

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 1993-1994

1023

**HB**

**292**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred: March 23, 1994

FURTHER REFERRALS:

Date of Committee Action: \_\_\_\_\_

The FINANCE Committee considered:

# Died

HB 292

HOUSE BILL NO. 292

CIVIL LIABILITY

"An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49 and 68; and providing for an effective date."

- RECOMMENDATIONS:  the same title  
 be replaced with \_\_\_\_\_  a new title
- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
- fiscal impact: \_\_\_\_\_  fiscal note(s) \_\_\_\_\_
- zero fiscal note \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

<u>SIGNING DO PASS</u>	DP	<u>OTHER RECOMMENDATIONS</u>	DNP	NR	AM

\_\_\_\_\_

CHAIRMAN'S SIGNATURE

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

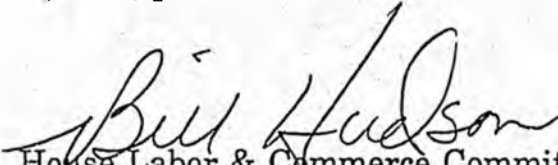
STATE CAPITOL, JUNEAU, AK 99801-1182  
(907) 465-4954



## LETTER OF INTENT CSHB 292(L&C)

The House Labor and Commerce Committee considered House Bill 292, an Act relating to civil actions, and has replaced it with Committee Substitute for House Bill 292 (L&C), and referred it to the Judiciary Committee.

It is the intent of the House Labor and Commerce Committee that the Judiciary Committee reconsider the amendment to current law that would delete the exclusion of disfigurement or severe physical impairment from the cap on noneconomic damages in Section 7 of CSHB 292(L&C) and adopt an amendment that: 1) defines the phrase "disfigurement or severe physical impairment; and 2) restores the exclusion or establishes a more "realistic cap" on these types of injuries, per the commitment of the Chair of the Judiciary Committee.

  
Chair, House Labor & Commerce Committee

FISCAL NOTE

No. 1  
 Bill Version: CSHB 292 (L&C)  
 (H) Publish Date: 2/7/94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

Revision Date: February 2, 1994  
 Title: "...relating to civil actions; amending Alaska Rules of Civil Procedure 49 and 68..."  
 Sponsor: House Labor and Commerce  
 Requestor: House Labor and Commerce

Department Affected: Department of Law  
 BRU: Legal Services  
 Component: Operations  
 COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
 Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: February 2, 1994  
 Approved by Commissioner: Bruce M. Botelho, Attorney General  
 Agency: Department of Law Date: February 2, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 292

ANALYSIS CONTINUATION:

This bill amends Title 9, the Alaska Code of Civil Procedure, to provide various changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to create a more equitable distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays would be reduced. However, because the total number of claims would probably not be reduced, the impact on the department's defense of personal injury claims will be negligible.

FISCAL NOTE

BILL NO. ( )

No. 2

Bill Version: CSHB 292 (JUD)

(H) Publish Date: 3/23/94

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
Title: "An Act relating to civil actions. . ."  
Sponsor: House Labor and Commerce  
Requestor: House Judiciary

Department Affected: Administration  
BRU: Risk Management  
Component: Risk Management  
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability claims exposure and the amount Risk Management will ultimately pay in loss settlements will be reduced by this legislation. The extent of such savings is difficult to forecast, due to the uncertainty that any of the limitations in the type of claims that may be filed or amounts of damages that can be awarded will actually be realized in future liability claims that have not yet occurred.

Prepared by: Brad Thompson, Director  
Division: Risk Management

Phone: 465-2180  
Date: \_\_\_\_\_

Approved by Commissioner: Nancy Bear Usery  
Agency: Department of Administration

Date: 3/21/94

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. CSHB 292 (JUD)

ANALYSIS: (continued)

Risk Management loss funding is collected solely through interagency receipts of premiums assessed each agency. In future years, Risk Management liability premium assessments will reflect the reductions realized as our costs are based on actual claims expense incurred.

# FISCAL NOTE

No. 3  
 Bill Version: CASHB 292(JUD)  
 (H) Publish Date: 3/23/94

STATE OF ALASKA  
 1994 LEGISLATIVE SESSION

BILL NC

Revision Date: 03/14/94 Dept. Affected: Alaska Court System  
 Title: Tort Reform BRU: Trial Courts  
 Components: \_\_\_\_\_  
 Sponsor: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 768

**EXPENDITURES/REVENUES**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	14.0	14.0	14.0	14.0	14.0	14.0
TRAVEL						
CONTRACTUAL	8.3	8.3	8.3	8.3	8.3	8.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>

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

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

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	22.2	22.2	22.2	22.2	22.2	22.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>	<b>22.2</b>

**POSITIONS**

FULL-TIME						
PART-TIME	1.0	1.0	1.0	1.0	1.0	1.0
TEMPORARY						

Estimate of current year (FY 94) cost: \$ None

**ANALYSIS:** (Attach a separate page if necessary)  
 See attached fiscal analysis.

Prepared by: C. S. Christensen III, Staff Counsel *CC* Phone: 264-8228  
 Agency: Alaska Court System Date: 03/14/94

Approved by: Arthur H. Snowden, II, Administrative Director *AS* *CC*  
 Agency: Alaska Court System Date: 03/14/94

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**COMMITTEE COPY**

ALASKA COURT SYSTEM  
FISCAL ANALYSIS  
CSHB 292 (JUD)

CSHB 292 (JUD) proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

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

At the present time, a defendant has no right to pay a civil judgment for future damages periodically; such damages must be paid as a lump sum unless the plaintiff requests periodic payments. Plaintiffs rarely exercise this option because they generally do not perceive periodic payments as being in their economic best interest. Thus, as a practical matter, the court system does not now hold hearings on this issue. Sections 12, 13, and 14 of the Judiciary CS give a defendant in a superior court case the option of making periodic payments to a successful plaintiff. The judgment must set the amounts of the payments, including any increases for anticipated inflation, the interval between payments, and the number of payments. While the CS instructs the defendant to propose a payment schedule, setting the appropriate amount, number, and inflation factor of these payments will require taking and evaluating conflicting testimony from experts and others representing each party, if the plaintiff objects to the specifics of the defendant's proposal. Such objections are inevitable. The payment hearing will be held before a judge and will not require the expenditure of jury costs. However, additional costs will inevitably arise when many plaintiffs return to court in later years because the defendant has stopped making periodic payments for some reason.

While California has been cited as a state in which mandatory periodic payments do not result in additional court time, this reputed result was not achieved for at least five to six years following passage of the legislation; during this period, substantial court time was expended on the issue of periodic payments, and the question of the constitutionality of such payments was appealed to the California Supreme Court on two separate occasions before it was upheld.

Section 15 of the Judiciary CS relates to collateral benefits. This complex section essentially provides that the amount which a

defendant owes to a plaintiff will be reduced by whatever insurance benefits or other benefits the plaintiff has already received as compensation. Implementation will require extra trial time, in order for the jury to hear testimony regarding the types of coverage which might be involved, the amounts paid, and determining which payments may be offset. The current statute relating to collateral benefits is substantially less complex. Moreover, only the judge hears the testimony, and then only if the jury has returned a verdict for the plaintiff. The proposed system is thus less efficient and results in longer trials and more jury costs.

CSHB 292 (JUD) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the inevitable hearings that result from the failure of defendants to make periodic payments; by the increase in litigation resulting from the repeal of Civil Rule 82; and by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by CSHB 292 (JUD). In this regard, note that several pro-tort reform insurance defense attorneys who testified in favor of HB 292 conceded that the bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 93, there were 935 tort cases filed. Approximately 40 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 50 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 40 default judgments entered, with all entered for plaintiff. Determining periodic payments will average one day of court time without a jury. Determining collateral benefits will average one-half day of court time, including jury time. Time spent is discounted by two-thirds in default cases.

In district court in FY 93, there were 521 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and 21 default judgments were entered. Periodic payments will not be made in district court, because of the \$50,000 jurisdictional limit of that court. Because of the lower dollar value of cases, not as much time will be invested by litigants in determining collateral benefits; it is assumed that one-half as much court time will be used. District court jury costs are also less, because half as many jurors are used.

Alaska Court System  
Fiscal Analysis  
CS HB 292 (L&C)

	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
<u>Personal Services</u>			
Pro Tem Judge, fully vested, Anchorage permanent part-time, 4 months	\$8,050	\$5,912	\$13,962
 <u>Contractual Services</u>			
Jury Fees			8,250
Superior Court-			
40 - 1/2 day length collateral benefit hearings with 13 jurors at \$12.50 a half day (from trials)		6,500	
District Court-			
20 - 1/2 day length collateral benefit hearings with 7 jurors at \$12.50 a half day (from trials)		1,750	_____
Estimated Total Cost			<u><u>\$22,212</u></u>

FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NOCSHB 292 (JUD)

Revision Date: February 2, 1994  
Title: "...relating to civil actions; amending Alaska Rules of Civil Procedure 49 and 68..."  
Sponsor: House Labor and Commerce  
Requestor: House Labor and Commerce

Department Affected: Department of Law  
BRU: Legal Services  
Component: Operations  
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)  
Please see the attached analysis.

Prepared by: Richard I. Pegues, Director  
Division: Administrative Services Division  
Approved by Commissioner: Bruce M. Botelho, Attorney General  
Agency: Department of Law

Phone: 465-3672  
Date: February 2, 1994  
Date: February 2, 1994

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FISCAL NOTE

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

BILL NO. HB 292

ANALYSIS CONTINUATION:

This bill amends Title 9, the Alaska Code of Civil Procedure, to provide various changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to create a more equitable distribution of the cost of risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted away from claimants and toward defendants. Consequently, the state's claims exposure and the amount it ultimately pays would be reduced. However, because the total number of claims would probably not be reduced, the impact on the department's defense of personal injury claims will be negligible.

AMENDMENT 1

Adopt  
no/obj

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

Page 3, line 29, after "from":

Insert "prolonged exposure to hazardous waste,"

AMENDMENT 2

A dot

OFFERED IN THE HOUSE

TO: CSHB 292(JUD)

Page 15, line 15:

Delete "may"

Insert "shall"

Page 15, lines 19 - 20:

Delete "attorney fees, and monetary sanctions that are not less than \$500 nor more than \$10,000"

Insert "costs and attorney fees, and monetary sanctions not to exceed \$10,000"

1.

HOUSE FINANCE COMMITTEE

MEETING OF \_\_\_\_\_

SUBJECT am 2

MEMBER	YES	NO
BROWN		<input checked="" type="checkbox"/>
FOSTER		
GRUSSENDORF	<input checked="" type="checkbox"/>	
HANLEY	<input checked="" type="checkbox"/>	
HOFFMAN		
MARTIN	<input checked="" type="checkbox"/>	
NAVARRE	<input checked="" type="checkbox"/>	
PARNELL	<input checked="" type="checkbox"/>	
THERRIAULT	<input checked="" type="checkbox"/>	
LARSON	<input checked="" type="checkbox"/>	
MACLEAN	<input checked="" type="checkbox"/>	

TOTAL \_\_\_\_\_

PASSED: 8-1

FAILED: \_\_\_\_\_

adopted

3-LS091-N.L.3  
Ford  
4/7/94

AMENDMENT 3

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 2, line 18, after "available":

Insert ", except in a few limited circumstance:"

2.

HOUSE FINANCE COMMITTEE

MEETING OF 4/9/94

SUBJECT Amund # 3 # 292

MEMBER	YES	NO
FOSTER		
GRUSSENDORF	✓	
HANLEY	✓	
HOFFMAN		
MARTIN		✓
NAVARRE	✓	
PARNELL	✓	
TERRIAULT	✓	
BROWN	✓	
MACLEAN	✓	
LARSON	✓	

TOTAL

PASSED: 8

FAILED: 1

AMENDMENT 4

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 2, lines 2 - 3:

Delete all material.

Renumber the following paragraphs accordingly.

Page 3, lines 9 - 10:

Delete all material.

Renumber the following paragraph accordingly.

Page 3, line 13, through page 4, line 11:

Delete all material.

Renumber the following bill sections accordingly.

Page 4, line 14:

Delete "AS 09.10.052 and"

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 13"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 14"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 17"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 19"

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

3.

HOUSE FINANCE COMMITTEE

MEETING OF 4/8/94

SUBJECT HB 292 Amend #4

MEMBER	YES	NO
GRUSSENDORF		+
HANLEY		✓
HOFFMAN		—
MARTIN		✓
NAVARRE	✓	
PARNELL		✓
THERRIAULT		✓
BROWN	✓	
FOSTER		—
LARSON	✓	
MACLEAN	✓	

TOTAL

PASSED: 4

FAILED: 4

AMENDMENT 5

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 3, line 16:

Delete "personal injury, death, or"

Page 3, line 22:

Delete "personal injury, death, or"

Page 3, line 25:

Delete "personal injury, death, or"

Page 3, line 28:

Delete "personal injury, death, or"

Page 4, lines 4 - 7:

Delete all material.

Reletter the following subsection accordingly.

4.

HOUSE FINANCE COMMITTEE

MEETING OF 4/9/94

SUBJECT HB 292 Amend #5

MEMBER	YES	NO
HANLEY		✓
HOFFMAN		+
MARTIN		✓
NAVARRE	✓	
PARNELL		✓
THERRIAULT		✓
BROWN	✓	
FOSTER		+
GRUSSENDORF		+
MACLEAN	✓	
LARSON		✓

TOTAL

PASSED: 3  
FAILED: 3

AMENDMENT 6

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 3, lines 18 - 20:

Delete all material.

Renumber the following paragraphs accordingly.

5.

HOUSE FINANCE COMMITTEE

MEETING OF 4/8/94

SUBJECT HB 292 Amend # 6

MEMBER	YES	NO
HOFFMAN		+
MARTIN		✓
NAVARRE	✓	
PARNELL		✓
THERRIAULT		✓
BROWN	✓	
FOSTER		+
GRUSSENDORF		+
HANLEY		✓
LARSON		✓
MACLEAN	✓	
TOTAL		

PASSED: 3  
FAILED: 5

AMENDMENT 7

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 3, lines 23 - 24:

Delete "an intentional or reckless disregard of specific"

Insert "a failure to follow applicable"

6.

HOUSE FINANCE COMMITTEE

MEETING OF 4/9/94

SUBJECT Amendment #7

MEMBER	YES	NO
MARTIN		✓
NAVARRE	✓	
PARNELL		✓
TERRIAULT		✓
BROWN	✓	
FOSTER		—
GRUSSENDORF		—
HANLEY		✓
HOFFMAN		—
MACLEAN		—
LARSON	✓	

TOTAL \_\_\_\_\_

PASSED: 3

FAILED: 4

AMENDMENT 8

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 3, line 14:

Delete "SIX" ~~10~~

*adopted*

Insert "~~5~~"

10

Page 3, line 17:

Delete "six" ~~10~~

Insert "~~5~~"

10

7.

HOUSE FINANCE COMMITTEE

MEETING OF 4/9-94  
SUBJECT to Amend #8 to 10 years

MEMBER	YES	NO
NAVARRE		✓
PARNELL	✓	
THERRIAULT	✓	
BROWN		✓
FOSTER	+	
GRUSSENDORF		✓
HANLEY	✓	
HOFFMAN	+	
MARTIN	✓	
LARSON	✓	
MACLEAN		

TOTAL

PASSED: 5  
FAILED: 3

8.

HOUSE FINANCE COMMITTEE

MEETING OF 4/9/94

SUBJECT to amend the changed amount # 8

MEMBER	YES	NO
PARNELL	✓	
TERRIAULT	✓	
BROWN	✓	
FOSTER		+
GRUSSENDORF	✓	
HANLEY	✓	
HOFFMAN		+
MARTIN	✓	
NAVARRE	✓	
MACLEAN		+
LARSON	✓	

TOTAL \_\_\_\_\_

PASSED: 8

FAILED: 0

AMENDMENT 9

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 292(JUD)

Page 3, lines 15 - 16:

Delete "Notwithstanding the disability of minority described under AS 09.10.140(a),  
a"

Insert "A"

Page 4, line 4, after "period":

Insert "the injured person is less than 18 years of age or"

Page 4, line 12, through page 5, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 5, lines 15 - 16:

Delete "Notwithstanding the disability of minority described under AS 09.10.140(a),  
a"

Insert "A"

Page 5, line 20:

Delete ", other than AS 09.10.065"

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 13"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 14"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 17"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 19"

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT 10

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 292(JUD)

Page 4, line 12, through page 5, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 5, line 20:

Delete ", other than AS 09.10.065"

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 13"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 14"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 17"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 19"

Page 16 line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT \ \

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 5, line 29:

Delete "\$500,000"

Insert "\$750,000"

Page 5, line 31:

Delete "\$750,000"

Insert "\$1,000,000"

AMENDMENT 12

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 5, line 31:

Delete "\$750,000"

Insert "\$1,000,000"

AMENDMENT 3

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 6, lines 1 - 7:

Delete all material.

Insert "claimant, as a result of the injury suffers severe disfigurement or severe physical impairment."

AMENDMENT 14

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 5, line 23:

Delete "or wrongful death"

Page 5, line 29:

Delete "or death"

Page 6, line 9, after "damages":

Insert "for wrongful death, or noneconomic damages"

Page 12, line 25:

Delete "AS 09.17.010 and"

AMENDMENT

15

OFFERED IN THE HOUSE  
TO: CSHB.292(JUD)

BY REPRESENTATIVE BROWN

Page 6, line 20, after "sought":

Insert ". or clear and convincing evidence of gross negligence or reckless  
misconduct"

A M E N D M E N T

16

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 6, lines 21 - 29:

Delete all material.

Renumber the following bill sections accordingly.

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 13"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 14"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 17"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 19"

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT 17

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 7, lines 9 - 22:

Delete all material.

Re-number the following bill sections accordingly.

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 13"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 14"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 17"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 19"

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT 18

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 7, lines 19 - 22:

Delete all material and insert:

"(2) the amount of federal and state income tax that would be paid on gross earnings under tax rates in effect on the date of the injury or death may be considered by the jury in awarding economic damages for loss of past or future gross earnings."

AMENDMENT 19

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 292(JUD)

Page 7, line 19, after "(2)"

Insert "the court or jury shall determine"

Page 7, line 20:

Delete "shall be reduced by"

Insert "that is the equivalent of"

Page 7, line 22, after "death":

Insert ": the verdict shall provide that an amount determined under this paragraph shall be paid to the Internal Revenue Service"

AMENDMENT 20

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 7, line 23, through page 8, line 4:

Delete all material.

Renumber the following bill sections accordingly.

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 12"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 13"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 16"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 18"

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 23"

AMENDMENT 21

OFFERED IN THE HOUSE

BY REPRESENTATIVE FORD

TO: CSHB 292(JUD)

Page 7, line 24:

Delete "shall"

Insert "may [SHALL]"

AMENDMENT 22

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 10, lines 2 - 5:

Delete ", or other person responsible for the damages to each claimant regardless of whether the other person, including an employer, is or could have been named as a party to the action"

A M E N D M E N T

23

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 1, line 2:

Delete "68,"

Page 11, lines 29 - 31:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, lines 3 - 5:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT 24

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 292(JUD)

Page 12, line 24, through page 13, line 10:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT 25

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 12, line 25:

Delete "and (g) of this section"

Page 12, line 31:

Delete "economic [PECUNIARY]"

Insert "pecuniary"

Page 13, lines 11 - 20:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT 26

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 12, line 25:

Delete "and (g) of this section"

Page 13, lines 11 - 20:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 24"

AMENDMENT

27

OFFERED IN THE HOUSE

BY REPRESENTATIVE BROWN

TO: CSHB 292(JUD)

Page 13, line 13, after "by a":

Insert "devisee under a will of the deceased or a"

AMENDMENT 28

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 13, line 31, after "if":

Insert "the health care provider is insured under a policy of malpractice insurance with coverage of at least \$1,000,000 per occurrence that applies to the practice of medicine by the health care provider at the hospital and if"

Page 14, line 26, after "services":

Insert ";

(4) "malpractice insurance" has the meaning given in AS 21.12.070(10)"

AMENDMENT 29

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 1, line 7:

Delete "68, and 82"

Insert "and 68"

Page 13, lines 21 - 27:

Delete all material.

Renumber the following bill sections accordingly.

Page 16, lines 6 - 9:

Delete all material.

Renumber the following bill sections accordingly.

AMENDMENT 30

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 16, line 12, after "residents of the state":

Insert ", and determine if the enactment of this Act results in a reduction in insurance rates in the state"

A M E N D M E N T 31

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 3, after line 12:

Insert new bill sections to read:

\*\* Sec. 2. AS 08.64.326(a) is amended to read:

(a) The board may impose a sanction if the board finds after a hearing that a licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted, including conviction based on a guilty plea or plea of nolo contendere, of

(A) a felony or other crime if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee;  
or

(E) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law, regardless of whether there has been a criminal action;

(6) intentionally or negligently permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct or in lewd or immoral conduct in connection with the delivery of professional services to patients;

(10) has violated AS 18.16.010;

(11) has violated any code of ethics adopted by regulation by the board; or

(12) [HAS DENIED CARE OR TREATMENT TO A PATIENT OR PERSON SEEKING ASSISTANCE FROM THE PHYSICIAN IF THE ONLY REASON FOR THE DENIAL IS THE FAILURE OR REFUSAL OF THE PATIENT TO AGREE TO ARBITRATE AS PROVIDED IN AS 09.55.535(a); OR

(13)] has had a license or certificate to practice medicine in another state or territory of the United States, or a province or territory of Canada suspended or revoked unless the suspension or revocation was caused by the failure of the licensee to pay fees to that state, territory, or province.

\* Sec. 3. AS 09.68.270 is amended to read:

Sec. 08.68.270. GROUNDS FOR DENIAL, SUSPENSION, OR REVOCATION. The board may deny, suspend, or revoke the license of a person who

(1) has obtained or attempted to obtain a license to practice nursing by fraud or deceit;

(2) has been convicted of a felony or other crime if the felony or other crime is substantially related to the qualifications, functions or duties of the licensee;

(3) habitually abuses alcoholic beverages, or illegally uses controlled substances;

(4) has impersonated a registered or practical nurse;

(5) has intentionally or negligently engaged in conduct that has

resulted in a significant risk to the health or safety of a client or in injury to a client;

(6) practices or attempts to practice nursing while afflicted with physical or mental illness, deterioration, or disability that interferes with the individual's performance of nursing functions;

(7) is guilty of unprofessional conduct as defined by regulations adopted by the board;

(8) has wilfully or repeatedly violated a provision of this chapter or regulations adopted under it; or

(9) is professionally incompetent [;

(10) DENIES CARE OR TREATMENT TO A PATIENT OR PERSON SEEKING ASSISTANCE IF THE SOLE REASON FOR THE DENIAL IS THE FAILURE OR REFUSAL OF THE PATIENT OR PERSON SEEKING ASSISTANCE TO AGREE TO ARBITRATE AS PROVIDED IN AS 09.55.535(a)]."

Renumber the following bill sections accordingly.

Page 12, lines 1 - 7:

Delete all material and insert new bill sections to read:

"\* Sec. 23. AS 09.55.535 is repealed and reenacted to read:

Sec. 09.55.535. MANDATORY ARBITRATION. (a) A person who files an action for damages against a health care provider resulting from medical malpractice shall also submit the claim to the court for arbitration.

(b) When a claim is submitted as required by (a) of this section, the court shall appoint an arbitrator to review the claim. The arbitrator appointed to review the claim shall interview the parties and examine all records or materials relating to the claim and may compel the attendance of witnesses or consult with medical specialists.

(c) An arbitrator appointed under this section shall conduct a prehearing settlement conference within 30 days after the appointment. The arbitrator shall establish a period for discovery and a date for a hearing. The hearing date may not be more than 120 days after the settlement conference.

(d) An arbitrator shall render a decision within 30 days after hearing a claim under (c) of this section. The decision must contain findings of fact and conclusions

of law. The decision of the arbitrator may be rejected by a party.

(e) If the decision of the arbitrator is rejected by a party, the action may proceed in the appropriate court. The arbitrator's decision is admissible evidence in that action and may be used by a party to support or oppose a claim of damages.

(f) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act) apply to an arbitration under this section to the extent the provisions do not conflict with the provisions of this section.

\* Sec. 24. AS 09.55.536(a) is amended to read:

(a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider when the parties have failed to resolve the claim after [NOT AGREED TO] arbitration [OF THE CLAIM] under AS 09.55.535, the court shall appoint within 20 days after the decision of the arbitrator is rejected under AS 09.55.535(e) [FILING OF ANSWER TO A SUMMONS AND COMPLAINT] a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. The [WHEN THE ACTION IS FILED THE] court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

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

(f) Except as provided under AS 09.55.535(b), [NO] discovery may not be undertaken in a case until the report of the expert advisory panel is received. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant it an additional 30 days."

Renumber the following bill sections accordingly.

Page 15, line 21:

Delete "and AS 09.55.548"

Insert ", AS 09.55.548, and 09.55.560(2)"

Page 15, line 22:

Delete "14"

Insert "16"

Page 15, line 25:

Delete "15"

Insert "17"

Page 15, line 29:

Delete "18"

Insert "20"

Page 16, line 3:

Delete "20"

Insert "22"

Page 16, line 6:

Delete "25"

Insert "29"

AMENDMENT 32

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 1, line 1:

Delete "relating to civil actions"

Insert "requiring certain civil actions for personal injury, death, or property damage to be commenced within six years; requiring a civil action for professional negligence against a health care provider be brought before the injured person's eighth birthday if the injured person is less than six years of age at the time of the negligent act or omission; requiring that civil actions for personal injury, death, or property damage be brought within two years of accrual of the action and amending the limitations period for certain noncontractual rights; limiting the award of noneconomic and punitive damages; relating to the award of damages resulting from the commission of, attempted commission of, or fleeing from the commission of, a felony; requiring itemization of certain verdicts and a reduction of economic damages for the amount that would be paid in federal and state income taxes; relating to future damages being paid by periodic payment; relating to the effect in damages of amounts received from collateral sources; relating to the allocation of fault to a person responsible for damages; establishing the effect of a release from liability; changing the penalty for failing to accept certain offers of judgment; establishing the rate of prejudgment interest and interest on a judgment; prohibiting the award of prejudgment interest for certain damages; limiting damages received for wrongful death; prohibiting the award of attorney fees in certain cases unless authorized by statute or by agreement of the parties; limiting the civil liability of a hospital for a person who is not an employee or actual agent; relating to the signing of certain documents filed in a court action; requiring a report from the division of insurance; relating to computation of future economic damages; and relating to damages in wrongful death actions; requiring the State Medical Board to ask the Alaska State Medical Association to appoint a committee to develop medical practice parameters;"

AMENDMENT 33

OFFERED IN THE HOUSE  
TO: CSHB 292(JUD)

BY REPRESENTATIVE BROWN

Page 5, after line 20:

Insert a new bill section to read:

"\* Sec. 6. AS 09.10.075 is repealed and reenacted to read:

Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO PERSON OR PROPERTY. A person may not bring an action for personal injury, death, or property damage unless the action is brought within two years of the accrual of the action."

Renumber the following bill sections accordingly.

Page 6, after line 15:

Insert a new bill section to read:

"\* Sec. 8. AS 09.17.010 is repealed and reenacted to read:

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

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

(c) The limit under (b) of this section does not apply to damages for disfigurement or severe physical impairment."

Renumber the following bill sections accordingly.

Page 6, after line 20:

Insert a new bill section to read:

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

Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence."

Renumber the following bill sections accordingly.

Page 7, after line 8:

Insert a new bill section to read:

"\* Sec. 13. AS 09.17.030 is repealed and reenacted to read:

Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A person who suffers personal injury or death may not recover damages for the personal injury or death if the injuries or death occurred while the person was engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the felony substantially contributed to the injury or death. This section does not affect a right of action under 42 U.S.C. 1983."

Renumber the following bill sections accordingly.

Page 7, after line 22:

Insert a new bill section to read:

"\* Sec. 15. AS 09.17.040(a) is repealed and reenacted to read:

(a) In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:

- (1) past economic loss;
- (2) past noneconomic loss;
- (3) future economic loss;
- (4) future noneconomic loss; and

(5) punitive damages."

Renumber the following bill sections accordingly.

Page 7, after line 29:

Insert a new bill section to read:

"\* Sec. 17. AS 09.17.040(d) is repealed and reenacted to read:

(d) In an action to recover damages, the court shall, at the request of an injured party, 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."

Renumber the following bill sections accordingly.

Page 8, after line 4:

Insert a new bill section to read:

"\* Sec. 19. AS 09.17.040(e) is repealed and reenacted to read:

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

Renumber the following bill sections accordingly.

Page 8, after line 19:

Insert new bill sections to read:

"\* Sec. 21. AS 09.17.040(f) is repealed and reenacted to read:

(f) A judgment ordering payment of future damages by periodic payment shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but

shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will.

\* Sec. 22. AS 09.17.040 is amended by adding a new subsection to read:

(h) Subsection (b) of this section does not apply to future economic damages if the parties agree that the award of future damages may be computed under the rule adopted in the case of *Beaulieu v. Elliott*, 434 P.2d 665 (Alaska 1967)."

Renumber the following bill sections accordingly.

Page 9, after line 22:

Insert a new bill section to read:

\*\* Sec. 24. AS 09.17.070 is repealed and reenacted to read:

Sec. 09.17.070. 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 by law or contract.

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

(1) actual attorney fees incurred by the claimant in obtaining the award exceed the amount of attorney fees awarded to the claimant by the court; and

(2) 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 total award the amount by which the value of the nonsubrogated sum awarded 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 under federal law cannot be reduced or offset;
- (2) a deceased's life insurance policy; or
- (3) gratuitous benefits provided to the claimant.

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

Renumber the following bill sections accordingly.

Page 10, after line 5:

Insert a new bill section to read:

"\* Sec. 26. AS 09.17.080(a) is repealed and reenacted to read:

(a) In all actions involving fault of more than one person, including third-party defendants and persons who have been released under AS 09.17.091, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

(2) the percentage of the total fault that is allocated to each claimant, defendant, third-party defendant, person who has been released from liability under AS 09.17.091."

Renumber the following bill sections accordingly.

Page 10, after line 17:

Insert a new bill section to read:

"\* Sec. 28. AS 09.17.080(c) is repealed and reenacted to read:

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.091, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance

with the respective percentages of fault as determined under (a) of this section."

Renumber the following bill sections accordingly.

Page 11, after line 19:

Insert a new bill section to read:

"\* Sec. 31. AS 09.30.065 is repealed and reenacted to read:

Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days before the trial begins either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with 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 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 percent a year;
- (2) if the offeree is the party defending against the claim, the interest rate shall be increased by five percent a year."

Renumber the following bill sections accordingly.

Page 11, after line 28:

Insert a new bill section to read:

"\* Sec. 33. AS 09.30.070(a) is repealed and reenacted to read:

- (a) The rate of interest on judgments and decrees for the payment of money is 10.5 percent a year, except that a judgment or decree founded on a contract in

writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree."

Renumber the following bill sections accordingly.

Page 12, after line 7:

Insert new bill sections to read:

"\* Sec. 36. AS 09.55.535(k) is repealed and reenacted to read:

(k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180, apply to arbitrations under this section if they do not conflict with the provisions of this section; arbitration under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of AS 09.55.540 - 09.55.549 and AS 09.55.554 - 09.55.560, and AS 09.65.090.

\* Sec. 37. AS 09.55 is amended by adding a new section to read:

Sec. 09.55.549. AWARDS, COLLATERAL SOURCE. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump sum payment; the judgment shall include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.900 is sufficient assurance that funds will be available. Any part of the award that is paid on a periodic basis shall be adjusted annually according to changes in the Consumer Price Index in the community where the claimant resides. In this subsection, future damages include damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program that by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant that exceed amounts received by the claimant as compensation for the injuries from collateral sources, whether private,

group, or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program that must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future."

Renumber the following bill sections accordingly.

Page 12, after line 23:

Insert a new bill section to read:

"\* Sec. 39. AS 09.55.580(a) is repealed and reenacted to read:

(a) Except as provided under (f) of this section, when the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had the person lived, against the latter for an injury done by the same act or omission. The action shall be commenced within two years after the death, and the damages therein shall be the damages the court or jury may consider fair and just. The amount recovered, if any, shall be exclusively for the benefit of the decedent's spouse and children when the decedent is survived by a spouse or children, or other dependents. When the decedent is survived by no spouse or children or other dependents, the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss. When the plaintiff prevails, the trial court shall determine the allowable costs and expenses of the action and may, in its discretion, require notice and hearing thereon. The amount recovered shall be distributed only after payment of all costs and expenses of suit and debts and expenses of administration."

Renumber the following bill sections accordingly.

Page 13, after line 10:

Insert a new bill section to read:

"\* Sec. 41. AS 09.55.580(c) is repealed and reenacted to read:

(c) In fixing the amount of damages to be awarded under this section, the court or jury shall consider all the facts and circumstances and from them fix the award at a sum which will fairly compensate for the injury resulting from the death. In determining the amount of the award, the court or jury shall consider but is not limited to the following:

- (1) deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries, without regard to age thereof, that would have resulted from the continued life of the deceased and without regard to probable accumulations or what the deceased may have saved during the lifetime of the deceased;
- (2) loss of contributions for support;
- (3) loss of assistance or services irrespective of age or relationship of decedent to the beneficiary or beneficiaries;
- (4) loss of consortium;
- (5) loss of prospective training and education;
- (6) medical and funeral expenses."

Renumber the following bill sections accordingly.

Page 13, after line 27:

Insert a new bill section to read:

"\* Sec. 44. AS 09.60.010 is repealed and reenacted to read:

Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING PARTY. The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death, or property damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil action is contested without trial or fully contested as determined by the court."

Renumber the following bill sections accordingly.

Page 15, after line 21:

Insert a new bill section to read:

"\* Sec. 48. AS 09.10.052, 09.10.065; AS 09.17.020(b), 09.17.020(c); AS 09.30.070(c); AS 09.55.580(g), 09.55.580(h); AS 09.65.096, and 09.65.125 are repealed."

Renumber the following bill sections accordingly.

Page 15, line 22:

Delete "sec. 14"

Insert "sec. 23"

Page 15, line 25:

Delete "sec. 15"

Insert "sec. 25"

Page 15, line 29:

Delete "sec. 18"

Insert "sec. 30"

Page 16, line 3:

Delete "sec. 20"

Insert "sec. 34"

Page 16, line 6:

Delete "sec. 25"

Insert "sec. 43"

Page 16, after line 9:

Insert new bill sections to read:

"\* Sec. 54. AS 09.17.080(a), as repealed and reenacted in sec. 26 of this Act, has the

effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatory described in AS 09.17.080.

\* Sec. 55. AS 09.30.065, as repealed and reenacted by sec. 31 of this Act, has the effect of amending Alaska Rule of Civil Procedure 68 by providing that if a judgment is not more favorable to the offeree than the offer, the applicable interest rate shall be adjusted.

\* Sec. 56. The repeal of AS 09.30.070(c), by sec. 48 of this Act, has the effect of amending Alaska Rule of Civil Procedure 68 by removing a provision providing that prejudgment interest may not be awarded for future economic or noneconomic damages.

\* Sec. 57. AS 09.60.010, as repealed and reenacted by sec. 44 of this Act, has the effect of amending Alaska Rule of Civil Procedure 82 by removing the absolute prohibition on award of attorney fees in a civil action for personal injury, death, or property damage.

\* Sec. 58. The repeal of AS 09.65.125, by sec. 48 of this Act, has the effect of amending Alaska Rules of Civil Procedure 11 and 95 by removing a provision requiring an immediate hearing to consider appropriate sanctions for certain failures relating to the signing of pleadings, motions, or other papers."

Renumber the following bill sections accordingly.

Page 17, line 6:

Delete "This Act"

Insert "Each of secs. 1 - 58 of this Act"

Page 17, line 7, after "of":

Insert "that section of"

Page 17, after line 7:

Insert a new bill section to read:

"\* Sec. 63. Sections 6, 8, 10, 13, 15, 17, 19, 21, 22, 24, 26, 28, 31, 33, 36, 37, 39, 41, 44, 48, and 54 - 58 of this Act take effect July 1, 1998."

Renumber the following bill section accordingly.

Page 17, line 8:

Delete "This"

Insert "Except as provided in sec. 63 of this Act, this"



# Alaska State Legislature

Official Business

State Capitol  
Juneau, AK 99801-1182

## MEMORANDUM

To: Representative Ron Larson, Co-Chair  
House Finance Committee


Subject: Proposed amendments to CS HB (292) CIVIL LIABILITY

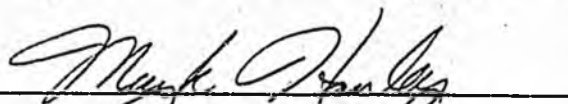
Date: April 20, 1994

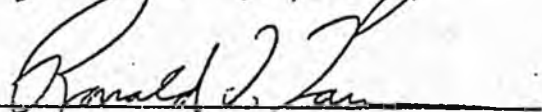
The sponsor of HB<sup>2</sup> 292 has made significant changes to the bill and we are enclosing a draft for your review. The changes made to expedite passage from House Finance Committee include the following:

- (1) Raise the cap on physical impairment from \$750,000 to 1 million.
- (2) Raise the cap on punitive damages from \$200,000 to \$500,000.
- (3) Delete the provision on taxing gross earnings on an award.
- (4) Delete the section on Offers of Judgment.
- (5) Delete the section of Rule 82.
- (6) Delete the limitation of the award of wrongful death for non-dependents.
- (7) Statute of repose is increased from 8 to 10 years.

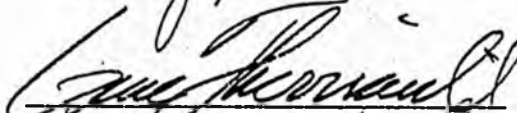
We would appreciate you scheduling a hearing on the bill as soon as possible.

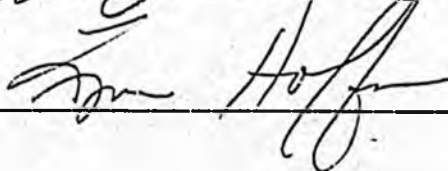
  
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8-LS0914NQ  
Ford  
4/29/94

CS FOR HOUSE BILL NO. 292( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rule of Civil Procedure 68;  
2 and providing for an effective date."

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

4 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

5 (1) civil justice in this state has generally been developed by the courts on a  
6 case-by-case basis; this process has resulted in some significant changes in the law, and the  
7 legislature has periodically intervened to bring about needed reforms;

8 (2) the level of malpractice insurance premiums discourage physicians and  
9 other health care professionals from initiating or continuing their practice or offering needed  
10 services to the public;

11 (3) society as a whole cannot afford the price of lawsuits years after the  
12 delivery of medical services and other actions; the widespread use of claims-made insurance  
13 policies makes it impossible to adequately and economically insure against actions after a  
14 health care provider leaves medical practice; likewise it is extremely difficult to defend against

1 a claim that has become stale after information and witnesses have disappeared;

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

5 (5) the issues in the Act were intended to be addressed in a comprehensive  
6 way in 1986; however, the legislation passed in 1976, 1978, and 1986 fell short of  
7 accomplishing the goals of the legislature and the problems that existed in 1986 still exist in  
8 1994.

9 (b) It is the purpose of this Act to

10 (1) enact further reforms that create a more equitable distribution of the cost  
11 and risk of injury;

12 (2) reduce costs associated with the medical malpractice system, while ensuring  
13 that adequate and appropriate compensation for persons injured through the fault of others is  
14 available;

15 (3) help match losses with compensation by helping to

16 (A) ensure that money paid to an injured person is available when  
17 anticipated expenses or losses occur;

18 (B) ensure that a claimant with substantial injury requiring long-term  
19 treatment will have money available for future medical care;

20 (C) reduce reparation system costs by eliminating those portions of  
21 awards that are not needed to compensate the claimant;

22 (D) eliminate duplicate recoveries; and

23 (E) reduce the costs of litigation;

24 (4) ensure that in medical malpractice actions involving the fault of more than  
25 one person, the fault of each claimant, defendant, third-party defendant, person who has been  
26 released from liability, or other person responsible for the damages be determined and awards  
27 be allocated in accordance with their fault;

28 (5) clarify the circumstances in which hospitals are held directly liable for the  
29 actions of health care providers not employed by the hospital.

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

31 Sec. 09.10.065. LIMITATION ON ACTIONS AGAINST HEALTH CARE

1 PROVIDERS. (a) Notwithstanding the disability of minority described under  
2 AS 09.10.140(a), an action based on professional negligence may not be brought  
3 against a health care provider

4 (1) unless commenced within two years after accrual of the action or  
5 within six years of the last act alleged to have caused the personal injury or death,  
6 whichever is earlier; or

7 (2) if the injured person was less than six years of age on the date of  
8 the last act alleged to have caused the personal injury or death, unless the action is  
9 brought before the person's eighth birthday.

10 (b) The limitation imposed under (a) of this section is tolled during any period  
11 in which there exists

12 (1) fraud, including fraud or collusion by a parent, guardian, insurer,  
13 or health care provider, resulting in the failure to bring an action on behalf of an  
14 injured minor; or

15 (2) intentional concealment of facts that would give notice of a  
16 potential action.

17 (c) In this section, "health care provider" and "professional negligence" have  
18 the meanings given in AS 09.55.560.

19 \* Sec. 3. AS 09.17.010 is amended by adding a new subsection to read:

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

22 \* Sec. 4. AS 09.17.040 is amended by adding a new subsection to read:

23 (h) This section does not apply to a medical malpractice action filed under  
24 AS 09.55.

25 \* Sec. 5. AS 09.17.080 is amended by adding a new subsection to read:

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

28 \* Sec. 6. AS 09.55 is amended by adding new sections to read:

29 Sec. 09.55.538. NONECONOMIC DAMAGES. (a) In an action to recover  
30 damages against a health care provider for personal injury or death resulting from  
31 professional negligence, all damage claims for noneconomic losses shall be limited to

1 compensation for pain, suffering, inconvenience, physical impairment, disfigurement,  
2 loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

3 (b) The amount of damages awarded by a court or a jury under (a) of this  
4 section for all claims, including a loss of consortium claim, arising out of a single  
5 injury or death may not exceed \$500,000.

6 (c) Multiple injuries sustained as a result of a single incident shall be treated  
7 as a single injury for purposes of this section.

8 Sec. 09.55.539. PUNITIVE DAMAGES. (a) Notwithstanding AS 09.17.020,  
9 punitive damages may not be awarded in an action against a health care provider for  
10 personal injury or death resulting from professional negligence, unless supported by  
11 clear and convincing evidence of malice or conscious acts showing deliberate disregard  
12 of another person by the person from whom the punitive damages are sought.

13 (b) The amount of punitive damages awarded by a court or jury under (a) of  
14 this section may not exceed three times the amount of compensatory damages awarded  
15 or \$500,000, whichever amount is greater.

16 \* Sec. 7. AS 09.55 is amended by adding new sections to read:

17 Sec. 09.55.541. AWARD OF DAMAGES. (a) In an action against a health  
18 care provider where damages for personal injury or death resulting from professional  
19 negligence are awarded by the court or jury,

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

- 22 (A) past economic loss;  
23 (B) past noneconomic loss;  
24 (C) future economic loss;  
25 (D) future noneconomic loss;  
26 (E) punitive damages; and

27 (2) the amount of economic damages awarded for past or future gross  
28 earnings shall be reduced by the amount of federal and state income tax that would be  
29 paid on the earnings under tax rates in effect on the date of the injury or death.

30 (b) In an action to recover damages against a health care provider resulting  
31 from professional negligence, the court shall, at the request of a party, enter judgment

1 ordering that amounts awarded a judgment creditor for future damages that exceed  
2 \$100,000 be paid to the maximum extent feasible by periodic payments rather than by  
3 a lump-sum payment. If a portion of the judgment awarded is owed to an attorney  
4 under a contingent fee agreement, that portion of the judgment shall be reduced to  
5 present value and paid in a lump sum.

6 (c) Except as provided in this subsection, if a judgment entered against a  
7 health care provider for professional negligence is paid by periodic payments, the court  
8 shall require security be posted in order to ensure that funds are available as periodic  
9 payments become due. The court may not require security to be posted if the state or  
10 an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its  
11 obligation to discharge the judgment.

12 (d) A judgment entered against a health care provider ordering payment of  
13 future damages for personal injury or death resulting from professional negligence by  
14 periodic payment shall specify the recipient, the dollar amount of the payments,  
15 including any increases in future payments for anticipated inflation, the interval  
16 between payments, and the number of payments or the period of time over which  
17 payments shall be made. Payments may be modified only in the event of the death  
18 of the judgment creditor, in which case payments may not be reduced or terminated,  
19 but shall be paid to persons to whom the judgment creditor owed a duty of support,  
20 as provided by law, immediately before death. In the event the judgment creditor  
21 owed no duty of support to dependents at the time of the judgment creditor's death,  
22 the money remaining shall be distributed in accordance with a will of the deceased  
23 judgment creditor accepted into probate or under the intestate laws of the state if the  
24 deceased had no will.

25 Sec. 09.55.542. INTEREST ON MALPRACTICE JUDGMENTS. In an action  
26 against a health care provider based on professional negligence, prejudgment interest  
27 may not be awarded for future economic damages, future noneconomic damages, or  
28 for punitive damages.

29 Sec. 09.55.543. APPORTIONMENT OF DAMAGES. (a) In an action based  
30 on professional negligence against a health care provider involving the fault of more  
31 than one person, regardless of whether the person is or could have been named as a

1 party to the action, the court shall enter judgment against each person liable on the  
2 basis of several liability in accordance with that person's percentage of fault.

3 (b) An assessment of a percentage of fault against a person who is not a party  
4 may only be used as a measure for accurately determining the percentages of fault of  
5 a named party. Assessment of a percentage of fault against a person who is not a  
6 party does not subject that person to civil liability in this or another action and may  
7 not be used as evidence of civil liability in another action.

8 \* Sec. 8. AS 09.55.548 is repealed and reenacted to read:

9 Sec. 09.55.548. COLLATERAL BENEFITS. (a) Except when the collateral  
10 source is a federally funded program that by law must seek subrogation and except for  
11 death benefits paid under life insurance, a claimant in an action against a health care  
12 provider for personal injury or death resulting from professional negligence may only  
13 recover damages that exceed amounts received by the claimant, or that with reasonable  
14 probability will be received in the future by the claimant, as compensation for the  
15 injuries from collateral sources, whether private, group, or governmental, and whether  
16 contributory or noncontributory.

17 (b) In an action against a health care provider for personal injury or death  
18 resulting from professional negligence, a person defending a claim may introduce into  
19 evidence an amount paid or payable as a benefit to the claimant as a result of the  
20 personal injury or death under 42 U.S.C. 301 - 1397 (Social Security Act); a state or  
21 federal disability or workers' compensation act; health, sickness, or income-disability  
22 insurance; insurance that provides health benefits or income-disability coverage; and  
23 a contract or agreement of a group, organization, partnership, or corporation, or other  
24 collateral source, to provide, pay for, or reimburse the cost of medical, hospital, dental,  
25 or other health care services or lost wages. If a person defending a claim elects to  
26 introduce evidence described in this subsection, the claimant may introduce evidence  
27 of the amount that the claimant has paid or contributed to secure the claimant's right  
28 to an insurance or contractual benefit introduced by the person defending the claim as  
29 evidence.

30 (c) Unless evidence of a collateral source has already been introduced under  
31 (b) of this section, evidence of a collateral source, other than a federal program that

1 by law must seek subrogation and a death benefit paid under life insurance, is only  
2 admissible after the fact finder has rendered an award. The court may take into  
3 account the value of the claimant's rights to coverage exhausted or depleted by  
4 payment of the collateral benefit by adding back a reasonable estimate of their  
5 probable value, or by designating and holding for possible periodic payment under  
6 AS 09.55.541 that amount of the award that would otherwise have been deducted, to  
7 determine if the impairment of the claimant's rights actually takes place in the future.

8 (d) A person who provides a collateral benefit admissible under (a) of this  
9 section may not bring an action based on the provision of the benefit and may not be  
10 subrogated to the rights of a claimant against a person defending a claim.

11 \* Sec. 9. AS 09.55.560 is amended by adding new paragraphs to read:

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

14 (5) "professional services" means services provided by a health care  
15 provider that are within the scope of services for which the health care provider is  
16 licensed, and that are not prohibited under the health care provider's license or by a  
17 hospital in which the health care provider practices.

18 \* Sec. 10. AS 09.65 is amended by adding a new section to read:

19 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.

20 (a) A hospital is not liable for civil damages as a result of an act or omission by a  
21 health care provider who is not an employee or actual agent of the hospital if the  
22 hospital provides notice that the health care provider is an independent contractor. The  
23 notice required by this subsection must be posted conspicuously in all admitting areas  
24 of the hospital, published at least annually in a newspaper of general circulation in the  
25 area, and must be in substantially the following form:

26 Notice of Limited Liability

27 The following health care providers are independent contractors  
28 and are not employees of the hospital:

29 (List specific health care providers)

30 The hospital is responsible for exercising reasonable care in granting staff privileges  
31 to practice in the hospital, for reviewing those privileges on a regular basis, and for

1 taking appropriate steps to revoke or restrict privileges in appropriate circumstances.  
2 The hospital is not otherwise liable for the acts or omissions of a health care provider  
3 who is an independent contractor.

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

6 (c) In this section,

7 (1) "health care provider" means a doctor of medicine, a surgeon,  
8 psychologist, osteopath, dentist, optometrist, or certified registered nurse anesthetist,  
9 who is licensed in this state;

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

12 (3) "independent contractor" means a licensed health care provider who  
13 is a member of a hospital's medical staff or who has otherwise been granted specified  
14 privileges to render health care services directly or indirectly to patients at the hospital,  
15 but who is not an employee or actual agent of the hospital in connection with the  
16 rendition of the health care services.

17 \* Sec. 11. AS 09.65 is amended by adding a new section to read:

18 Sec. 09.65.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER  
19 PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party  
20 represented by an attorney shall be signed by at least one attorney of record in the  
21 attorney's individual name, whose address shall be stated. A party who is not  
22 represented by an attorney shall sign the party's pleading, motion, or other paper and  
23 state the party's address. Except when otherwise specifically provided by the Alaska  
24 Rules of Civil Procedure or statute, pleadings need not be verified or accompanied by  
25 affidavit. The signature of an attorney or party constitutes a certificate by the signer  
26 that the signer has read the pleading, motion, or other paper; that to the best of the  
27 signer's knowledge, information, and belief formed after reasonable inquiry it is well  
28 grounded in fact and is warranted by existing law or a good faith argument of the  
29 extension, modification, or reversal of existing law; and that it is not interposed for any  
30 improper purpose, including to harass or to cause unnecessary delay or needless  
31 increase in the cost of litigation. If a pleading, motion, or other paper is not signed,

1 it shall be stricken unless it is signed promptly after the omission is called to the  
2 attention of the pleader or movant. If it is alleged or appears that a pleading, motion,  
3 or other paper is signed in violation of this section, the court, upon motion or upon its  
4 own initiative, may set the matter for hearing. If the court determines that a pleading,  
5 motion, or other paper is signed in violation of this section, the court shall impose  
6 upon the person who signed it, a represented party, or both, an appropriate sanction  
7 that may include an order to pay to the other party the amount of the reasonable  
8 expenses incurred because of the filing of the pleading, motion, or other paper,  
9 including costs and attorney fees, and monetary sanctions not to exceed \$10,000.

10 \* Sec. 12. AS 09.55.542, enacted in sec. 7 of this Act, has the effect of amending Alaska  
11 Rule of Civil Procedure 68 by providing that in an action against a health care provider  
12 prejudgment interest may not be awarded for future economic or noneconomic damages.

13 \* Sec. 13. MEDICAL PRACTICE PARAMETER REPORT. (a) The State Medical Board  
14 shall request that the Alaska State Medical Association appoint a committee representative of  
15 medical specialties for the purpose of determining the efficacy of practice parameters in the  
16 state. The committee required under this subsection shall, at a minimum, report to the State  
17 Medical Board on the following:

18 (1) the perceived costs and time required to develop practice parameters;

19 (2) an evaluation of the experience with medical practice parameters in other  
20 states; and

21 (3) the extent to which medical practice parameters appear to prevent medical  
22 malpractice claims and to eliminate or reduce the practice of defensive medicine undertaken  
23 to avoid civil litigation.

24 (b) By July 1, 1996, the committee appointed under (a) of this section shall complete  
25 its evaluation and submit to the State Medical Board a detailed report concluding with a  
26 recommendation for or against the development and adoption of medical practice parameters  
27 in the state.

28 (c) Based on the report of the committee appointed under (a) of this section and  
29 recommendations submitted under (b) of this section, the State Medical Board shall make a  
30 formal recommendation to the governor and the legislature regarding the development and  
31 adoption of medical practice parameters in the state by January 1, 1997.

1 \* Sec. 14. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
2 application of a provision of this Act to any person or circumstance is held invalid, the  
3 remainder of this Act and the application to other persons shall not be affected.

4 \* Sec. 15. APPLICABILITY. This Act applies to a cause of action accruing on or after  
5 the effective date of this Act.

6 \* Sec. 16. This Act takes effect July 1, 1994.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 8, 1994

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 269-5100  
FAX: (907) 276-3697
- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846
- P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-6735
- Juneau-Anriex  
Phone: (907) 465-3603  
Fax: (907) 465-2539

The Honorable Brian Porter  
Alaska House of Representatives  
State Capitol, Room 516  
Juneau, AK 99801-1182

Re: HB 292, tort reform

Dear Representative Porter:

You have asked for our legal opinion on HB 292, otherwise known as the tort reform bill. We have spent considerable time analyzing the legal and constitutional issues raised by the proposed legislation. Our comments below address the most recent version of the bill, CSHB 292 (L&C).

We understand that the House Judiciary Committee, which you chair, and the House Labor and Commerce Committee have invited and received input on this bill from many sources. We appreciate your efforts to consider a variety of viewpoints, as this is a complicated piece of legislation that will have significant impacts. Please do not hesitate to contact us if we can provide further assistance with this bill.

SECTION 3: STATUTE OF REPOSE

Section 3 proposes to enact a "statute of repose" in a new AS 09.10.052. The Alaska Supreme Court has observed:

A statute of repose differs from a statute of limitation in that the former may bar a cause of action before it accrues, because the statute begins to run from a specific date unrelated to the date of injury. A cause of action thus precluded is *damnum absque injuria*, a loss without a remedy. In contrast, a statute of limitation begins to run when the plaintiff's cause of action accrues or is