distribution of the cost and risk of injury and increase the availability and affordability of insurance.

(b) The legislature finds that boroughs, cities, and other governmental entities are faced with increased exposure to lawsuits and awards and dramatic increases in the cost of insurance coverage. These escalating costs ultimately affect the public through higher taxes, loss of essential services, and loss of the protection provided by adequate insurance. In order to improve the availability and affordability of quality governmental services, comprehensive reform is necessary.

(c) The legislature also finds comparable cost increases in professional liability insurance. Escalating malpractice insurance premiums discourage physicians and other health care providers from initiating or continuing their practice or offering needed services to the public and

1 contribute to the rising costs of consumer health care. Other profession-
2 als, such as architects and engineers, face similar difficult choices,
3 financial instability, and unlimited risk in providing services to the
4 public.

5 (d) The legislature also finds that general liability insurance is
6 becoming unavailable or unaffordable to many businesses, individuals, and
7 nonprofit organizations in amounts sufficient to cover potential losses.
8 High premiums have discouraged socially and economically desirable activ-
9 ities and encourage many to go without adequate insurance coverage.

10 (e) It is the intent of the legislature to reduce costs associated
11 with the tort system, while ensuring that adequate and appropriate compen-
12 sation for persons injured through the fault of others is available.

13 * Sec. 2. AS 09 is amended by adding a new chapter to read:

14 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

15 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
16 recover damages for personal injury based on negligence, damages for
17 noneconomic losses shall be limited to compensation for pain, suffer-
18 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-
19 ment of life and other nonpecuniary damage.

20 (b) The amount of damages awarded by a court or jury under (a)
21 of this section may not exceed \$500,000 for each claim based on a
22 separate incident or injury.

23 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
24 be awarded in an action, whether in tort, contract, or otherwise,
25 unless the claimant proves by clear and convincing evidence that the
26 party defending the claim caused injury to the claimant by an act
27 constituting the commission of a felony under state or federal law, or
28 the act constituted deliberate or malicious conduct.

29 (b) A person may not claim punitive damages in a civil action,

1 unless the claimant first establishes a prima facie claim under (a) of
2 this section.

3 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-
4 SION OF A CRIME. (a) A person who suffers personal injury or death
5 may not bring an action to recover damages for the personal injury or
6 death if the injuries or death occurred while the person was

7 (1) voluntarily under the influence of intoxicating liquor
8 or under the influence of a controlled substance listed in AS 11.71.-
9 140 - 11.71.190 and the condition of being under the influence of the
10 intoxicating liquor or controlled substance contributed more than 50
11 percent to the person's injuries or death; if there was 0.10 percent
12 or more by weight of alcohol in the person's blood or 0.10 grams or
13 more of alcohol per 210 liters of the person's breath, it is presumed
14 that the person was under the influence of intoxicating liquor; or

15 (2) engaged in the commission of a felony, if the felony
16 was causally related to the injury or death in time, place, or activi-
17 ty; however, nothing in this paragraph shall affect a right of action
18 under 42 U.S.C. 1983.

19 (b) The provisions of (a)(1) of this section do not apply to a
20 person who suffers personal injury or death caused by the intentional
21 act of another person or persons.

22 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
23 for personal injury are awarded by the court or jury, the verdict
24 shall be itemized between economic loss and noneconomic loss, if any,
25 as follows:

- 26 (1) past economic loss;
27 (2) past noneconomic loss;
28 (3) future economic loss;
29 (4) future noneconomic loss; and

1 (5) punitive damages.

2 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover
3 damages, the court shall, at the request of a party, enter judgment
4 ordering that amounts awarded a judgment creditor for future damages
5 be paid to the maximum extent feasible by periodic payments rather
6 than by a lump-sum payment if the award equals or exceeds \$100,000 in
7 future damages.

8 (b) The court may require security be posted, in order to ensure
9 that funds are available as periodic payments become due. The court
10 may not require security to be posted if an authorized insurer, as
11 defined in AS 21.90.900, acknowledges to the court its obligation to
12 discharge the judgment.

13 (c) A judgment ordering payment of future damages by periodic
14 payment shall specify the recipient, the dollar amount of the pay-
15 ments, the interval between payments, and the number of payments or
16 the period of time over which payments shall be made. Periodic pay-
17 ments shall be cumulatively adjusted annually by applying each year
18 the annual rate of change in the consumer price index for all urban
19 consumers for the Anchorage Metropolitan Area as published by the
20 Bureau of Labor Statistics of the United States Department of Labor
21 for the immediately preceding year. Payments may be modified only in
22 the event of the death of the judgment creditor, in which case pay-
23 ments may not be reduced or terminated, but shall be paid to persons
24 to whom the judgment creditor owed a duty of support, as provided by
25 law, immediately before death. In the event the judgment creditor
26 owed no duty of support to dependents at the time of the judgment
27 creditor's death, the money remaining shall be distributed in accor-
28 dance with a will of the deceased judgment creditor accepted into
29 probate or under the intestate laws of the state if the deceased had

1 no will.

2 (d) If the court finds that the judgment debtor has exhibited a
3 continuing pattern of failing to make payments required under (c) of
4 this section, the court shall, in addition to the required periodic
5 payments, order the judgment debtor to pay the judgment creditor any
6 damages caused by the failure to make periodic payments, including
7 costs and attorney fees.

8 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the
9 attorney of the party shall sign and verify each complaint, answer,
10 cross-claim, and counterclaim that the party files. The verification
11 must include a statement that the person signing the pleading believes
12 the statements made in the pleading are true. If the court finds that
13 a statement made in the complaint, answer, cross-claim, or counter-
14 claim was knowingly untrue, and upon motion of a party the person
15 signing the pleading shall be compelled to show cause why the person
16 signing the pleading should not be held in contempt of court.

17 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
18 OFFICERS. (a) Unless the act or omission constituted gross negli-
19 gence, a person may not recover damages for an act or omission to act,
20 in the course and scope of official duties, from the following:

21 (1) a member of the board of directors or an officer of a
22 nonprofit corporation;

23 (2) a member of the board of directors of a public or
24 nonprofit hospital or a community-based advisory board of a hospital;

25 (3) a member of a school board of a school district;

26 (4) a member of a governing board, commission, or citizen
27 advisory committee of a municipality in the state.

28 (b) Notwithstanding (a) of this section, the duties and liabil-
29 ities of a director or officer of a nonprofit corporation to the

1 corporation or the corporation's shareholders may not be limited or
2 modified.

3 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
4 based on fault seeking to recover damages for injury or death to a
5 person or harm to property, contributory fault chargeable to the
6 claimant diminishes proportionately the amount awarded as compensatory
7 damages for the injury attributable to the claimant's contributory
8 fault, but does not bar recovery.

9 Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder
10 has rendered an award to a claimant, and after the court has awarded
11 costs and attorney fees, a defendant may introduce evidence of amounts
12 received or to be received by the claimant as compensation for the
13 same injury from collateral sources that do not have a right of subro-
14 gation against the claimant by law or contract.

15 (b) If the defendant elects to introduce evidence under (a) of
16 this section, the claimant may introduce evidence of

17 (1) the amount that the actual attorney fees incurred by
18 the claimant exceed the amount of the attorney fees awarded to the
19 claimant; and

20 (2) the amount that the claimant has paid or contributed to
21 secure the right to an insurance benefit introduced by the defendant
22 as evidence.

23 (c) If the total amount of collateral benefits introduced as
24 evidence under (a) of this section exceeds the total amount that the
25 claimant introduced as evidence under (b) of this section, the court
26 shall deduct from the amount awarded the claimant, the amount by which
27 the value of the benefits under (a) of this section exceeds the amount
28 of payments under (b) of this section.

29 (d) Notwithstanding (a) of this section, the defendant may not

1 introduce evidence of

2 (1) benefits that cannot be reduced or offset by federal
3 law;

4 (2) a deceased's life insurance policy; or

5 (3) gratuitous benefits provided to the claimant.

6 (e) This section does not apply to a medical malpractice action
7 filed under AS 09.55.

8 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
9 involving fault of more than one party to the action, including third-
10 party defendants and persons who have been released under AS 09.17.-
11 070, the court, unless otherwise agreed by all parties, shall instruct
12 the jury to answer special interrogatories or, if there is no jury,
13 shall make findings, indicating

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

16 (2) the percentage of the total fault of all of the parties
17 to each claim that is allocated to each claimant, defendant, third-
18 party defendant, and person who has been released from liability under
19 AS 09.17.070; for this purpose the court may determine that two or
20 more persons are to be treated as a single party.

21 (b) In determining the percentages of fault, the trier of fact
22 shall consider both the nature of the conduct of each party at fault
23 and the extent of the causal relation between the conduct and the
24 damages claimed.

25 (c) The court shall determine the award of damages to each
26 claimant in accordance with the findings, subject to a reduction under
27 AS 09.17.070, and enter judgment against each party liable on the
28 basis of rules of several liability. The court shall also determine
29 and state in the judgment each party's equitable share of the

1 obligation to each claimant in accordance with the respective
2 percentages of fault.

3 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
4 sue, or similar agreement entered into by a claimant and a person
5 liable discharges that person from liability to the claimant, but it
6 does not discharge another person liable upon the same claim unless
7 the release, covenant not to sue, or similar agreement provides for
8 discharge. However, the claim of the releasing person against other
9 persons is reduced by the amount of the released person's equitable
10 share of the obligation, determined in accordance with the provisions
11 of AS 09.17.060.

12 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
13 not contract for or collect a contingency fee for representing a
14 person seeking damages in connection with an action for personal
15 injury based on negligence in excess of 25 percent of the amount
16 recovered.

17 (b) If periodic payments for future damages are awarded, the
18 present value of the periodic payments must be included in computing
19 the total award from which attorney fees are calculated under this
20 section.

21 (c) An attorney may not contract for or receive a fee for de-
22 feuding a person against a claim for damages in connection with an
23 action for personal injury based on negligence, in excess of 25 per-
24 cent of the amount recovered or if no amount is recovered by the
25 plaintiff, 25 percent of the amount in controversy.

26 (d) The limitations in (a) - (c) of this section apply whether
27 the recovery is by settlement, arbitration, or judgment.

28 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
29 acts or omissions that are in any measure negligent or reckless toward

1 the person or property of the actor or others, or that subject a
2 person to strict tort liability; the term also includes breach of
3 warranty, unreasonable assumption of risk not constituting an enforce-
4 able express consent, misuse of a product for which the defendant
5 otherwise would be liable, and unreasonable failure to avoid an injury
6 or to mitigate damages; legal requirements of causal relation apply
7 both to fault as the basis for liability and to contributory fault.

8 * Sec. 3. AS 09.30.065 is amended to read:

9 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
10 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
11 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
12 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
13 making a claim or the party defending against a claim may serve upon
14 the adverse party an offer to allow judgment to be entered in complete
15 satisfaction of the claim for the money or property or to the effect
16 specified in the offer, with cost then accrued. If within 10 days
17 after the service of the offer the adverse party serves written notice
18 that the offer is accepted, either party may then file the offer and
19 notice of acceptance together with proof of service, and the clerk
20 shall enter judgment. An offer not accepted within 10 days is con-
21 sidered withdrawn and evidence of that offer is not admissible except
22 in a proceeding to determine the form of judgment after verdict. If
23 the judgment finally entered on the claim as to which an offer has
24 been made under this section is not more favorable to the offeree than
25 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
26 and accrued up to the date judgment is entered shall be adjusted as
27 follows:

28 (1) if the offeree is the party making the claim, the
29 interest rate shall be reduced by five [TWO] percent a year;

1 (2) if the offeree is the party defending against the
2 claim, the interest rate shall be increased by five [TWO] percent a
3 year.

4 * Sec. 4. AS 09.30.070 is amended to read:

5 Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on
6 judgments and decrees for the payment of money is equal to the 12th
7 Federal Reserve district discount rate as determined under AS 45.45.-
8 010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded
9 on a contract in writing, providing for the payment of interest until
10 paid at a specified rate not exceeding the legal rate of interest for
11 that type of contract, bears interest at the rate specified in the
12 contract if the interest rate is set out in the judgment or decree.

13 * Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

14 (b) Except when the court finds that the parties have agreed
15 otherwise, prejudgment interest accrues from the day process is served
16 on the defendant or the day the defendant received written notifica-
17 tion of the claim, whichever is earlier. Evidence to be considered by
18 the finder of fact may include the amount of the prejudgment interest
19 that may be added to the award.

20 * Sec. 6. AS 09.55.548(a) is repealed and reenacted to read:

21 (a) Except as provided in (b) of this section and AS 09.17,
22 damages in a malpractice shall be awarded in accordance with
23 principles of the common law.

24 * Sec. 7. AS 09.60.010 is repealed and reenacted to read:

25 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
26 PARTY. The supreme court shall determine by rule or order the costs,
27 if any, that may be allowed a prevailing party in a civil action.
28 Unless specifically authorized by statute or by agreement between the
29 parties, attorney fees may not be awarded to a party in a civil action

1 for personal injury, death or property damage related to or arising
2 out of fault, as defined in AS 09.17.900.

3 * Sec. 3. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
4 09.16.060 are repealed.

5 * Sec. 9. AS 09.17.030 and 09.17.060 enacted in sec. 2 of this Act have
6 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
7 jury to answer the special interrogatories listed in AS 09.17.060 regarding
8 the amount of damages and the percentages of fault to be allocated among
9 the parties and to itemize the verdict regarding economic and noneconomic
10 loss as specified in AS 09.17.030.

11 * Sec. 10. AS 09.17.060 enacted in sec. 2 of this Act has the effect of
12 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
13 specific findings regarding the amount of damages and the percentages of
14 fault to be allocated among the parties.

15 * Sec. 11. AS 09.17.030 and 09.17.060 enacted in sec. 2 of this Act
16 have the effect of amending Alaska Rule of Civil Procedure 53 by requiring
17 the court to include a specific item in its judgment.

18 * Sec. 12. AS 09.17.040 enacted in sec. 2 of this Act has the effect of
19 amending Alaska Rule of Civil Procedure 11 by requiring verification of
20 certain pleadings.

21 * Sec. 13. AS 09.17.080 enacted in sec. 2 of this Act has the effect of
22 amending Alaska Rule of Civil Procedure 32 by limiting the amount that
23 could be awarded as attorney fees in an action for personal injury or
24 property damage.

25 * Sec. 14. AS 09.30.070(b) as added by sec. 5 of this Act has the
26 effect of amending Alaska Rule of Civil Procedure 68 by providing that
27 prejudgment interest accrues from the day process is served on the defen-
28 dant or the day the defendant receives written notice of the claim.

29 * Sec. 15. AS 09.60.010 as amended by sec. 7 of this Act has the effect

1 of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of
2 attorney fees in certain civil actions based on fault, unless allowed by
3 statute or by agreement of the parties.

4 * Sec. 16. APPLICABILITY. Sections 1 - 8 of this Act apply to all
5 causes of action accruing after the effective date of this Act, except that
6 AS 09.17.055(a) enacted in sec. 2 of this Act applies to all contracts for
7 the provision of collateral benefits that are formed or renewed after the
8 effective date of this Act.

9 * Sec. 17. SEVERABILITY. If any provision of this Act, or the applica-
10 tion thereof to any person or circumstance is held invalid, the remainder
11 of this Act and the application to other persons or circumstances shall not
12 be affected thereby.

13 * Sec. 18. The governor is requested to direct the Department of Law,
14 with the assistance of the Department of Commerce and Economic Development
15 to

16 (1) contract for a study of closed insurance claims to identify
17 (A) the extent to which the legal system has or has not
18 been the cause of dramatic liability insurance increases and coverage
19 reduction in crisis lines in Alaska;

20 (B) how victims are faring under the present system; and

21 (C) what the various specific tort reform proposals will
22 actually accomplish;

23 (2) a study of insurance company finances to determine

24 (A) the extent to which dramatic liability insurance rate
25 increases and coverage limitations in Alaska are, or are not, cost-
26 justified;

27 (B) what alternatives exist to limiting coverage and rais-
28 ing rates; and

29 (C) the legislative or regulatory actions that may be

1 necessary to resolve the state's liability insurance crisis.

2 * Sec. 19. Except for AS 09.17.080, added by sec. 2 of this Act, this
3 Act takes effect immediately in accordance with AS 01.10.070(c).

4 * Sec. 20. AS 09.17.080, added by sec. 2 of this Act, only takes effect
5 if sec. 15 of this Act does not pass each house of the legislature by at
6 least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes
7 effect immediately under AS 01.10.070(c).
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Faiks Version ✓
Lauterbach
4/24/86

Original sponsors: Kelly, Abood,
Bennett, et al

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 377 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska
7 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;
8 and providing for an effective date."

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

10 * Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has
11 generally been developed by the courts on a case-by-case basis. While this
12 process has resulted in some significant changes in the law, including
13 amelioration of the harshness of many common law doctrines, the legislature
14 has periodically intervened in order to bring about needed reforms. The
15 purpose of this Act is to enact further reforms in order to create a more
16 equitable distribution of the cost and risk of injury and increase the
17 availability and affordability of insurance.

18 (b) The legislature finds that boroughs, cities, and other govern-
19 mental entities are faced with increased exposure to lawsuits and awards
20 and dramatic increases in the cost of insurance coverage. These escalating
21 costs ultimately affect the public through higher taxes, loss of essential
22 services, and loss of the protection provided by adequate insurance. In
23 order to improve the availability and affordability of quality governmental
24 services, comprehensive reform is necessary.

25 (c) The legislature also finds comparable cost increases in profes-
26 sional liability insurance. Escalating malpractice insurance premiums
27 discourage physicians and other health care providers from initiating or
28 continuing their practice or offering needed services to the public and
29 contribute to the rising costs of consumer health care. Other

1 professionals, such as architects and engineers, face similar difficult
2 choices, financial instability, and unlimited risk in providing services to
3 the public.

4 (d) The legislature also finds that general liability insurance is
5 becoming unavailable or unaffordable to many businesses, individuals, and
6 nonprofit organizations in amounts sufficient to cover potential losses.
7 High premiums have discouraged socially and economically desirable activ-
8 ities and encourage many to go without adequate insurance coverage.

9 (e) It is the intent of the legislature to reduce costs associated
10 with the tort system, while ensuring that adequate and appropriate compen-
11 sation for persons injured through the fault of others is available.

12 * Sec. 2. AS 09.10 is amended by adding a new section to read:

13 Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may
14 not bring an action for damages based on injury to person or property
15 when the amount in controversy is less than \$25,000, exclusive of
16 costs, interest and attorney fees, unless the controversy is first
17 arbitrated under AS 09.43.

18 * Sec. 3. AS 09 is amended by adding a new chapter to read:

19 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

20 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
21 recover damages for personal injury based on negligence, damages for
22 noneconomic losses shall be limited to compensation for pain, suffer-
23 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-
24 ment of life and other nonpecuniary damage.

25 (b) The amount of damages awarded by a court or jury under (a)
26 of this section may not exceed \$250,000 for each claim based on a
27 separate incident or injury.

28 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
29 be awarded in an action, whether in tort, contract, or otherwise,

1 unless the claimant proves by clear and convincing evidence that the
2 party defending the claim caused injury to the claimant by an act
3 constituting the commission of a felony under state or federal law, or
4 the act constituted deliberate or malicious conduct.

5 (b) A person may not claim punitive damages in a civil action,
6 unless the claimant first establishes a prima facie claim under (a) of
7 this section.

8 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-
9 SION OF A CRIME. (a) A person who suffers personal injury or death
10 may not bring an action to recover damages for the personal injury or
11 death if the injuries or death occurred while the person was

12 (1) voluntarily under the influence of intoxicating liquor
13 or under the influence of a controlled substance listed in AS 11.71.-
14 140 - 11.71.190 and the condition of being under the influence of the
15 intoxicating liquor or controlled substance contributed more than 50
16 percent to the person's injuries or death; if there was 0.10 percent
17 or more by weight of alcohol in the person's blood or 0.10 grams or
18 more of alcohol per 210 liters of the person's breath, it is presumed
19 that the person was under the influence of intoxicating liquor; or

20 (2) engaged in the commission of a felony, if the felony
21 was causally related to the injury or death in time, place, or activi-
22 ty; however, nothing in this paragraph shall affect a right of action
23 under 42 U.S.C. 1983.

24 (b) The provisions of (a)(1) of this section do not apply to a
25 person who suffers personal injury or death caused by the intentional
26 act of another person or persons.

27 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
28 for personal injury are awarded by the court or jury, the verdict
29 shall be itemized between economic loss and noneconomic loss, if any,

1 as follows:

- 2 (1) past economic loss;
3 (2) past noneconomic loss;
4 (3) future economic loss;
5 (4) future noneconomic loss; and
6 (5) punitive damages.

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9 ordering that amounts awarded a judgment creditor for future damages
10 be paid to the maximum extent feasible by periodic payments rather
11 than by a lump-sum payment if the award equals or exceeds \$100,000 in
12 future damages.

13 (b) The court may require security be posted, in order to ensure
14 that funds are available as periodic payments become due. The court
15 may not require security to be posted if an authorized insurer, as
16 defined in AS 21.90.900, acknowledges to the court its obligation to
17 discharge the judgment.

18 (c) A judgment ordering payment of future damages by periodic
19 payment shall specify the recipient, the dollar amount of the pay-
20 ments, the interval between payments, and the number of payments or
21 the period of time over which payments shall be made. Payments may be
22 modified only in the event of the death of the judgment creditor, in
23 which case payments may not be reduced or terminated, but shall be
24 paid to persons to whom the judgment creditor owed a duty of support,
25 as provided by law, immediately before death. In the event the judg-
26 ment creditor owed no duty of support to dependents at the time of the
27 judgment creditor's death, the money remaining shall be distributed in
28 accordance with a will of the deceased judgment creditor accepted into
29 probate or under the intestate laws of the state if the deceased had

1 no will.

2 (d) If the court finds that the judgment debtor has exhibited a
3 continuing pattern of failing to make payments required under (c) of
4 this section, the court shall, in addition to the required periodic
5 payments, order the judgment debtor to pay the judgment creditor any
6 damages caused by the failure to make periodic payments, including
7 costs and attorney fees.

8 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the
9 attorney of the party shall sign and verify each complaint, answer,
10 cross-claim, and counterclaim that the party files. The verification
11 must include a statement that the person signing the pleading believes
12 the statements made in the pleading are true. If the court finds that
13 a statement made in the complaint, answer, cross-claim, or counter-
14 claim was knowingly untrue, and upon motion of a party the person
15 signing the pleading shall be compelled to show cause why the person
16 signing the pleading should not be held in contempt of court.

17 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS, OFFICERS
18 ~~AND SUPERINTENDENTS.~~ (a) Unless the act or omission constituted
19 gross negligence, a person may not recover damages for an act or
20 omission to act, in the course and scope of official duties, from the
21 following:

- 22 (1) a member of the board of directors or an officer of a
23 nonprofit corporation;
- 24 (2) a member of the board of directors of a public or
25 nonprofit hospital or a community-based advisory board of a hospital;
- 26 (3) a member of a school board or superintendent of a
27 school district;
- 28 (4) an elected or appointed official of a political subdi-
29 vision of the state.

1 (b) Notwithstanding (a) of this section, the duties and liabil-
2 ities of a director or officer of a nonprofit corporation to the
3 corporation or the corporation's shareholders may not be limited or
4 modified.

5 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
6 based on fault seeking to recover damages for injury or death to a
7 person or harm to property, contributory fault chargeable to the
8 claimant diminishes proportionately the amount awarded as compensatory
9 damages for the injury attributable to the claimant's contributory
10 fault, but does not bar recovery.

11 Sec. 09.17.055. COLLATERAL BENEFITS. (a) Except when the
12 collateral source is a federal program that by law is required to seek
13 subrogation and except death benefits paid under life insurance, a
14 claimant in an action to recover damages for personal injury or death
15 may only recover damages from the defendant that exceed amounts re-
16 ceived by or paid for the benefit of the claimant as compensation for
17 the injuries from collateral sources, whether private, group, or
18 governmental, and whether contributory or noncontributory. Evidence
19 of collateral sources, other than a federal program that by law is
20 required to seek subrogation and the death benefit paid under life
21 insurance, is admissible after the fact finder has rendered an award.
22 The court may take into account the value of the claimant's rights to
23 coverage exhausted or depleted by payment of these collateral benefits
24 by adding back a reasonable estimate of their probable value, or by
25 designating and holding for possible periodic payment that amount of
26 the award that would otherwise have been deducted.

27 (b) A person who provides collateral benefits admissible under
28 (a) of this section may not bring an action based on the provision of
29 the collateral benefits, nor may the person be subrogated to the

1 rights of a plaintiff against a defendant.

2 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
3 involving fault of more than one party to the action, including third-
4 party defendants and persons who have been released under AS 09.17.-
5 070, the court, unless otherwise agreed by all parties, shall instruct
6 the jury to answer special interrogatories or, if there is no jury,
7 shall make findings, indicating

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

10 (2) the percentage of the total fault of all of the parties
11 to each claim that is allocated to each claimant, defendant, third-
12 party defendant, and person who has been released from liability under
13 AS 09.17.070; for this purpose the court may determine that two or
14 more persons are to be treated as a single party.

15 (b) In determining the percentages of fault, the trier of fact
16 shall consider both the nature of the conduct of each party at fault
17 and the extent of the causal relation between the conduct and the
18 damages claimed.

19 (c) The court shall determine the award of damages to each
20 claimant in accordance with the findings, subject to a reduction under
21 AS 09.17.070, and enter judgment against each party liable on the
22 basis of rules of several liability. The court shall also determine
23 and state in the judgment each party's equitable share of the obliga-
24 tion to each claimant in accordance with the respective percentages of
25 fault.

26 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
27 sue, or similar agreement entered into by a claimant and a person
28 liable discharges that person from liability to the claimant, but it
29 does not discharge another person liable upon the same claim unless

1 the release, covenant not to sue, or similar agreement provides for
2 discharge.

3 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
4 not contract for or collect a contingency fee for representing a
5 person seeking damages in connection with an action for personal
6 injury based on negligence in excess of 25 percent of the amount
7 recovered.

8 (b) The limitations in (a) of this section apply whether the
9 recovery is by settlement, arbitration, or judgment.

10 (c) If periodic payments for future damages are awarded, the
11 present value of the periodic payments must be included in computing
12 the total award from which attorney fees are calculated under this
13 section.

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

23 * Sec. 4. AS 09.30.065 is amended to read:

24 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
25 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
26 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
27 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
28 making a claim or the party defending against a claim may serve upon
29 the adverse party an offer to allow judgment to be entered in complete

1 satisfaction of the claim for the money or property or to the effect
2 specified in the offer, with cost then accrued. If within 10 days
3 after the service of the offer the adverse party serves written notice
4 that the offer is accepted, either party may then file the offer and
5 notice of acceptance together with proof of service, and the clerk
6 shall enter judgment. An offer not accepted within 10 days is con-
7 sidered withdrawn and evidence of that offer is not admissible except
8 in a proceeding to determine the form of judgment after verdict. If
9 the judgment finally entered on the claim as to which an offer has
10 been made under this section is not more favorable to the offeree than
11 the offer, the interest awarded under AS 45.45.010(a) and accrued up
12 to the date judgment is entered shall be adjusted as follows:

13 (1) if the offeree is the party making the claim, the
14 interest rate shall be reduced by two percent a year;

15 (2) if the offeree is the party defending against the
16 claim, the interest rate shall be increased by two percent a year.

17 * Sec. 5. AS 09.30.070 is amended to read:

18 Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on
19 judgments and decrees for the payment of money is equal to the 12th
20 Federal Reserve district discount rate as determined under AS 45.45.-
21 010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded
22 on a contract in writing, providing for the payment of interest until
23 paid at a specified rate not exceeding the legal rate of interest for
24 that type of contract, bears interest at the rate specified in the
25 contract if the interest rate is set out in the judgment or decree.

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

27 (b) Except when the court finds that the parties have agreed
28 otherwise, prejudgment interest accrues from the day process is served
29 on the defendant.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

1 satisfaction of the claim for the money or property or to the effect
2 specified in the offer, with cost then accrued. If within 10 days
3 after the service of the offer the adverse party serves written notice
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23 paid at a specified rate not exceeding the legal rate of interest for
24 that type of contract, bears interest at the rate specified in the
25 contract if the interest rate is set out in the judgment or decree.

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

27 (b) Except when the court finds that the parties have agreed
28 otherwise, prejudgment interest accrues from the day process is served
29 on the defendant.

1 * Sec. 7. AS 09.43.110 is amended to read:

2 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of
3 a party, the court shall confirm an award unless

4 (1) within the time limits imposed by AS 09.43.120 and
5 09.43.130 grounds are urged for vacating or modifying or correcting
6 the award, in which case the court shall proceed as provided in
7 AS 09.43.120 and 09.43.130; or

8 (2) an appeal is taken under AS 09.43.160(c).

9 * Sec. 8. AS 09.43.160 is amended by adding a new subsection to read:

10 (c) An award made as a result of arbitration required by AS 09.-
11 10.075 may be appealed to the district court. The appeal shall be
12 filed within 60 days after notice of an award is made under AS 09.-
13 43.080. The court shall grant a trial de novo if an appeal is filed
14 under this subsection.

15 * Sec. 9. AS 09.55.548 is repealed and reenacted to read:

16 Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages
17 in a malpractice action shall be awarded in accordance with principles
18 of the common law.

19 * Sec. 10. AS 09.60.010 is repealed and reenacted to read:

20 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
21 PARTY. The supreme court shall determine by rule or order the costs,
22 if any, that may be allowed a prevailing party in a civil action.
23 Unless specifically authorized by statute or by agreement between the
24 parties, attorney fees may not be awarded to a party in a civil
25 action.

26 * Sec. 11. AS 09.60 is amended by adding a new section to read:

27 Sec. 09.60.035. COSTS AND ATTORNEY FEES ALLOWED FOR ARBITRATION
28 APPEAL. If a party appeals an award made as a result of arbitration
29 required by AS 09.10.075, and the appellate court increases or

3464

Looks great. But be aware - fut. has never had committee review or other legal review!

1 decreases the award by more than 10
2 appeal shall also be awarded actual costs ling party on
3 as a result of the appeal. fees incurred

4 * Sec. 12. AS 09.65 is amended by adding a new section to read:

5 Sec. 09.65.137. CIVIL LIABILITIES OF ZOOS. (a) A person may
6 not recover damages for injury to person or property from a zoo or a
7 zoo operator if

8 (1) the damages occurred as a result of an inherent risk of
9 attendance at the zoo;

10 (2) the zoo operator exercised reasonable care to prevent
11 the injury; and

12 (3) signs are posted at prominent places within the zoo and
13 at each entrance warning that the zoo is not liable for injuries to
14 person or property occurring as a result of dangers or conditions
15 inherent in attending the zoo.

16 (b) In this section

17 (1) "inherent risk of attendance" means the dangers or
18 conditions that are an integral part of the physical layout of a zoo
19 and the physical proximity of wild animals;

20 (2) "zoo" means a place where wild animals are kept for
21 exhibition to the public.

22 * Sec. 13. AS 22.15.030(a) is amended to read:

23 (a) The district court has jurisdiction of civil cases and
24 proceedings as follows:

25 (1) for the recovery of money or damages when the amount
26 claimed exclusive of costs, interest and attorney fees does not exceed
27 \$25,000;

28 (2) for the recovery of specific personal property, when
29 the value of the property claimed and the damages for the detention do

1 not exceed \$25,000;

2 (3) for the recovery of a penalty or forfeiture, whether
3 given by statute or arising out of contract, not exceeding \$25,000;

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

7 (5) for establishing the fact of death of any person in the
8 manner prescribed in AS 09.55.020 - 09.55.060;

9 (6) for the recovery of the possession of premises in the
10 manner provided under AS 09.45.070 - 09.45.160 when the value of the
11 property or of the arrears and damage to the property does not exceed
12 \$25,000;

13 (7) for the foreclosure of a lien when the amount in con-
14 troversy does not exceed \$25,000;

15 (8) for the recovery of money or damages in motor vehicle
16 tort cases when the amount claimed exclusive of costs, interest and
17 attorney fees does not exceed \$25,000;

18 (9) over civil actions for taking utility service and for
19 damages to or interference with a utility line filed under AS 42.20.-
20 030;

21 (10) over cases involving injunctive relief for domestic
22 violence under AS 25.35.010 and 25.35.020;

23 (11) over an appeal by a party to an arbitration award under
24 AS 09.43.160(c).

25 * Sec. 14. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050,
26 and 09.16.060 are repealed.

27 * Sec. 15. AS 09.17.030 and 09.17.060 enacted in sec. 3 of this Act
28 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
29 the jury to answer the special interrogatories listed in AS 09.17.060

1 regarding the amount of damages and the percentages of fault to be allo-
2 cated among the parties and to itemize the verdict regarding economic and
3 noneconomic loss as specified in AS 09.17.030.

4 * Sec. 16. AS 09.17.060 enacted in sec. 3 of this Act has the effect of
5 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
6 specific findings regarding the amount of damages and the percentages of
7 fault to be allocated among the parties.

8 * Sec. 17. AS 09.17.030 and 09.17.060 enacted in sec. 3 of this Act
9 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
10 the court to include a specific item in its judgment.

11 * Sec. 18. AS 09.17.040 enacted in sec. 3 of this Act has the effect of
12 amending Alaska Rule of Civil Procedure 11 by requiring verification of
13 certain pleadings.

14 * Sec. 19. AS 09.17.080 enacted in sec. 3 of this Act has the effect of
15 amending Alaska Rule of Civil Procedure 82 by limiting the amount that
16 could be awarded as attorney fees in an action for personal injury or
17 property damage.

18 * Sec. 20. AS 09.30.070(b) as added by sec. 6 of this Act has the
19 effect of amending Alaska Rule of Civil Procedure 68 by providing that
20 prejudgment interest accrues from the day process is served on the defen-
21 dant.

22 * Sec. 21. AS 09.60.010 as amended by sec. 10 of this Act has the
23 effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the
24 award of attorney fees, unless allowed by statute or by agreement of the
25 parties.

26 * Sec. 22. APPLICABILITY. Sections 1 - 14 of this Act apply to all
27 causes of action accruing after the effective date of this Act, except that
28 AS 09.17.055(b) enacted in sec. 3 of this Act applies to all contracts for
29 the provision of collateral benefits that are formed or renewed after the

1 effective date of this Act.

2 * Sec. 23. SEVERABILITY. If any provision of this Act, or the applica-
3 tion thereof to any person or circumstance is held invalid, the remainder
4 of this Act and the application to other persons or circumstances shall not
5 be affected thereby.

6 * Sec. 24. LEGISLATIVE INTENT. The legislature intends that the
7 changes made in this Act to the code of civil procedure should be reviewed
8 three years after the effective date of the Act, to determine if additional
9 modifications or changes are necessary. To achieve effective review, the
10 legislature requests that the governor direct the division of insurance to
11 monitor the effect of this Act on premiums being charged for liability
12 insurance and to report the effect to the legislature no later than
13 March 1, in 1987, 1988, and 1989.

14 * Sec. 25. Except for AS 09.17.080, added by sec. 3 of this Act, this
15 Act takes effect immediately in accordance with AS 01.10.070(c).

16 * Sec. 26. AS 09.17.080, added by sec. 3 of this Act, only takes effect
17 if sec. 21 of this Act does not pass each house of the legislature by at
18 least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes
19 effect immediately under AS 01.10.070(c).

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Version #2
Ford/Lauterbac
4/23/86 ✓

Original sponsors: Kelly, Abood,
Bennett, et al

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 377 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska
7 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;
8 and providing for an effective date."

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

10 * Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has
11 generally been developed by the courts on a case-by-case basis. While this
12 process has resulted in some significant changes in the law, including
13 amelioration of the harshness of many common law doctrines, the legislature
14 has periodically intervened in order to bring about needed reforms. The
15 purpose of this Act is to enact further reforms in order to create a more
16 equitable distribution of the cost and risk of injury and increase the
17 availability and affordability of insurance.

18 (b) The legislature finds that boroughs, cities, and other govern-
19 mental entities are faced with increased exposure to lawsuits and awards
20 and dramatic increases in the cost of insurance coverage. These escalating
21 costs ultimately affect the public through higher taxes, loss of essential
22 services, and loss of the protection provided by adequate insurance. In
23 order to improve the availability and affordability of quality governmental
24 services, comprehensive reform is necessary.

25 (c) The legislature also finds comparable cost increases in profes-
26 sional liability insurance. Escalating malpractice insurance premiums
27 discourage physicians and other health care providers from initiating or
28 continuing their practice or offering needed services to the public and
29 contribute to the rising costs of consumer health care. Other

1 professionals, such as architects and engineers, face similar difficu
2 choices, financial instability, and unlimited risk in providing services
3 the public.

4 (d) The legislature also finds that general liability insurance
5 becoming unavailable or unaffordable to many businesses, individuals, and
6 nonprofit organizations in amounts sufficient to cover potential losses.
7 High premiums have discouraged socially and economically desirable activi
8 ties and encourage many to go without adequate insurance coverage.

9 (e) It is the intent of the legislature to reduce costs associate
10 with the tort system, while ensuring that adequate and appropriate compen
11 sation for persons injured through the fault of others is available.

12 * Sec. 2. AS 09.10 is amended by adding a new section to read:

13 Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may
14 not bring an action for damages based on injury to person or property
15 when the amount in controversy is less than \$25,000, exclusive of
16 costs, interest and attorney fees, unless the controversy is first
17 arbitrated under AS 09.43.

18 * Sec. 3. AS 09 is amended by adding a new chapter to read:

19 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

20 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
21 recover damages for personal injury based on negligence, damages for
22 noneconomic losses shall be limited to compensation for pain, suffering,
23 ing, inconvenience, physical impairment, disfigurement, loss of enjoy
24 ment of life and other nonpecuniary damage.

25 (b) The amount of damages awarded by a court or jury under (a)
26 of this section may not exceed \$250,000 for each claim based on
27 separate incident or injury.

28 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
29 be awarded in an action, whether in tort, contract, or otherwise

1 unless the claimant proves by clear and convincing evidence that the
2 party defending the claim caused injury to the claimant by an act
3 constituting the commission of a felony under state or federal law, or
4 the act constituted deliberate or malicious conduct.

5 (b) A person may not claim punitive damages in a civil action
6 unless the claimant first establishes a prima facie claim under (a) of
7 this section.

8 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-
9 SION OF A CRIME. (a) A person who suffers personal injury or death
10 may not bring an action to recover damages for the personal injury or
11 death if the injuries or death occurred while the person was

12 (1) voluntarily under the influence of intoxicating liquor;
13 or under the influence of a controlled substance listed in AS 11.71.
14 140 - 11.71.190 and the condition of being under the influence of the
15 intoxicating liquor or controlled substance contributed more than 5
16 percent to the person's injuries or death; if there was 0.10 percent
17 or more by weight of alcohol in the person's blood or 0.10 grams or
18 more of alcohol per 210 liters of the person's breath, it is presumed
19 that the person was under the influence of intoxicating liquor; or

20 (2) engaged in the commission of a felony, if the felony
21 was causally related to the injury or death in time, place, or activi-
22 ty; however, nothing in this paragraph shall affect a right of action
23 under 42 U.S.C. 1983.

24 (b) The provisions of (a)(1) of this section do not apply to a
25 person who suffers personal injury or death caused by the intentional
26 act of another person or persons.

27 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
28 for personal injury are awarded by the court or jury, the verdict
29 shall be itemized between economic loss and noneconomic loss, if any.

1 as follows:

- 2 (1) past economic loss;
- 3 (2) past noneconomic loss;
- 4 (3) future economic loss;
- 5 (4) future noneconomic loss; and
- 6 (5) punitive damages.

7 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover
8 damages, the court shall, at the request of a party, enter judgment
9 ordering that amounts awarded a judgment creditor for future damages
10 be paid to the maximum extent feasible by periodic payments rather
11 than by a lump-sum payment if the award equals or exceeds \$100,000 in
12 future damages.

13 (b) The court may require security be posted, in order to ensure
14 that funds are available as periodic payments become due. The court
15 may not require security to be posted if an authorized insurer, as
16 defined in AS 21.90.900, acknowledges to the court its obligation to
17 discharge the judgment.

18 (c) A judgment ordering payment of future damages by periodic
19 payment shall specify the recipient, the dollar amount of the pay-
20 ments, the interval between payments, and the number of payments or
21 the period of time over which payments shall be made. Payments may be
22 modified only in the event of the death of the judgment creditor, in
23 which case payments may not be reduced or terminated, but shall be
24 paid to persons to whom the judgment creditor owed a duty of support,
25 as provided by law, immediately before death. In the event the judg-
26 ment creditor owed no duty of support to dependents at the time of the
27 judgment creditor's death, the money remaining shall be distributed in
28 accordance with a will of the deceased judgment creditor accepted into
29 probate or under the intestate laws of the state if the deceased had

1 no will.

2 (d) If the court finds that the judgment debtor has exhibited
3 continuing pattern of failing to make payments required under (c) of
4 this section, the court shall, in addition to the required periodic
5 payments, order the judgment debtor to pay the judgment creditor an
6 damages caused by the failure to make periodic payments, including
7 costs and attorney fees.

8 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the
9 attorney of the party shall sign and verify each complaint, answer,
10 cross-claim, and counterclaim that the party files. The verification
11 must include a statement that the person signing the pleading believes
12 the statements made in the pleading are true. If the court finds that
13 a statement made in the complaint, answer, cross-claim, or counter-
14 claim was knowingly untrue, and upon motion of a party the person
15 signing the pleading shall be compelled to show cause why the person
16 signing the pleading should not be held in contempt of court.

17 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS, OFFICERS
18 ~~AND SUPERINTENDENTS.~~ (a) Unless the act or omission constitutes
19 gross negligence, a person may not recover damages for an act or
20 omission to act, in the course and scope of official duties, from the
21 following:

22 (1) a member of the board of directors or an officer of
23 nonprofit corporation;

24 (2) a member of the board of directors of a public or
25 nonprofit hospital or a community-based advisory board of a hospital;

26 (3) a member of a school board ~~or superintendent~~ of a
27 school district;

28 (4) an elected or appointed official of a political subdivi-
29 sion of the state.

1 (b) Notwithstanding (a) of this section, the duties and liabilities
2 ities of a director or officer of a nonprofit corporation to the
3 corporation or the corporation's shareholders may not be limited or
4 modified.

5 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
6 based on fault seeking to recover damages for injury or death to a
7 person or harm to property, contributory fault chargeable to the
8 claimant diminishes proportionately the amount awarded as compensatory
9 damages for the injury attributable to the claimant's contributory
10 fault, but does not bar recovery.

11 Sec. 09.17.055. COLLATERAL BENEFITS. (a) Except when the
12 collateral source is a federal program that by law is required to seek
13 subrogation and except death benefits paid under life insurance, a
14 claimant in an action to recover damages for personal injury or death
15 may only recover damages from the defendant that exceed amounts re-
16 ceived by or paid for the benefit of the claimant as compensation for
17 the injuries from collateral sources, whether private, group, or
18 governmental, and whether contributory or noncontributory. Evidence
19 of collateral sources, other than a federal program that by law is
20 required to seek subrogation and the death benefit paid under life
21 insurance, is admissible after the fact finder has rendered an award.
22 The court may take into account the value of the claimant's rights to
23 coverage exhausted or depleted by payment of these collateral benefits
24 by adding back a reasonable estimate of their probable value, or by
25 designating and holding for possible periodic payment that amount of
26 the award that would otherwise have been deducted.

27 (b) A person who provides collateral benefits admissible under
28 (a) of this section may not bring an action based on the provision of
29 the collateral benefits, nor may the person be subrogated to the

1 rights of a plaintiff against a defendant.

2 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
3 involving fault of more than one party to the action, including third
4 party defendants and persons who have been released under AS 09.17
5 070, the court, unless otherwise agreed by all parties, shall instruct
6 the jury to answer special interrogatories or, if there is no jury,
7 shall make findings, indicating

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

10 (2) the percentage of the total fault of all of the parties
11 to each claim that is allocated to each claimant, defendant, third
12 party defendant, and person who has been released from liability under
13 AS 09.17.070; for this purpose the court may determine that two or
14 more persons are to be treated as a single party.

15 (b) In determining the percentages of fault, the trier of fact
16 shall consider both the nature of the conduct of each party at fault
17 and the extent of the causal relation between the conduct and the
18 damages claimed.

19 (c) The court shall determine the award of damages to each
20 claimant in accordance with the findings, subject to a reduction under
21 AS 09.17.070, and enter judgment against each party liable on the
22 basis of rules of several liability. The court shall also determine
23 and state in the judgment each party's equitable share of the obliga-
24 tion to each claimant in accordance with the respective percentages of
25 fault.

26 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
27 sue, or similar agreement entered into by a claimant and a person
28 liable discharges that person from liability to the claimant, but it
29 does not discharge another person liable upon the same claim unless

1 the release, covenant not to sue, or similar agreement provides for
2 discharge.

3 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
4 not contract for or collect a contingency fee for representing a
5 person seeking damages in connection with an action for personal
6 injury based on negligence in excess of 25 percent of the amount
7 recovered.

8 (b) The limitations in (a) of this section apply whether the
9 recovery is by settlement, arbitration, or judgment.

10 (c) If periodic payments for future damages are awarded, the
11 present value of the periodic payments must be included in computing
12 the total award from which attorney fees are calculated under this
13 section.

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

23 * Sec. 4. AS 09.30.065 is amended to read:

24 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
25 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
26 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
27 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
28 making a claim or the party defending against a claim may serve upon
29 the adverse party an offer to allow judgment to be entered in complete