

ALASKA LEGISLATURE COMMITTEE BILL FILES - 1987 - 1988 8879

SB 211

77

SB

2/11

5/5/88
H(L&C)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HCS CSSB 211 (L&C)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 5/4/88 Agency Affected: Commerce & Econ. Dev.
Title: An Act relating to civil liability BRU: Division of Insurance
Sponsor: Labor and Commerce Components: Public Protection
Requester: Labor and Commerce

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	350.0	300.0	250.0	250.0	250.0	250.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	350.0	300.0	250.0	250.0	250.0	250.0

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

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

FUNDING: (Thousands of dollars)

GENERAL FUND	350.0	300.0	250.0	250.0	250.0	250.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

The analysis required in Section 5 for the Director's Annual Report involves a legal and actuarial review of court decisions and an analysis of rate changes resulting from those decisions. This requires a review that present

(CONTINUED - NEXT SHEET)

Prepared by: Donald P. Koch Phone: 465-2571
Division: Insurance Date: 5/5/88

Approved by Commissioner: J. Anthony Smith Date: 5/5/88
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

ANALYSIS - (CONTINUED)

staff does not have the needed expertise to conduct. The scope of the analysis is not sufficiently clear to give great precision to the fiscal impact of this proposal. We estimate that a review could be done by an independent actuarial firm with legal assistance. The depth of review would be subject to negotiation and design. We have estimated \$250,000 per year for this work. The remaining \$100,000 in FY 88 and \$50,000 in FY 89 is for participation in the effort required in Section 6. This section requires a report by the Department of Law, which will need the assistance of the Division of Insurance. This participation will require a substantial data collection and analysis effort by the division which it is not geared to accommodate. We expect also to contract for the necessary assistance to develop and implement methods to acquire the data and analyze same.

SENATE COMMITTEE REPORT

FURTHER

3/4/88
Mr. President:

DATE TURNED INTO OFFICE 3/23/88

Finance Committee considered SB 211

civil liability; amending Alaska Rule of Civil Procedure 82; efd

and recommended

replace with _____ CS SB 211 (FIN)) same title
 or adopt _____ CS _____) new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)

new updated or previous

zero fiscal impact

Courts &
DOR (506.0)
Law &
Commerce 250

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures: Paul Frank, Rick Halvord]

Rick Halvord do pass
Chairman signature and recommendation

Committee Backup attached

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: CS SB 211(Fin)
Publish Date: 3-4-88

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to civil liability... BRU: Trial Courts

Sponsor: Faiks, Abood, et al Components:
Requestor: Judiciary

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL

REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time

Part-time

Temporary

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan E. Brandberg* General Counsel Phone: 264-8228
Division: Alaska Court System Date: 03/05/88

Approved by: *Arthur H. Snowden, II* Administrative Director Date: 03/05/88
Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

RECEIVED
MAR 18 1988
LEGISLATIVE FINANCE

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Civil Liability
Sponsor: Faiks, Abood, Bennett, et al.
Requestor: _____

Agency Affected: Department of Administration
BRU: Division of Risk Management
Components: Risk Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
TOTAL	0.0	(306.00)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

The final benefit is impossible to accurately project, given that it will only affect liability not yet incurred. Based on the State's past liability claims experience, we project a 20% reduction in estimated ultimate loss and loss expense per fiscal year. The attached projection details the calculations using the State of Alaska's actuarial experience.

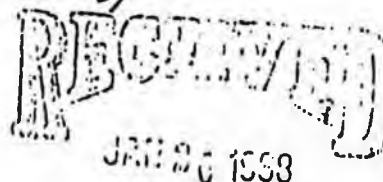
Prepared By: Don Hitchcock
Division: Risk Management

Phone: 465-2180
Date: January 18, 1988

Approved by Commissioner: John M. Andrews
Agency: Department of Administration

Date: 1/23/88

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



FISCAL NOTE ANALYSIS
FOR SB 211

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

	YEAR OF OCCURRENCE						TOTAL
	1988	1989	1990	1991	1992	1993	
FY 88	-0-						
FY 89		306.0					306.0
Y E A R O F S A V I N G FY 90		274.0	384.0				658.0
FY 91		360.0	342.0	480.0			1,182.0
FY 92		336.0	448.0	428.0	600.0		1,812.0
FY 93		252.0	420.0	558.0	534.0	750.0	2,514.0
FY 94			316.0	526.0	698.0	668.0	
FY 95				394.0	656.0	872.0	
FY 96					492.0	820.0	
FY 97						616.0	
Future		<u>874.0</u>	<u>1,092.0</u>	<u>1,366.0</u>	<u>1,706.0</u>	<u>2,132.0</u>	
TOTAL		2,400.0	3,000.0	3,750.0	4,686.0	5,858.0	

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

12 months	12.8%
24 months	11.4%
36 months	14.9%
48 months	14.0%
60 months	10.5%
Balance	36.4%

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Law
 Title: Relating to civil liability BRU: Legal Services
and amending Civil Rule 82
 Sponsor: Senate Judiciary Components: Operations
 Requestor: Senate Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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)

Prepared by: *Rick Halford* Phone: 465-4958
 Division: Senator Rick Halford, Co-chairman Date: 3/23/88
Senate Finance Committee

Approved by Commissioner: _____ Date: _____
 Agency: _____

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to civil liability
amending Civil Rule 82
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Insurance
Components: Public Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	25.0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	25.0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

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

GENERAL FUND	0	25.0	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)

Prepared by: *Rick Holford*
Division: Senator Rick Holford, Co-chairman
Senate Finance Committee

Phone: 465-4958
Date: 3/23/88

Approved by Commissioner: _____
Agency: _____

Date: _____

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

Original sponsors: Faiks, Abood,
Bennett, et al.

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 211 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability; amending Alaska
7 Rule of Civil Procedure 82; and providing for an
8 effective date."

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

10 * Section 1. AS 09.17.010(b) is amended to read:

11 (b) The amount of noneconomic damages awarded by a court or jury
12 under (a) of this section may not exceed \$100,000 [\$500,000] for each
13 claim based on a separate incident or injury.

14 * Sec. 2. AS 09.17.020 is amended to read:

15 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
16 awarded in an action, whether in tort, contract, or otherwise, unless
17 supported by clear and convincing evidence of fraud, malice, gross
18 negligence, or reckless disregard by the defendant.

19 * Sec. 3. AS 09.17.030 is amended to read:

20 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
21 person who suffers personal injury or death may not recover damages
22 for the personal injury or death if the injuries or death occurred
23 while the person was engaged in the commission of a crime [FELONY],
24 the person has been convicted of the crime [FELONY], including con-
25 viction based on a guilty plea or plea of nolo contendere, and the
26 crime [FELONY] substantially contributed to the injury or death. This
27 subsection [SECTION] does not affect a right of action under 42 U.S.C.
28 1983.

29 * Sec. 4. AS 09.17.030 is amended by adding new subsections to read:

*Alternative language suggested by Mike Ford
(Legal Services) approved by Cheryl 3/24/88.*

1 (b) This section does not apply to a person who suffers personal
2 injury or death if the person liable for the damages

3 (1) was engaged in the commission of a crime at the time
4 the personal injury or death occurred; and

5 (2) has been convicted of the crime, including conviction
6 based on a guilty plea or plea of nolo contendere.

7 (c) In this section "crime" has the meaning given in AS 11.81.-
8 900(b).

9 * Sec. 5. AS 09.17.040(d) is amended to read:

10 (d) In an action to recover damages, the court shall, at the
11 request of a [AN INJURED] party, enter judgment ordering that amounts
12 awarded a judgment creditor for future damages be paid to the maximum
13 extent feasible by periodic payments rather than by a lump-sum pay-
14 ment.

15 * Sec. 6. AS 09.17.050(a) is amended to read:

16 (a) Unless the act or omission constituted gross negligence, a
17 person may not recover tort damages for personal injury, death, or
18 damage to property for an act or omission to act in the course and
19 scope of official duties, from [ONE OF] the following:

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

22 (2) a member of the board of directors of a public or
23 nonprofit hospital, or a member of a citizen's advisory board of any
24 hospital;

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

26 (4) a member of the governing body, a commission, or a
27 citizen's advisory committee of a municipality of the state;

28 (5) a member of the board of directors or an officer of an
29 electric or telephone cooperative organized under AS 10.25.

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

2 Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the
3 collateral source by law or contract must seek subrogation and except
4 death benefits paid under life insurance, a person may only recover
5 damages that exceed amounts received by that person as compensation
6 for the injuries from collateral sources, whether private, group, or
7 governmental, and whether contributory or noncontributory. Evidence
8 of collateral sources, other than a source that must by law or con-
9 tract seek subrogation and the death benefit paid under life insur-
10 ance, shall be considered by the trier of fact in determining the
11 amount of an award, and shall be considered by the court in determin-
12 ing if an award is excessive. The trier of fact shall be informed of
13 the tax implications of an award of damages. The court may take into
14 account the value of the person's rights to coverage exhausted or
15 depleted by payment of these collateral benefits by adding back a
16 reasonable estimate of their probable value, or by earmarking and
17 holding for possible periodic payment under AS 09.17.040 that amount
18 of the award that would otherwise have been deducted, to see if the
19 impairment of the person's rights actually takes place in the future.

20 (b) This section does not apply to a medical malpractice action
21 filed under AS 09.55.

22 * Sec. 8. AS 09.17.080(d) is repealed and reenacted to read:

23 (d) In an action involving hazardous waste, environmental pol-
24 lution, or violation of state or federal antitrust statutes, the court
25 shall enter judgment against each party liable on the basis of joint
26 and several liability. In all other actions the court shall enter
27 judgment against each party liable on the basis of several liability
28 in accordance with that party's percentage of fault.

29 * Sec. 9. AS 09.17.900 is amended to read:

1 Sec. 09.17.900. DEFINITIONS [DEFINITION]. In this chapter

2 (1) "economic losses" means objectively verifiable monetary
3 losses;

4 (2) "fault" includes acts or omissions that are in any
5 measure negligent or reckless toward the person or property of the
6 actor or others, or that subject a person to strict tort liability;
7 the [. THE] term also includes breach of warranty, unreasonable
8 assumption of risk not constituting an enforceable express consent,
9 misuse of a product for which the defendant otherwise would be liable,
10 and unreasonable failure to avoid an injury or to mitigate damages;
11 legal [. LEGAL] requirements of causal relation apply both to fault
12 as the basis for liability and to contributory fault;

13 (3) "noneconomic losses" means nonmonetary damages and
14 includes pain, suffering, inconvenience, mental anguish, emotional
15 distress, and all other nonpecuniary damages.

16 * Sec. 10. AS 09.60.010 is amended to read:

17 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
18 court shall determine by rule or order the costs, if any, that may be
19 allowed a prevailing party in a civil action. Unless specifically
20 authorized by statute or by agreement between the parties, attorney
21 fees may not be awarded to a party in a civil action for personal
22 injury, death, or property damage related to or arising out of fault,
23 as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED
24 WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].

25 * Sec. 11. AS 21.06.110 is amended to read:

26 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
27 calendar year as is reasonably possible the director shall prepare and
28 deliver an annual report to the legislature and the commissioner,
29 showing, with respect to the preceding calendar year,

1 (1) a list of the authorized insurers transacting insurance
2 in Alaska, with such summary of their financial statement as the
3 director considers appropriate;

4 (2) the name of each insurer whose business was closed
5 during the year, the cause of the closing, and the amount of ascer-
6 tainable assets and liabilities of each closed business;

7 (3) the name of each insurer against which delinquency or
8 similar proceedings were instituted, and a concise statement of the
9 facts with respect to each proceeding and its present status;

10 (4) a statement in regard to examination of rating organi-
11 zations, advisory organizations, joint underwriters, and joint rein-
12 surers as required by AS 21.39.120;

13 (5) the receipts and expenses of the division for the year;

14 (6) recommendations of the director as to amendments or
15 supplementation of laws affecting insurance, or the office of direc-
16 tor;

17 (7) other pertinent information and matters the director
18 considers proper;

19 (8) an analysis of medical malpractice insurance rate
20 changes occurring as a result of court decisions in the state involv-
21 ing personal injury or death.

22 * Sec. 12. AS 09.17.010(c) and 09.17.040(c) are repealed.

23 * Sec. 13. REPORT. The Department of Law, with the assistance of the
24 Department of Commerce and Economic Development and with the cooperation of
25 all state agencies, shall report to the legislature by the 30th day of the
26 Second Session of the Sixteenth Alaska State Legislature on closed insur-
27 ance claims and insurance company finances. The report must consist of

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

29 (A) the extent to which the legal system has or has not

1 been the cause of dramatic liability insurance increases or decreases
2 and coverage reduction in crisis lines in the state;

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

4 (C) what the various specific tort reform proposals have
5 actually accomplished; and

6 (D) if the passage of this Act has resulted in a measurable
7 decrease in insurance rates in the state;

8 (2) a study of insurance company finances to determine the
9 extent to which

10 (A) dramatic liability insurance rate increases and cover-
11 age limitations in the state are, or are not, cost-justified in re-
12 lation to awards, settlements, and relevant court decisions in the
13 state involving personal injury, death, or property damage based on
14 fault; and

15 (B) legislative or regulatory actions affecting the tort
16 system in the state are necessary to resolve the state's liability
17 insurance rate increases.

18 * Sec. 14. COURT RULE CHANGE. AS 09.60.010, as amended in sec. 10 of
19 this Act, has the effect of amending Alaska Rule of Civil Procedure 82 by
20 prohibiting the award of attorney fees to the prevailing party in certain
21 civil actions based on fault, unless allowed by statute or by agreement of
22 the parties.

23 * Sec. 15. APPLICABILITY. This Act applies to all causes of action
24 accruing on or after the effective date of this Act.

25 * Sec. 16. SEVERABILITY. If any provision of this Act, or the applica-
26 tion thereof to any person or circumstance is held invalid, the remainder
27 of this Act and the application to other persons or circumstances is not
28 affected thereby.

29 * Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

R/o SFC 3/23/88

5-055-N
Ford
3/22/88

Original sponsors: Faiks, Abood,
Bennett, et al.

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 211 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability; amending Alaska
7 Rule of Civil Procedure 82; and providing for an
8 effective date."

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

10 * Section 1. AS 09.17.010(b) is amended to read:

11 (b) The amount of noneconomic damages awarded by a court or jury
12 under (a) of this section may not exceed \$100,000 [\$500,000] for each
13 claim based on a separate incident or injury.

14 * Sec. 2. AS 09.17.020 is amended to read:

15 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
16 awarded in an action, whether in tort, contract, or otherwise, unless
17 supported by clear and convincing evidence of fraud, malice, gross
18 negligence, or reckless disregard by the defendant.

19 * Sec. 3. AS 09.17.030 is amended to read:

20 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
21 person who suffers personal injury or death may not recover damages
22 for the personal injury or death if the injuries or death occurred
23 while the person was engaged in the commission of a crime [FELONY],
24 the person has been convicted of the crime [FELONY], including con-
25 viction based on a guilty plea or plea of nolo contendere, and the
26 crime [FELONY] substantially contributed to the injury or death. ^{*}This
27 section does not affect a right of action under 42 U.S.C. 1983. In
28 this section "crime" has the meaning given in AS 11.81.900(b).

29 * Sec. 4. AS 09.17.040(d) is amended to read:

~~* unless the action of the defendant constituted a crime for which the defendant was also convicted~~ CSSB 211(Fin)

RH 6/27

1 (d) In an action to recover damages, the court shall, at the
2 request of a [AN INJURED] party, enter judgment ordering that amounts
3 awarded a judgment creditor for future damages be paid to the maximum
4 extent feasible by periodic payments rather than by a lump-sum pay-
5 ment.

6 * Sec. 5. AS 09.17.050(a) is amended to read:

7 (a) Unless the act or omission constituted gross negligence, a
8 person may not recover tort damages for personal injury, death, or
9 damage to property for an act or omission to act in the course and
10 scope of official duties, from [ONE OF] the following:

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

13 (2) a member of the board of directors of a public or
14 nonprofit hospital, or a member of a citizen's advisory board of any
15 hospital;

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

17 (4) a member of the governing body, a commission, or a
18 citizen's advisory committee of a municipality of the state;

19 (5) a member of the board of directors or an officer of an
20 electric or telephone cooperative organized under AS 10.25.

21 * Sec. 6. AS 09.17.070 is repealed and reenacted to read:

22 Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the
23 collateral source by law or contract must seek subrogation and except
24 death benefits paid under life insurance, a person may only recover
25 damages that exceed amounts received by that person as compensation
26 for the injuries from collateral sources, whether private, group, or
27 governmental, and whether contributory or noncontributory. Evidence
28 of collateral sources, other than a source that must by law or con-
29 tract seek subrogation and the death benefit paid under life

1 insurance, shall be considered by the trier of fact in determining the
2 amount of an award, and shall be considered by the court in determin-
3 ing if an award is excessive. The trier of fact shall be informed of
4 the tax implications of an award of damages. The court may take into
5 account the value of the person's rights to coverage exhausted or
6 depleted by payment of these collateral benefits by adding back a
7 reasonable estimate of their probable value, or by earmarking and
8 holding for possible periodic payment under AS 09.17.040 that amount
9 of the award that would otherwise have been deducted, to see if the
10 impairment of the person's rights actually takes place in the future.

11 (b) This section does not apply to a medical malpractice action
12 filed under AS 09.55.

13 * Sec. 7. AS 09.17.080(d) is repealed and reenacted to read:

14 (d) In an action involving hazardous waste, environmental pol-
15 lution, or violation of state or federal antitrust statutes, the court
16 shall enter judgment against each party liable on the basis of joint
17 and several liability. In all other actions the court shall enter
18 judgment against each party liable on the basis of several liability
19 in accordance with that party's percentage of fault.

20 * Sec. 8. AS 09.17.900 is amended to read:

21 Sec. 09.17.900. DEFINITIONS [DEFINITION]. In this chapter

22 (1) "economic losses" means objectively verifiable monetary
23 losses;

24 (2) "fault" includes acts or omissions that are in any
25 measure negligent or reckless toward the person or property of the
26 actor or others, or that subject a person to strict tort liability;
27 the [. THE] term also includes breach of warranty, unreasonable
28 assumption of risk not constituting an enforceable express consent,
29 misuse of a product for which the defendant otherwise would be liable.

1 and unreasonable failure to avoid an injury or to mitigate damages;
2 legal [. LEGAL] requirements of causal relation apply both to fault
3 as the basis for liability and to contributory fault;

4 (3) "noneconomic losses" means nonmonetary damages and
5 includes pain, suffering, inconvenience, mental anguish, emotional
6 distress, and all other nonpecuniary damages.

7 * Sec. 9. AS 09.60.010 is amended to read:

8 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
9 court shall determine by rule or order the costs, if any, that may be
10 allowed a prevailing party in a civil action. Unless specifically
11 authorized by statute or by agreement between the parties, attorney
12 fees may not be awarded to a party in a civil action for personal
13 injury, death, or property damage related to or arising out of fault,
14 as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED
15 WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].

16 * Sec. 10. AS 21.06.110 is amended to read:

17 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
18 calendar year as is reasonably possible the director shall prepare and
19 deliver an annual report to the legislature and the commissioner,
20 showing, with respect to the preceding calendar year,

21 (1) a list of the authorized insurers transacting insurance
22 in Alaska, with such summary of their financial statement as the
23 director considers appropriate;

24 (2) the name of each insurer whose business was closed
25 during the year, the cause of the closing, and the amount of ascer-
26 tainable assets and liabilities of each closed business;

27 (3) the name of each insurer against which delinquency or
28 similar proceedings were instituted, and a concise statement of the
29 facts with respect to each proceeding and its present status;

1 (4) a statement in regard to examination of rating organi-
2 zations, advisory organizations, joint underwriters, and joint rein-
3 surers as required by AS 21.39.120;

4 (5) the receipts and expenses of the division for the year;

5 (6) recommendations of the director as to amendments or
6 supplementation of laws affecting insurance, or the office of direc-
7 tor;

8 (7) other pertinent information and matters the director
9 considers proper;

10 (8) an analysis of medical malpractice insurance rate
11 changes occurring as a result of court decisions in the state involv-
12 ing personal injury or death.

13 * Sec. 11. AS 09.17.010(c) and 09.17.040(c) are repealed.

14 * Sec. 12. REPORT. The Department of Law, with the assistance of the
15 Department of Commerce and Economic Development and with the cooperation of
16 all state agencies, shall report to the legislature by the 30th day of the
17 Second Session of the Sixteenth Alaska State Legislature on closed insur-
18 ance claims and insurance company finances. The report must consist of

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

20 (A) the extent to which the legal system has or has not
21 been the cause of dramatic liability insurance increases or decreases
22 and coverage reduction in crisis lines in the state;

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

24 (C) what the various specific tort reform proposals have
25 actually accomplished; and

26 (D) if the passage of this Act has resulted in a measurable
27 decrease in insurance rates in the state;

28 (2) a study of insurance company finances to determine the
29 extent to which

1 (A) dramatic liability insurance rate increases and cover-
2 age limitations in the state are, or are not, cost-justified in re-
3 lation to awards, settlements, and relevant court decisions in the
4 state involving personal injury, death, or property damage based on
5 fault; and

6 (B) legislative or regulatory actions affecting the tort
7 system in the state are necessary to resolve the state's liability
8 insurance rate increases.

9 * Sec. 13. COURT RULE CHANGE. AS 09.60.010, as amended in sec. 9 of
10 this Act, has the effect of amending Alaska Rule of Civil Procedure 82 by
11 prohibiting the award of attorney fees to the prevailing party in certain
12 civil actions based on fault, unless allowed by statute or by agreement of
13 the parties.

14 * Sec. 14. APPLICABILITY. This Act applies to all causes of action
15 accruing on or after the effective date of this Act.

16 * Sec. 15. SEVERABILITY. If any provision of this Act, or the applica-
17 tion thereof to any person or circumstance is held invalid, the remainder
18 of this Act and the application to other persons or circumstances is not
19 affected thereby.

20 * Sec. 16. This Act takes effect immediately under AS 01.10.070(c).
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FISCAL NOTE

REQUEST:

Revision Date: 03/16/88 Agency Affected: Commerce & Econ. Dev.
 Title: Relating to civil liability; BRU: Division of Insurance
amending Rule of Civil Procedure 82
 Sponsor: Judiciary Committee Components: Public Protection
 Requester: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	100.0	50.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	100.0	50.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND	100.0	50.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0	50.0	0.0	0.0	0.0	0.0

POSITIONS:

FULLTIME	0.0	0.0	0.0	0.0	0.0	0.0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Sec. 12 of the bill requires a report in which the division is not equipped to participate. That participation will require a substantial data collection and analysis effort by the division which it is not geared to accommodate. We expect to contract for the necessary assistance to develop and implement methods to acquire the data and analyze same.

Prepared by: Paul Roller, Director Phone: 465-2515
 Division: Division of Insurance Date: March 17, 1988

Approved by Commissioner: J. Anthony Smith Date: March 18, 1988
 Agency: Department of Commerce and Economic Development

Distribution (by preparer): Revised by SFC 3/23/88
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to civil liability;
amending Civil Rule 82
Sponsor: Senate Judiciary
Requestor: Senate Finance

Agency Affected: Commerce & Econ. Dev.
BRU: Division of Insurance
Components: Public Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	100.0	50.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	100.0	50.0	0.0	0.0	0.0
		25.0				
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	100.0	50.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	100.0	50.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) Sec. 12 of the bill requires a report in which the division is not equipped to participate. That participation will require substantial data collection and analysis which the division is not geared to accommodate. The division expects to contract for assistance to develop and implement methods to acquire and analyze the data.

Prepared by: _____ Phone: _____
Division: _____ Date: _____

Approved by Commissioner: _____ Date: 3/23/88
Agency: Senator Rick Halford, Co-chairman
Senate Finance Committee

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to civil liability ..."
Sponsor: Senate Judiciary
Requestor: Senate Judiciary

Agency Affected: Department of Law
BRU: Legal Services

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	250.0	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	250.0	-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)

Please see attached analysis.

by SFC 3/23/88

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: March 3, 1988

Approved by Commissioner: Richard I. Pegues / FORT
Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: March 3, 1988

Distribution (by preparer):

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

MAR 4 1988

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSB 211 (Jud.)

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. When this proposal was first considered as part of SB 377, in 1986, the department estimated that an examination of closed claims, and an analysis of company finances, would cost \$250,000. Although inflationary factors would indicate a higher cost in 1988, we believe this work can still be completed for \$250,000 because of the availability of some national data that was not available in 1986. Because the report is not due until February 1990, non-lapsing budget authority is needed.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Civil Actions

Agency Affected: Department of Administration
BRU: Division of Risk Management

Sponsor: (Original) Faiks, Abood, et al.
Requestor: _____

Components: Risk Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	(3.1)	(6.6)	(11.8)	(18.1)	(25.1)
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	(3.1)	(6.6)	(11.8)	(18.1)	(25.1)
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)


GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	(3.1)	(6.6)	(11.8)	(18.1)	(25.1)
TOTAL	0	(3.1)	(6.6)	(11.8)	(18.1)	(25.1)

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

See Fiscal Note Analysis attached.

Prepared By: Don Hitchcock 
Division: Risk Management

Phone: 465-2180
Date: March 7, 1988

Approved by Commissioner: John M. Andrews 
Agency: Department of Administration

Date: 3/8/88

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

RECEIVED
MAR 8 1988

FISCAL NOTE ANALYSIS
FOR CSSB 211

CS for Senate Bill 211 (Judiciary) drastically alters the fiscal savings generated by the original bill version. The most dramatic change is in Section 7, where joint and several liability has again been inserted; this time with a cap for joint liability at one and one-half times the allocated liability (to those found less than 50 percent liable). Present statutes apply a two-times-your-own-negligence rule if under 50%.

Diminishment of the application of collateral benefits to include contractual subrogation rights erodes the fiscal impact of Section 6.

Again, future fiscal impact is difficult to accurately project, but whereas in the original Bill we were projecting a 20 percent reduction in ultimate loss and loss adjustment expense, we are estimating only a 2 percent savings in the Committee Substitute as written.

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

(Thousands of Dollars)

		YEAR OF OCCURRENCE						
		1988	1989	1990	1991	1992	1993	TOTAL
	FY 88	-0-						
	FY 89		3.1					3.1
Y E A R O F S A V I N G	FY 90		2.7	3.8				6.5
	FY 91		3.6	3.4	4.8			11.8
	FY 92		3.4	4.5	4.3	6.0		18.2
	FY 93		2.5	4.2	5.6	5.3	7.5	25.1
	FY 94			3.2	5.3	7.0	6.7	
	FY 95				3.9	6.6	8.7	
	FY 96					4.9	8.2	
	FY 97						6.2	
	Future		<u>8.7</u>	<u>10.9</u>	<u>13.7</u>	<u>17.1</u>	<u>21.3</u>	
	TOTAL		24.0	30.0	37.6	46.9	58.6	

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

12 months	12.8%
24 months	11.4%
36 months	14.9%
48 months	14.0%
60 months	10.5%
Balance	36.4%

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act Relating to Civil Liability BRU: Division of Risk Management
 Sponsor: Faiks, Abood, Bennett, et al. Components: Risk Management
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
TOTAL	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Finance CS for SB 211 (March 22, 1988) closely parallels the sections of the original bill version we anticipate will provide future savings for the state.

Section 7, apportionment of damages by individual (several rather than joint) liability is the most significant alteration from the previous version, CSSB 211 (Jud).

Prepared By: Don Hitchcock Phone: 465-2180
 Division: Risk Management Date: March 23, 1988
 Approved by Commissioner: John M. Andrews Date: 3/24/88
 Agency: Department of Administration

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

MAR 24 1988

LEGISLATIVE FINANCE

CONTINUATION OF FISCAL NOTE ANALYSIS
FOR CSSB 211 (FIN)

Although future fiscal savings are difficult to project, we estimate this committee substitute will provide the same future savings as we projected with the original bill version. The projection below details the calculations used.

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

		YEAR OF OCCURRENCE						
		1988	1989	1990	1991	1992	1993	TOTAL
	FY 88	-0-						
	FY 89		306.0					306.0
Y E A R O F S A V I N G	FY 90		274.0	384.0				658.0
	FY 91		360.0	342.0	480.0			1,182.0
	FY 92		336.0	448.0	428.0	600.0		1,812.0
	FY 93		252.0	420.0	558.0	534.0	750.0	2,514.0
	FY 94			316.0	526.0	698.0	668.0	
	FY 95				394.0	656.0	872.0	
	FY 96					492.0	820.0	
	FY 97						616.0	
	Future		<u>874.0</u>	<u>1,092.0</u>	<u>1,366.0</u>	<u>1,706.0</u>	<u>2,132.0</u>	
	TOTAL		2,400.0	3,000.0	3,750.0	4,686.0	5,858.0	

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

12 months	12.8%
24 months	11.4%
36 months	14.9%
48 months	14.0%
60 months	10.5%
Balance	36.4%

BY FAIKS, ABOOD, BENNETT,
BINKLEY, COGHILL, ELIASON,
FISCHER, HENSLEY, JONES,
KELLY AND STURGULEWSKI

1 IN THE SENATE

2

SENATE BILL NO. 211

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to civil liability; amending Alaska

7

Rule of Civil Procedure 82; and providing for an

8

effective date."

9

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

10

* Section 1. AS 09.17.010(b) is amended to read:

11

(b) The amount of noneconomic damages awarded by a court or jury

12

under (a) of this section may not exceed \$100,000 [\$500,000] for each

13

claim based on a separate incident or injury.

14

* Sec. 2. AS 09.17.020 is amended to read:

15

Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be

16

awarded in an action, whether in tort, contract, or otherwise, unless

17

supported by clear and convincing evidence of fraud, malice, gross

18

negligence, or reckless misconduct by the defendant.

19

* Sec. 3. AS 09.17.030 is amended to read:

20

Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A

21

person who suffers personal injury or death may not recover damages

22

for the personal injury or death if the injuries or death occurred

23

while the person was engaged in the commission of a crime [FELONY],

24

the person has been convicted of the crime [FELONY], including con-

25

viction based on a guilty plea or plea of nolo contendere, and the

26

crime [FELONY SUBSTANTIALLY] contributed to the injury or death. This

27

section does not affect a right of action under 42 U.S.C. 1983.

28

* Sec. 4. AS 09.17.040(d) is amended to read:

29

(d) In an action to recover damages, the court shall, at the

1 request of a [AN INJURED] party, enter judgment ordering that amounts
2 awarded a judgment creditor for future damages be paid to the maximum
3 extent feasible by periodic payments rather than by a lump-sum pay-
4 ment.

5 * Sec. 5. AS 09.17.050(a) is amended to read:

6 (a) Unless the act or omission constituted gross negligence, a
7 person may not recover tort damages for personal injury, death, or
8 damage to property for an act or omission to act in the course and
9 scope of official duties, from [ONE OF] the following:

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

12 (2) a member of the board of directors of a public or
13 nonprofit hospital, or a member of a citizen's advisory board of any
14 hospital;

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

16 (4) a member of the governing body, a commission, or a
17 citizen's advisory committee of a municipality of the state;

18 (5) a member of the board of directors or an officer of an
19 electric or telephone cooperative organized under AS 10.25.

20 * Sec. 6. AS 09.17.070 is repealed and reenacted to read:

21 Sec. 09.17.070. COLLATERAL BENEFITS. Except when the collateral
22 source is a federal program that by law must seek subrogation and
23 except death benefits paid under life insurance, a person may only
24 recover damages that exceed amounts received by that person as compen-
25 sation for the injuries from collateral sources, whether private,
26 group, or governmental, and whether contributory or noncontributory.
27 Evidence of collateral sources, other than a federal program that must
28 by law seek subrogation and the death benefit paid under life insur-
29 ance, shall be considered by the trier of fact in determining the

1 amount of an award, and shall be considered by the court in determin-
2 ing if an award is excessive. The trier of fact shall be informed of
3 the tax implications of an award of damages. The court may take into
4 account the value of the person's rights to coverage exhausted or
5 depleted by payment of these collateral benefits by adding back a
6 reasonable estimate of their probable value, or by earmarking and
7 holding for possible periodic payment under AS 09.17.040 that amount
8 of the award that would otherwise have been deducted, to see if the
9 impairment of the person's rights actually takes place in the future.

10 * Sec. 7. AS 09.17.080(d) is amended to read:

11 (d) The court shall enter judgment against each party liable on
12 the basis of [JOINT AND] several liability [, EXCEPT THAT A PARTY WHO
13 IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL
14 THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENT-
15 AGE OF FAULT ALLOCATED TO THAT PARTY].

16 * Sec. 8. AS 09.17.900 is amended to read:

17 Sec. 09.17.900. DEFINITIONS [DEFINITION]. In this chapter

18 (1) "economic losses" means objectively verifiable monetary
19 losses;

20 (2) "fault" includes acts or omissions that are in any
21 measure negligent or reckless toward the person or property of the
22 actor or others, or that subject a person to strict tort liability;
23 the [. THE] term also includes breach of warranty, unreasonable
24 assumption of risk not constituting an enforceable express consent,
25 misuse of a product for which the defendant otherwise would be liable,
26 and unreasonable failure to avoid an injury or to mitigate damages;
27 legal [. LEGAL] requirements of causal relation apply both to fault
28 as the basis for liability and to contributory fault;

29 (3) "noneconomic losses" means subjective, nonpecuniary

1 damages and includes pain, suffering, inconvenience, physical impair-
2 ment, disfigurement, mental anguish, emotional distress, and all other
3 nonpecuniary damages.

4 * Sec. 9. AS 09.60.010 is amended to read:

5 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
6 court shall determine by rule or order the costs, if any, that may be
7 allowed a prevailing party in a civil action. Unless specifically
8 authorized by statute or by agreement between the parties, attorney
9 fees may not be awarded to a party in a civil action for personal
10 injury, death, or property damage related to or arising out of fault,
11 as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED
12 WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].

13 * Sec. 10. AS 09.16; AS 09.17.010(c), 09.17.040(c), and AS 09.55.548(b)
14 are repealed.

15 * Sec. 11. AS 09.60.010, as amended in sec. 9 of this Act, has the
16 effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the
17 award of attorney fees to the prevailing party in certain civil actions
18 based on fault, unless allowed by statute or by agreement of the parties.

19 * Sec. 12. Sections 1 - 10 of this Act apply to all causes of action
20 accruing after the effective date of this Act.

21 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

Original sponsors: Faiks, Abood,
Bennett, et al.

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 211 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to civil liability; amending Alaska
7 Rule of Civil Procedure 82; and providing for an
8 effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 09.17.010(b) is amended to read:
11 (b) The amount of noneconomic damages awarded by a court or jury
12 under (a) of this section may not exceed \$250,000 [\$500,000] for each
13 claim based on a separate incident or injury.
14 * Sec. 2. AS 09.17.020 is amended to read:
15 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
16 awarded in an action, whether in tort, contract, or otherwise, unless
17 supported by clear and convincing evidence of fraud, malice, gross
18 negligence, or reckless disregard by the defendant.
19 * Sec. 3. AS 09.17.030 is amended to read:
20 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
21 person who suffers personal injury or death may not recover damages
22 for the personal injury or death if the injuries or death occurred
23 while the person was engaged in the commission of a crime [FELONY],
24 the person has been convicted of the crime [FELONY], including con-
25 viction based on a guilty plea or plea of nolo contendere, and the
26 crime [FELONY] substantially contributed to the injury or death. This
27 section does not affect a right of action under 42 U.S.C. 1983. In
28 this section "crime" has the meaning given in AS 11.81.900(b).
29 * Sec. 4. AS 09.17.040(d) is amended to read:

1 (d) In an action to recover damages, the court shall, at the
2 request of a [AN INJURED] party, enter judgment ordering that amounts
3 awarded a judgment creditor for future damages be paid to the maximum
4 extent feasible by periodic payments rather than by a lump-sum pay-
5 ment.

6 * Sec. 5. AS 09.17.050(a) is amended to read:

7 (a) Unless the act or omission constituted gross negligence, a
8 person may not recover tort damages for personal injury, death, or
9 damage to property for an act or omission to act in the course and
10 scope of official duties, from [ONE OF] the following:

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

13 (2) a member of the board of directors of a public or
14 nonprofit hospital, or a member of a citizen's advisory board of any
15 hospital;

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

17 (4) a member of the governing body, a commission, or a
18 citizen's advisory committee of a municipality of the state;

19 (5) a member of the board of directors or an officer of an
20 electric or telephone cooperative organized under AS 10.25.

21 * Sec. 6. AS 09.17.070 is repealed and reenacted to read:

22 Sec. 09.17.070. COLLATERAL BENEFITS. Except when the collateral
23 source by law or contract must seek subrogation and except death
24 benefits paid under life insurance, a person may only recover damages
25 that exceed amounts received by that person as compensation for the
26 injuries from collateral sources, whether private, group, or govern-
27 mental, and whether contributory or noncontributory. Evidence of
28 collateral sources, other than a source that must by law or contract
29 seek subrogation and the death benefit paid under life insurance,

1 shall be considered by the trier of fact in determining the amount of
2 an award, and shall be considered by the court in determining if an
3 award is excessive. The trier of fact shall be informed of the tax
4 implications of an award of damages. The court may take into account
5 the value of the person's rights to coverage exhausted or depleted by
6 payment of these collateral benefits by adding back a reasonable
7 estimate of their probable value, or by earmarking and holding for
8 possible periodic payment under AS 09.17.040 that amount of the award
9 that would otherwise have been deducted, to see if the impairment of
10 the person's rights actually takes place in the future.

11 * Sec. 7. AS 09.17.080(d) is repealed and reenacted to read:

12 (d) In an action involving hazardous waste, environmental pol-
13 lution, or violation of state or federal antitrust statutes, the court
14 shall enter judgment against each party liable on the basis of joint
15 and several liability. In all other actions the court shall enter
16 judgment against each party liable on the basis of joint and several
17 liability, except that a party who is allocated less than 50 percent
18 of the total fault allocated to all the parties may not be jointly
19 liable for more than one and one-half times the percentage of fault
20 allocated to that party.

21 * Sec. 8. AS 09.17.900 is amended to read:

22 Sec. 09.17.900. DEFINITIONS [DEFINITION]. In this chapter

23 (1) "economic losses" means objectively verifiable monetary
24 losses.

25 (2) "fault" includes acts or omissions that are in any
26 measure negligent or reckless toward the person or property of the
27 actor or others, or that subject a person to strict tort liability;
28 the [. THE] term also includes breach of warranty, unreasonable
29 assumption of risk not constituting an enforceable express consent,

1 misuse of a product for which the defendant otherwise would be liable,
2 and unreasonable failure to avoid an injury or to mitigate damages;
3 legal [. LEGAL] requirements of causal relation apply both to fault
4 as the basis for liability and to contributory fault;

5 (3) "noneconomic losses" means nonmonetary damages and
6 includes pain, suffering, inconvenience, mental anguish, emotional
7 distress, and all other nonpecuniary damages.

8 * Sec. 9. AS 09.60.010 is amended to read:

9 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
10 court shall determine by rule or order the costs, if any, that may be
11 allowed a prevailing party in a civil action. Unless specifically
12 authorized by statute or by agreement between the parties, attorney
13 fees may not be awarded to a party in a civil action for personal
14 injury, death, or property damage related to or arising out of fault,
15 as defined in AS 09.17.900, unless the court determines that the
16 action, claim, or defense was frivolous and brought without reasonable
17 cause [THE CIVIL ACTION IS CONTESTED WITHOUT TRIAL, OR FULLY CONTESTED
18 AS DETERMINED BY THE COURT].

19 * Sec. 10. AS 21.06.110 is amended to read:

20 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
21 calendar year as is reasonably possible the director shall prepare and
22 deliver an annual report to the legislature and the commissioner,
23 showing, with respect to the preceding calendar year,

24 (1) a list of the authorized insurers transacting insurance
25 in Alaska, with such summary of their financial statement as the
26 director considers appropriate;

27 (2) the name of each insurer whose business was closed
28 during the year, the cause of the closing, and the amount of ascer-
29 tainable assets and liabilities of each closed business;

1 (3) the name of each insurer against which delinquency or
2 similar proceedings were instituted, and a concise statement of the
3 facts with respect to each proceeding and its present status;

4 (4) a statement in regard to examination of rating organi-
5 zations, advisory organizations, joint underwriters, and joint rein-
6 surers as required by AS 21.39.120;

7 (5) the receipts and expenses of the division for the year;

8 (6) recommendations of the director as to amendments or
9 supplementation of laws affecting insurance, or the office of direc-
10 tor;

11 (7) other pertinent information and matters the director
12 considers proper;

13 (8) an analysis of medical malpractice insurance rate
14 changes occurring as a result of court decisions in the state involv-
15 ing personal injury or death.

16 * Sec. 11. AS 09.55.548(b) is repealed.

17 * Sec. 12. REPORT. The Department of Law, with the assistance of the
18 Department of Commerce and Economic Development and with the cooperation of
19 all state agencies, shall report to the legislature by the 30th day of the
20 Second Session of the Sixteenth Alaska State Legislature on closed insur-
21 ance claims and insurance company finances. The report must consist of

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

23 (A) the extent to which the legal system has or has not
24 been the cause of dramatic liability insurance increases or decreases
25 and coverage reduction in crisis lines in the state;

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

27 (C) what the various specific tort reform proposals have
28 actually accomplished; and

29 (D) if the passage of this Act has resulted in a measurable

1 decrease in insurance rates in the state;

2 (2) a study of insurance company finances to determine the
3 extent to which

4 (A) dramatic liability insurance rate increases and cover-
5 age limitations in the state are, or are not, cost-justified in re-
6 lation to awards, settlements, and relevant court decisions in the
7 state involving personal injury, death, or property damage based on
8 fault; and

9 (B) legislative or regulatory actions affecting the tort
10 system in the state are necessary to resolve the state's liability
11 insurance rate increases.

12 * Sec. 13. COURT RULE CHANGE. AS 09.60.010, as amended in sec. 9 of
13 this Act, has the effect of amending Alaska Rule of Civil Procedure 82 by
14 prohibiting the award of attorney fees to the prevailing party in certain
15 civil actions based on fault, unless allowed by statute or by agreement of
16 the parties.

17 * Sec. 14. APPLICABILITY. This Act applies to all causes of action
18 accruing on or after the effective date of this Act.

19 * Sec. 15. SEVERABILITY. If any provision of this Act, or the applica-
20 tion thereof to any person or circumstance is held invalid, the remainder
21 of this Act and the application to other persons or circumstances is not
22 affected thereby.

23 * Sec. 16. This Act takes effect immediately under AS 01.10.070(c).

SFC-88
3/23/88
Dr. McGuire

During the summer of 1987, the Dittman Research Corporation of Alaska conducted a state-wide poll regarding the issue of tort reform. Fifty-one communities were contacted. The complete report is attached for your reference and a summary of the results of this poll is given below.

Of those polled:

- 73% favor tort reform. (page 5)
- 74% would sign a petition to put the tort reform issue on the ballot. (page 8)
- 65% would vote for tort reform if it were on the ballot. (page 9)
- 81% favor changes in joint and several liability. (page 10)
- 74% favor a sliding fee scale as opposed to the contingency system. (page 12)
- 73% favor reducing damage awards when some compensation has already been received. (page 14)
- 68% favor placing a \$250,000 limit on the amount of money that could be awarded on top of actual economic damages. (page 16)
- 81% feel liability insurance premiums are increasing too much due to excessively high damage awards from lawsuits. (page 18)
- 55% have personally had an increase in their liability insurance premiums. (page 20)
- 81%, after hearing a summary of arguments from both sides of the issue, still favored tort reform. (page 22)

After conducting this poll, the Dittman Research Corporation made the following comment:

"..I've never known of any initiative effort in Alaska that began with such a high degree of public support on so many different points--the highest negative score was only 24% who oppose a \$250,000 limit to non-economic damages--and overall, when informed of what is generally considered both sides of the issue, Alaskans, by a margin of 81% to 13%, support tort reform." (page 30)

5FC-89
3/21/88pm
5B211

8 states sue insurance companies

Fraud suit charges industry conspired to create liability crisis

By PEGGY FIKAC
The Associated Press

AUSTIN, Texas — Eight states on Tuesday filed suit accusing dozens of insurance companies of conspiring to create the liability insurance crisis, making coverage unavailable or too costly for many governments and businesses.

"These defendants have sucked the blood of our nation's economic well-being," Texas Attorney General Jim Mattox said at a news conference.

"Our conscience tells us that we cannot stand idly by and allow them to perpetrate what I consider to be the most insidious consumer fraud that's taken place by American companies in modern times," he said.

David Ostwald, a vice president of the Insurance Services Office, which is named in the suit, called the charges "unfounded and meritless."

Mattox alleged that eight American property and casualty insurance companies, along with other industry representatives, plotted to create the liability insurance crisis beginning around 1984.

As a result, liability insurance became unavailable or prohibitively expensive for certain professionals, cities and others, the lawsuit alleges.

The crisis was artificially created to drive

These defendants have sucked the blood of our nation's economic well-being. . . . we cannot stand idly by and allow them to perpetrate what I consider to be the most insidious consumer fraud that's taken place by American companies in modern times. ♪

— Texas Attorney General Jim Mattox

up rates, change policies to provide less coverage for higher premiums and restructure the civil justice system to obtain more protection from lawsuit judgments, Mattox charged.

California Attorney General John Van de Kamp said at a news conference in San Francisco that the companies, through concerted pressure and threats of boycotts, virtually eliminated coverage that was previously available for property damage that occurs during the term of a policy but is discovered later, and for damage caused by pollution.

Texas sued in state district court in Travis County under the state's antitrust, deceptive trade practices and consumer protection laws.

Suits were filed in U.S. District Court in

San Francisco by California, New York, Massachusetts, West Virginia, Alabama, Minnesota and Wisconsin. Arizona would sue in the same court Wednesday, Van de Kamp said.

The suits named the Insurance Services Office, a non-profit rate and policy advisory organization.

"We've conducted our operations properly and legally, and ISO intends to vigorously defend itself against the state attorney general's allegations," said Ostwald.

The liability insurance crisis was caused by "demonstrable increases in claims losses and economic factors, such as the decline of interest rates from their century-high mark," he said.

Submitted by Kent Dawson

Senator Rick Halford

Senate District 1
Chugiak, Eagle River, East Anchorage, Fort Richardson



Senate Finance Committee
Co-Chairman

March 22, 1988

MEMORANDUM

TO: Finance Committee Members

FROM: Senator Rick Halford, Co-Chairman
Senate Finance Committee

SUBJECT: CSSB 211 (Fin) "An Act relating to civil liability; amending Alaska Rule of Civil Procedure 82; and providing for an effective date."

The Finance Committee Substitute for Senate Bill 211 proposes the following:

Section 1. NONECONOMIC DAMAGES. Amends AS 09.17.010(b) by reducing the maximum amount of noneconomic damages which may be awarded for personal injury based on negligence.

The present statute has a limit of \$500,000 for such damages; CSSB 211 (Fin) proposes a maximum of \$100,000 for noneconomic damages, which are defined as subjective, nonpecuniary damages including pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages.

Section 2. PUNITIVE DAMAGES. Amends AS 09.17.020 by requiring clear and convincing evidence of specific conduct by the defendant before the court may award punitive damages.

The present statute has the same burden of proof (clear and convincing evidence), but does not specify the type of conduct which will trigger the award. CSSB 211 (Fin) provides that fraud, malice, gross negligence, or reckless disregard by the defendant may result in the award of punitive damages.

Section 3. DAMAGES RESULTING FROM COMMISSION OF A CRIME. Amends AS 09.17.030 by expanding the class of persons who may not recover damages for personal injury or death if incurred while the person was engaged in the commission of a crime.

The present statute is limited to those persons who commit and are convicted of a felony which substantially contributes to the injury or death.

CSSB 211 (Fin) replaces "felony" with "crime". This has the additional effect of precluding persons convicted of a misdemeanor from recovering damages for personal injury or death if that crime substantially contributed to the injury or death. It also adds a definition of "crime".

Section 4. AWARD OF DAMAGES. Amends AS 09.17.040(d) by allowing any party, not just the injured party, to request the court to enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment.

The present statute allows only the injured party to make such a request.

Section 5. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. Amends AS 09.17.050 to include members of the board of directors or an officer of an electric or telephone cooperative organized under AS 10.25.

Section 6. COLLATERAL BENEFITS. Repeals and reenacts AS 09.17.070, replacing it with language similar to that found in present statute AS 09.55.548(b) relating to collateral sources in malpractice actions.

This section of CSSB 211 (Fin) provides that a person may only recover damages that exceed amounts that he/she has already received from a collateral source, whether it be a private, group, or governmental source, either contributory or noncontributory. The only exceptions are where the collateral source by law or contract must seek subrogation, or from death benefits paid under life insurance.

This section further provides that the trier of fact shall be informed of the tax implications of an award of damages. The court may also take into account the value of the person's right to coverage which may have been exhausted or depleted by payment of these collateral benefits, and add a reasonable estimate of their probable value to the award.

Section 7. APPORTIONMENT OF DAMAGES. Amends AS 09.17.080(d) by modifying the theory of joint and several liability.

Under the present statute, a party can be held liable for all of the damages, even if that party has been allocated a certain percentage of the fault. The exception under the present statute is that where a party has been allocated less than 50% of the total fault allocated to all of the parties, that party may not be jointly liable for more than twice the percentage of fault allocated to that party.

CSSB 211 (Fin) establishes full joint and several liability in cases involving hazardous waste, environmental pollution, or violation of state or federal antitrust laws.

In all other cases, CSSB 211 (Fin) has the effect of eliminating joint liability, and making each defendant liable only for the share of the damages for which he/she is personally responsible.

Section 8. DEFINITIONS. Amends AS 09.17.900 by adding new definitions for "economic losses" and "noneconomic losses".

Section 9. COSTS ALLOWED PREVAILING PARTY. Amends AS 09.60.010 by eliminating the language "unless the civil action is contested without trial, or fully contested as determined by the court."

This has the effect of allowing the supreme court to determine the costs which may be allowed a prevailing party in a civil action. However, unless attorneys fees are authorized by statute or by an agreement between the parties, they may not be awarded in actions for personal injury, death, or property damage relating to fault.

Section 10. DIRECTOR'S ANNUAL REPORT. AS 21.06.110 currently requires the director of the Division of Insurance to submit an annual report to the legislature. CSSB 211 (Fin) requires this report to include an analysis of medical malpractice insurance rate changes occurring as a result of court decisions in the state.

Section 11. REPEALERS. 1) AS 09.17.010(c) would be repealed, to make the limit on noneconomic damages in section 1 applicable to all injuries. Currently, the limit on noneconomic damages does not apply to damages for disfigurement and severe physical impairment.

2) CSSB 211 (Fin) also repeals AS 09.17.040(c), which allows parties to agree to compute the award of future damages under

the rule adopted in Beaulieu v. Elliott, 434 P. 2d 665 (Alaska 1967). That case held that income taxes should be deducted from the allowance for past lost wages, but not from the allowance for inflation or for future lost wages. It further made no allowance for inflation or for future normal wage increases and approved the use of a per diem formula in computing damages for pain and suffering.

Section 12. REPORT. CSSB 211 (Fin) requires the Department of Law, with the assistance of the Department of Commerce and Economic Development, to report annually to the legislature on closed insurance claims and insurance company finances.

Section 13. COURT RULE CHANGE. AS 09.60.010, as amended by section 9 of this bill, has the effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of attorney fees to the prevailing party in certain civil actions based on fault, unless allowed by statute or by agreement of the parties.

Section 14. APPLICABILITY OF ACT. This Act applies to all causes of action which accrue after the effective date.

Section 15. SEVERABILITY. If any provision of this Act is held invalid, the remainder of the Act is not affected.

Section 16. EFFECTIVE DATE. This Act takes effect immediately.

Please contact my office if you have any questions or comments.



Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3755

March 14, 1988

MEMORANDUM

TO: Senator Rick Halford, Co-Chairman
Senator John Binkley, Co-Chairman
Senate Finance Committee

FROM: Senator Jan Faiks
President of the Senate

SUBJECT: CSSB 211 (Jud) "An Act relating to civil liability;
amending Alaska Rule of Civil Procedure 82; and providing for an effective date."

CSSB 211 (Jud) has been referred to your committee for consideration. The purpose of this bill is to improve the tort liability system in Alaska.

Specifically, this bill proposes the following:

Section 1. NONECONOMIC DAMAGES. Amends AS 09.17.010(b) by reducing the maximum amount of noneconomic damages which may be awarded for personal injury based on negligence.

The present statute has a limit of \$500,000 for such damages; CSSB 211 (Jud) proposes a maximum of \$250,000 for noneconomic damages, which are defined as subjective, nonpecuniary damages including pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages.

Section 2. PUNITIVE DAMAGES. Amends AS 09.17.020 by requiring clear and convincing evidence of specific conduct by the defendant before the court may award punitive damages.

The present statute has the same burden of proof (clear and convincing evidence), but does not specify the type of conduct which will trigger the award. CSSB 211 (Jud) provides that fraud, malice, gross negligence, or reckless disregard by the defendant may result in the award of punitive damages.

Section 3. DAMAGES RESULTING FROM COMMISSION OF A CRIME. Amends AS 09.17.030 by expanding the class of persons who may not recover damages for personal injury or death if incurred while the person was engaged in the commission of a crime.

The present statute is limited to those persons who commit and are convicted of a felony which substantially contributes to the injury or death.

CSSB 211 (Jud) replaces "felony" with "crime". This has the additional effect of precluding persons convicted of a misdemeanor from recovering damages for personal injury or death if that crime substantially contributed to the injury or death. It also adds a definition of "crime".

Section 4. AWARD OF DAMAGES. Amends AS 09.17.040(d) by allowing any party, not just the injured party, to request the court to enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment.

The present statute allows only the injured party to make such a request.

Section 5. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. Amends AS 09.17.050 to include members of the board of directors or an officer of an electric or telephone cooperative organized under AS 10.25.

Section 6. COLLATERAL BENEFITS. Repeals and reenacts AS 09.17.070, replacing it with language similar to that found in present statute AS 09.55.548(b) relating to collateral sources in malpractice actions.

This section of CSSB 211 (Jud) provides that a person may only recover damages that exceed amounts that he/she has already received from a collateral source, whether it be a private, group, or governmental source, either contributory or noncontributory. The only exceptions are where the collateral source by law or contract must seek subrogation, or from death benefits paid under life insurance.

This section further provides that the trier of fact shall be informed of the tax implications of an award of damages. The

court may also take into account the value of the person's right to coverage which may have been exhausted or depleted by payment of these collateral benefits, and add a reasonable estimate of their probable value to the award.

Section 7. APPORTIONMENT OF DAMAGES. Amends AS 09.17.080(d) by modifying the theory of joint and several liability.

Under the present statute, a party can be held liable for all of the damages, even if that party has been allocated a certain percentage of the fault. The exception under the present statute is that where a party has been allocated less than 50% of the total fault allocated to all of the parties, that party may not be jointly liable for more than twice the percentage of fault allocated to that party.

CSSB 211 (Jud) has the effect of making a party who has been allocated less than 50% of the total fault jointly liable for no more than one and one-half times the percentage of fault which has been allocated to that party.

CSSB 211 (Jud) also reestablishes full joint and several liability in cases involving hazardous waste, environmental pollution, or violation of state or federal antitrust laws.

Section 8. DEFINITIONS. Amends AS 09.17.900 by adding new definitions for "economic losses" and "noneconomic losses".

Section 9. COSTS ALLOWED PREVAILING PARTY. Amends AS 09.60.010 by eliminating the language "unless the civil action is contested without trial, or fully contested as determined by the court," and adding the language "unless the court determines that the action, claim, or defense was frivolous and brought without reasonable cause."

This has the effect of allowing the supreme court to determine the costs which may be allowed a prevailing party in a civil action. However, unless attorneys fees are authorized by statute or by an agreement between the parties, or unless the court determines that the case or the defense was frivolous, they may not be awarded in actions for personal injury, death, or property damage relating to fault.

Section 10. DIRECTOR'S ANNUAL REPORT. AS 21.06.110 currently requires the director of the Division of Insurance to submit an annual report to the legislature. CSSB 211 (Jud) requires this report to include an analysis of medical malpractice insurance rate changes occurring as a result of court decisions in the state.

Section 11. REPEALED SECTION. AS 09.55.548(b) is repealed by CSSB 211 (Jud), since the language contained in that statute is similar to that incorporated in Section 6 of the bill. That section relates to collateral benefits.

Section 12. REPORT CSSB 211 (Jud) requires the Department of Law, with the assistance of the Department of Commerce and Economic Development, to report annually to the legislature on closed insurance claims and insurance company finances.

Section 13. COURT RULE CHANGE. AS 09.60.010, as amended by section 9 of this bill, has the effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of attorney fees to the prevailing party in certain civil actions based on fault, unless allowed by statute or by agreement of the parties.

Section 14. This Act applies to all causes of action which accrue after the effective date.

Section 15. SEVERABILITY If any provision of this Act is held invalid, the remainder of the Act is not affected.

Section 16. EFFECTIVE DATE This Act takes effect immediately.

Please contact my office if you have any questions or comments.

Thank you.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 4-16-87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED **
IN ACCORDANCE WITH AS 24.08.035
(see below)

3/25/87
Mr. President:

DATE TURNED INTO OFFICE _____

JUDICIARY

Committee considered SB 211

civil liability; amending Alaska Rule of Civil Procedure 82; efd.

and recommended:

[] replace with CS SB 211 same title
[] attached amendment(s) and and reports it back as follows new title

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted and attached

** Committee attached or [] adopted fiscal note(s)
1 zero 2 fiscal impact

MEMBERS SIGNING DO PASS

3 [Signature]
3 [Signature]

OTHER RECOMMENDATIONS

~~1 [Signature] do not Pass~~
2 [Signature] do not Pass

[] Committee Backup Attached

[Signature] NO Pass
Chairman signature and recommendation

Outdated

Fiscal

Notes

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: SB 211
Publish Date:

REQUEST: _____

Revision Date:
Title: An act relating to civil liability.
Sponsor: Faiks
Requestor: Senate Judiciary

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)					
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	
OPERATING							
Personal Services	
Travel	
Contractual	
Supplies	
Equipment	
Land & Structures	
Grants & Claims	
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	
CAPITAL	
REVENUE	

FUNDING:		(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0	
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	

POSITIONS:							
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 4-23-87

Approved by: *Stephanie J. Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 4-23-87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

RECEIVED
APR 27 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 211
Publish Date: _____

REQUEST _____

Revision Date: _____ Agency Affected: _____
Title: An Act Relating to Civil Liability BRU: _____
Sponsor: Faiks, Abood, Bennett, et al. Components: _____
Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)
TOTAL	0.0	(306.0)	(658.0)	(1,182.0)	(1,812.0)	(2,514.0)

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

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 20% reduction in estimated ultimate loss and loss expense per fiscal year. The attached projection details the calculations using the State of Alaska's actuarial experience.

Prepared By: Don Hitchcock Phone: 465-2180
Division: Risk Management Date: April 14, 1987

Approved by Commissioner: Garrey Peska Date: 4/16/87
Agency: Department of Administration

Distribution (by preparer):
Legislative Finance
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Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

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FISCAL NOTE ANALYSIS
FOR SB 211

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

	YEAR OF OCCURRENCE					TOTAL
	1987	1988	1989	1990	1991		1992
FY 87	-0-					
FY 88		306.0				306.0
Y E A R O F S A V I N G FY 89		274.0	384.0			658.0
FY 90		360.0	342.0	480.0		1,182.0
FY 91		336.0	448.0	428.0	600.0	1,812.0
FY 92		252.0	420.0	558.0	534.0	2,514.0
FY 93			316.0	526.0	698.0	668.0
FY 94				394.0	656.0	872.0
FY 95					492.0	820.0
FY 96						616.0
Future		<u>874.0</u>	<u>1,092.0</u>	<u>1,366.0</u>	<u>1,706.0</u>	<u>2,132.0</u>
TOTAL		2,400.0	3,000.0	3,750.0	4,686.0	5,858.0

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

12 months	12.8%
24 months	11.4%
36 months	14.9%
48 months	14.0%
60 months	10.5%
Balance	36.4%

Senator Rick Halford



Senate District 1
Chugiak, Eagle River, East Anchorage, Fort Richardson

Senate Finance Committee
Co-Chairman

March 22, 1988

MEMORANDUM

*Outside of
(See new statement)*

TO: Finance Committee Members

FROM: Senator Rick Halford, *Rick* Co-Chairman
Senate Finance Committee

SUBJECT: CSSB 211 (Fin) "An Act relating to civil liability;
amending Alaska Rule of Civil Procedure 82; and pro-
viding for an effective date."

The Finance Committee Substitute for Senate Bill 211 proposes the following:

Section 1. NONECONOMIC DAMAGES. Amends AS 09.17.010(b) by reducing the maximum amount of noneconomic damages which may be awarded for personal injury based on negligence.

The present statute has a limit of \$500,000 for such damages; CSSB 211 (Fin) proposes a maximum of \$100,000 for noneconomic damages, which are defined as subjective, nonpecuniary damages including pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, and all other nonpecuniary damages.

Section 2. PUNITIVE DAMAGES. Amends AS 09.17.020 by requiring clear and convincing evidence of specific conduct by the defendant before the court may award punitive damages.

The present statute has the same burden of proof (clear and convincing evidence), but does not specify the type of conduct which will trigger the award. CSSB 211 (Fin) provides that fraud, malice, gross negligence, or reckless disregard by the defendant may result in the award of punitive damages.

Section 3. DAMAGES RESULTING FROM COMMISSION OF A CRIME. Amends AS 09.17.030 by expanding the class of persons who may not recover damages for personal injury or death if incurred while the person was engaged in the commission of a crime.

The present statute is limited to those persons who commit and are convicted of a felony which substantially contributes to the injury or death.

CSSB 211 (Fin) replaces "felony" with "crime". This has the additional effect of precluding persons convicted of a misdemeanor from recovering damages for personal injury or death if that crime substantially contributed to the injury or death. It also adds a definition of "crime".

Section 4. AWARD OF DAMAGES. Amends AS 09.17.040(d) by allowing any party, not just the injured party, to request the court to enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment.

The present statute allows only the injured party to make such a request.

Section 5. LIMITED LIABILITY OF CERTAIN DIRECTORS AND OFFICERS. Amends AS 09.17.050 to include members of the board of directors or an officer of an electric or telephone cooperative organized under AS 10.25.

Section 6. COLLATERAL BENEFITS. Repeals and reenacts AS 09.17.070, replacing it with language similar to that found in present statute AS 09.55.548(b) relating to collateral sources in malpractice actions.

This section of CSSB 211 (Fin) provides that a person may only recover damages that exceed amounts that he/she has already received from a collateral source, whether it be a private, group, or governmental source, either contributory or noncontributory. The only exceptions are where the collateral source by law or contract must seek subrogation, or from death benefits paid under life insurance.

This section further provides that the trier of fact shall be informed of the tax implications of an award of damages. The court may also take into account the value of the person's right to coverage which may have been exhausted or depleted by payment of these collateral benefits, and add a reasonable estimate of their probable value to the award.

Section 7. APPORTIONMENT OF DAMAGES. Amends AS 09.17.080(d) by modifying the theory of joint and several liability.

Under the present statute, a party can be held liable for all of the damages, even if that party has been allocated a certain percentage of the fault. The exception under the present statute is that where a party has been allocated less than 50% of the total fault allocated to all of the parties, that party may not be jointly liable for more than twice the percentage of fault allocated to that party.

CSSB 211 (Fin) establishes full joint and several liability in cases involving hazardous waste, environmental pollution, or violation of state or federal antitrust laws.

In all other cases, CSSB 211 (Fin) has the effect of eliminating joint liability, and making each defendant liable only for the share of the damages for which he/she is personally responsible.

Section 8. DEFINITIONS. Amends AS 09.17.900 by adding new definitions for "economic losses" and "noneconomic losses".

Section 9. COSTS ALLOWED PREVAILING PARTY. Amends AS 09.60.010 by eliminating the language "unless the civil action is contested without trial, or fully contested as determined by the court."

This has the effect of allowing the supreme court to determine the costs which may be allowed a prevailing party in a civil action. However, unless attorneys fees are authorized by statute or by an agreement between the parties, they may not be awarded in actions for personal injury, death, or property damage relating to fault.

Section 10. DIRECTOR'S ANNUAL REPORT. AS 21.06.110 currently requires the director of the Division of Insurance to submit an annual report to the legislature. CSSB 211 (Fin) requires this report to include an analysis of medical malpractice insurance rate changes occurring as a result of court decisions in the state.

Section 11. REPORT CSSB 211 (Fin) requires the Department of Law, with the assistance of the Department of Commerce and Economic Development, to report annually to the legislature on closed insurance claims and insurance company finances.

Section 12. COURT RULE CHANGE. AS 09.60.010, as amended by section 9 of this bill, has the effect of amending Alaska Rule

of Civil Procedure 82 by prohibiting the award of attorney fees to the prevailing party in certain civil actions based on fault, unless allowed by statute or by agreement of the parties.

Section 13. This Act applies to all causes of action which accrue after the effective date.

Section 14. SEVERABILITY If any provision of this Act is held invalid, the remainder of the Act is not affected.

Section 15. EFFECTIVE DATE This Act takes effect immediately.

Please contact my office if you have any questions or comments.