

ALASKA LEGISLATURE

1628

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

NATIONAL PARK SERVICE, PACIFIC WEST FIELD AREA, 600 HARRISON ST  
STE 600, SAN FRANCISCO CA 94107-1372  
FISH & WILDLIFE SERVICE, REGIONAL DIRECTOR, 1011 EAST TUDOR ROAD,  
ANCHORAGE AK 99503-6199  
FISH & WILDLIFE SERVICE, DIVISION OF REALTY, 622 ARLSQ, 1849 C ST NW,  
WASHINGTON DC 20240-0002

U.S. DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY, 400 7TH ST SW, WASHINGTON DC 20590-0003  
FEDERAL AVIATION ADMINISTRATION, REGIONAL ADMINISTRATOR, ALASKA  
REGION, 222 W 7TH AVE #14, ANCHORAGE AK 99513-7587  
FEDERAL AVIATION ADMINISTRATION, ALASKA REGION, AIRPORTS DIVISION,  
222 W 7TH AVE #14, ANCHORAGE AK 99513-7587  
FEDERAL AVIATION ADMINISTRATION, MILITARY AIRPORTS COORDINATION  
PROGRAM, 800 INDEPENDENCE AVE SW, WASHINGTON DC 20591-0004  
FEDERAL HIGHWAY ADMINISTRATION, REGIONAL ADMINISTRATOR, 222 W 7TH  
AVE #7, ANCHORAGE AK 99513-7530  
FEDERAL HIGHWAY ADMINISTRATION, POLICY DEVELOPMENT BRANCH,  
4000 7TH ST SW, STE 3221, WASHINGTON DC 20590-0001  
MARITIME ADMINISTRATION, OFFICE OF PORTS & DOMESTIC SHIPPING, 400 7TH  
ST SW, WASHINGTON DC 20590-0003

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES

REGIONAL HEALTH ADMINISTRATOR, 2901 3RD AVE, MS 501, SEATTLE WA  
98121-1042  
DIRECTOR, ALASKA AREA NATIVE HEALTH SERVICE, PUBLIC HEALTH SERVICE,  
250 GAMBELL ST, ANCHORAGE AK 99501-6100  
PUBLIC HEALTH SERVICE, DIVISION OF HEALTH FACILITIES PLANNING,  
RM 17A-10, PARKLAWN BLDG, 5600 FISHERS LANE,  
ROCKVILLE MD 20857-0001  
FOOD & DRUG ADMINISTRATION, 222 W 7TH AVE #25, ANCHORAGE, AK  
99513-7549  
SOCIAL SECURITY ADMINISTRATION, 222 W 8TH AVE #66, ANCHORAGE AK  
99513-7560

U.S. DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO & FIREARMS, 222 W 7TH AVE #39,  
ANCHORAGE AK 99513-7597  
BUREAU OF ALCOHOL, TOBACCO & FIREARMS, 915 2ND AVE STE 806,  
SEATTLE WA 98174-1093

INTERNAL REVENUE SERVICE, 949 E 36TH AVE, STE 206, ANCHORAGE  
AK 99518-4362  
CUSTOMS SERVICE, DISTRICT DIRECTOR, 605 W 4TH AVE, STE 205,  
ANCHORAGE AK 99501-2252  
CUSTOMS SERVICE, 1301 CONSTITUTION AVE NW, WASHINGTON DC 20229-0002

OTHER FEDERAL AGENCIES

VETERANS ADMINISTRATION, 2925 DEBARR ROAD, ANCHORAGE AK 99508-2989  
POSTMASTER, U.S. POSTAL SERVICE, 4141 POSTMARK DRIVE, ANCHORAGE  
AK 99502-9998  
U.S. POSTAL SERVICE, REAL ESTATE DIVISION, CODE 320, 850 CHERRY AVE,  
SAN BRUNO CA 94099-0003  
DIRECTOR, GENERAL ACCOUNTING OFFICE, WASHINGTON DC 20548-0001  
DIRECTOR, NUCLEAR REGULATORY COMMISSION, WASHINGTON DC 20555-0001  
DIRECTOR, NATIONAL SECURITY AGENCY, CODE LS2, FORT MEADE  
MD 20755-6000  
STATE DEPARTMENT, BUILDING SERVICES, 2201 C ST NW, WASHINGTON  
DC 20520-9997  
SMITHSONIAN INSTITUTION, PROPERTY MANAGEMENT, OFFICE OF  
PROCUREMENT, 255 LENFANT PLAZA, WASHINGTON DC 20202-0001  
U.S. INFORMATION AGENCY, ADMINISTRATIVE SERVICES DIV, STE 105,  
1776 PENNSYLVANIA AVE, WASHINGTON DC 20547-0001  
SMALL BUSINESS ADMINISTRATION, 915 2ND AVE, STE 1792,  
SEATTLE WA 98174-1001  
SMALL BUSINESS ADMINISTRATION, OFFICE OF VETERANS AFFAIRS, 409  
3RD ST SW, 6TH FLOOR, WASHINGTON DC 20416-0001  
U.S. DEPARTMENT OF EDUCATION, IMPACT AID PROGRAM, 600  
INDEPENDENCE AVE SW, MS 6244, WASHINGTON DC 20202-4553  
U.S. DEPARTMENT OF EDUCATION, DIRECTOR REAL PROPERTY GROUP, OFFICE  
OF MANAGEMENT, 600 INDEPENDENCE AVE SW STE 2451 - FOB #10B,  
WASHINGTON DC 20202-4553  
U.S. DEPARTMENT OF EDUCATION, DIRECTOR, WESTERN ZONE, FEDERAL REAL  
PROPERTY ASSISTANCE PROGRAM, 915 2ND AVE STE 3390,  
SEATTLE WA 98174-1099  
GENERAL SERVICES ADMINISTRATION, DIRECTOR, OFFICE OF REAL ESTATE  
SALES, 525 MARKET STREET, SAN FRANCISCO CA 94105-2799  
GENERAL SERVICES ADMINISTRATION, REGIONAL ADMINISTRATOR, 400 15TH  
STREET, AUBURN WA 98001-6599  
ADVISORY COUNCIL ON HISTORIC PRESERVATION, 1100 PENNSYLVANIA AVE  
NW STE 809, WASHINGTON DC 20004-2590  
U.S. DEPARTMENT OF LABOR/ETA, ACTING REGIONAL ADMINISTRATOR,  
1111 3RD AVE STE 900, SEATTLE WA 98101-3212

July 1, 1996

Mr. Ed Arobio  
Department of Natural Resources  
3700 Airport Way  
Fairbanks, AK 99709-4699

Dear Ed,

The attached package was sent to your Commissioner and so that you are kept in the loop, I am sending you a copy. The formal notice of surplus property is required but an informal network of people, like yourself, who know what is happening and could advise people who could possibly be interested will often produce better results. As you talk to various groups, please keep the facilities at Fort Greely in mind. As you know, the possible uses for these facilities are unlimited. In our view, we could provide many benefits at a lower cost than anywhere else in the State.

We are, therefore, asking if you know or hear of any interest from your contacts in the use of any of the attached list of Fort Greely facilities for any purpose, please let us know.

We appreciate your efforts thus far in our behalf and would appreciate hearing from you.

Sincerely,

Ray Woodruff, Executive Director

crpint

issuance of the ID card. The data are transmitted to the Defense Manpower Data Center to be entered into the Defense Enrollment Eligibility Reporting System (DEERS) database. The application is required to update the information once every four years or as changes occur, i.e., reservist entering active duty or being released from active duty.

The information collection may also be used to identify employees and certain contractors of the military departments and Defense agencies for the purpose of issuance of a non-benefit identification card. This group may include civilians and contractors who regularly require official identification in connection with their official business.

Respondents will be: active duty, reserve, and retired personnel of the Uniformed Services (Army, Navy, Air Force, Marine Corps, Coast Guard, US Public Health Service, and NOAA) and their dependents; surviving dependents of deceased active duty and deceased retired personnel; certain Federal employees; certain contract employees; certain State Department employees employed in foreign country and their dependents; any other individuals entitled to care under the Uniformed Services health care program; individuals entitled to Uniformed Services benefits and privileges and a Uniformed Services identification card; any eligible individual who submits a health care claim; and individuals eligible for certain civilian non-benefit identification cards.

Dated: March 28, 1996.

Patricia L. Toppanga

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96-7990 Filed 4-1-96; 8:43 am]  
BILLING CODE 1000-01-01

### Base Closure and Community Redevelopment and Homeless Assistance Act; Base Realignments and Closures

AGENCY: Department of Defense, Economic Security.

ACTION: Notice.

**SUMMARY:** This Notice provides the third and final list of closing or realigning military installations pursuant to the 1995 Defense Base Closure and Realignment (BRAC) Report, and the points of contact, addresses, and telephone numbers for the Local Redevelopment Authorities (LRA's) for those installations. Representatives of state and local governments and homeless providers interested in the

reuse of an installation should contact the person or organization listed. The following information will be published in a newspaper of general circulation in the area of each installation.

EFFECTIVE DATE: April 2, 1996.

FOR FURTHER INFORMATION CONTACT: Helene O'Connor, Office of Assistant Secretary of Defense for Economic Security, Office of Economic Adjustment, 406 Army Navy Drive, Suite 200, Arlington, VA 22202, (703) 604-5948.

Local Redevelopment Authorities (LRA's) for Closing and Realigning Military Installations

#### Alabama

Installation Name: Naval Reserve Center  
Huntsville  
LRA Name: City of Huntsville  
Point of Contact: Mr. Ken Newberry, City Planning  
Address: P.O. Box 308, Huntsville, AL 35804  
Phone: (205) 332-7353

#### Alaska

Installation Name: Fort Greely  
LRA Name: Delta/Greely Community Coalition  
Point of Contact: Mr. Ray Woodruff  
Address: P.O. Box 780, Delta Junction, AK 99737  
Phone: (907) 895-1081  
Installation Name: Naval Air Facility Adak  
LRA Name: Adak Reuse Planning Committee  
Point of Contact: Mr. Ika Waita  
Address: Department of Community and Regional Affairs, State of Alaska, 333 W. 4th Avenue, Suite 220, Anchorage, AK 99501-2543  
Phone: (907) 269-4571

#### California

Installation Name: Long Beach Naval Shipyard (Navy property in the City of Los Angeles)  
LRA Name: City of Los Angeles  
Point of Contact: Mr. Rudy Svornich, Jr.  
Address: 200 N. Spring Street, City Hall, Room 236, Los Angeles, CA 90012  
Phone: (213) 485-3347  
Installation Name: Ontario Air National Guard  
LRA Name: City of Ontario  
Point of Contact: Mayor Gus James Skropos  
Address: 303 East "B" Street, Civil Center, Ontario, CA 91764-1106  
Phone: (909) 986-1151

#### Connecticut

Installation Name: Stratford Army Engine Plant  
LRA Name: Stratford Town Council  
Point of Contact: Ms. Diane C. Toolan  
Address: Stratford Town Hall, 2725 Main Street, Room 120, Stratford, CT 06498  
Phone: (203) 385-4028

#### Florida

Installation Name: Naval Research Laboratory  
CWSRD Orlando  
LRA Name: Orange County  
Point of Contact: Ms. Corianna C. Leon  
Address: 201 S. Rosalind Avenue, 5th Floor, P.O. Box 1393, Orlando, FL 32802

Phone: (407) 838-5362

#### Guam

Installation Name: Guam Naval Activities (corrected submission)  
LRA Name: Government of Guam (acting through the Guam Economic Development Authority)  
Point of Contact: Mr. Glenn Leon Guerrero  
Address: P.O. Box 2950, Agaña, Guam 96910  
Phone: (671) 647-4362

#### Maryland

Installation Name: NSWC CDD Annapolis  
LRA Name: David Taylor Naval Research Center Reuse Committee  
Point of Contact: Mr. Samuel F. Minette, Jr.  
Address: Office of the County Executive, 44 Calvert Street, Annapolis Center, Annapolis, MD 21401  
Phone: (410) 222-1380

#### Massachusetts

Installation Name: Hingham Cohasset  
LRA Name: Town of Hingham Board of Selectman  
Point of Contact: Ms. Katherine W. Paardon  
Address: 7 East Street, Hingham, MA 02043  
Phone: (617) 741-1400

#### Michigan

Installation Name: Detroit Arsenal/Detroit Army Tank Plant  
LRA Name: City of Warren  
Point of Contact: Mr. Tom Zamsta  
Address: Warren City Hall, 29500 Van Dyke, Warren, MI 48093  
Phone: (810) 574-4520

#### New York

Installation Name: Bellmore Logistics Activity  
LRA Name: Bellmore Re-Use Planning Group  
Point of Contact: Commissioner Robert Francis, Department of Planning & Economic Development  
Address: 200 North Franklin Street, Hempstead, NY 11550  
Phone: (516) 489-3000  
Installation Name: Griffiss Air Force Base (Property available pursuant to BRAC 95)  
LRA Name: Griffiss Local Development Corporation  
Point of Contact: Mr. Steven J. DiMeo  
Address: 153 Brooks Road, Rome, NY 13443  
Phone: (315) 338-0393  
Installation Name: Roslyn Air Guard Station  
LRA Name: Roslyn Air Guard Station at East Hill, Redevelopment Authority  
Point of Contact: Mayor Michael R. Koblenz, Village of East Hills  
Address: 20 Tor Path, East Hills, NY 11575  
Phone: (516) 621-4251

#### Pennsylvania

Installation Name: Kelly Support Center, North Huntingdon  
LRA Name: Redevelopment Authority of the County of Westmoreland  
Point of Contact: Mr. William E. Mitchell II  
Address: 601 Courthouse Square, Greensburg, PA 15601  
Phone: (412) 430-3050  
Installation Name: Kelly Support Center, Oakdale  
LRA Name: (Will be published at a later date)



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
**U.S. ARMY ENGINEER DISTRICT, ALASKA**  
P.O. BOX 898  
ANCHORAGE, ALASKA 99506-0898

April 8, 1996

Real Estate Division  
Management & Disposal Branch

Ray Woodruff  
Executive Director  
Delta/Greely Community Coalition  
Post Office Box 780  
Delta Junction, Alaska 99737-0780

Dear Mr. Woodruff:

The purpose of this letter is to formally notify the coalition that the Alaska District did not receive any applications from either a DoD component or Federal agency resulting from the screening process for the realignment of Fort Greely. The Bureau of Land Management determined the land not suitable for return to the public domain but that the entire mineral estate of the land should remain in Federal ownership.

The cantonment area of the installation comprising approximately 1,830 acres together with buildings/facilities, excluding approximately 44.49 acres and facilities to be retained for the residual forces, has been recommended for surplus. Upon approval of the surplus recommendation by the Deputy Assistant Secretary of the Army (I&H), the determination will be published in the Federal Register and in the Fairbanks Daily News Miner and the Delta Wind. The Alaska District will then notify the coalition, the State of Alaska, Department of Community and Regional Affairs, and the Department of Housing and Urban Development of the surplus property.

Please contact me directly at 907/753-2859 if I can be of further assistance. Questions or comments can be addressed to Angie Gori of my staff at 907/753-2845.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis E. Klein".

Dennis E. Klein  
Chief, Real Estate Division

**HB**

**58**

**HFIN**

**FILE**

# HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 27, 1997

FURTHER REFERRALS:

Date of Committee Action: 3/14/97

The FINANCE Committee considered:

SSHB 58

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58

CIVIL ACTIONS & ATTY PROVIDED BY INS CO.

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

recommends it be replaced with the following committee substitute CSSS HB 58 (FIN)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) AK Jud Council  
AK Court Sys.

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) (2) DDA 2/27/97  
 (1) DCED 2/27/97

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Edon G. Kelly</i>	X			
<i>Pete Kelly</i>				✓
<i>Terry Martin</i>	X			
<i>Gene Therriault</i>				✓
<i>John Kohring</i>	X			
<i>Charles Moses</i>			X	
<i>John Foster</i>	X			
<i>J. Davis</i>				X
<i>Grussendorf</i>				✓
<i>G. Davis</i>				X

CO-CHAIR'S SIGNATURE

*Gene Therriault*  
 Therriault

FISCAL NOTE

Bill Version: CSSSHB 58 (JLD)

(H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Effective Date: \_\_\_\_\_

Department Affected: Administration

Title: An Act relating to civil actions; amending Rules 49 and BRU:

Risk Management

68.

Component: Risk Management

Sponsor: Representatives Porter, Cowdery

Requestor: House Judiciary

COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

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

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability exposure and the amount Risk Management will ultimately pay in future liability loss settlements will be reduced by this legislation.

The extent of such savings is difficult to forecast, due to the uncertainty that the limitations in the type of claims that may be filed or the amounts of damages that can be awarded will be realized in future liability claims — that might be filed against State agencies — arising from events that have not yet occurred.

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

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

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

Prepared by: J. Brad Thomson, Director  
Division: Risk Management

Phone: 465-5723  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 2/20/97

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LEGISLATIVE SERVICE CENTER

# FISCAL NOTE

No. 2  
 Bill Version: CSSHB 58(JUD)  
 (H) Publish Date: 2/27/97

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "An Act relating to civil action"; . . . amending BRU: Civil Division  
. . . AK Rules of Civil Procedure, . . . AK Rules of Evidence . . . Component: General Legal Services  
 Sponsor: Representative Porter  
 Requester: House Judiciary Committee COMPONENT SERIAL NO. 2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

Sponsor Substitute for HB 58 is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone: 465-5370  
 Division: Administrative Services Division Date: 2/20/97  
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho* Date: 2/20/97  
 Agency: Department of Law

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# FISCAL NOTE

No. 3  
 Bill Version: CSSHB 58 (JUD)  
 (H) Publish Date: 2/27/97

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Department: Commerce and Economic Development  
 Title: An Act relating to civil actions: relating to BRU: Insurance  
independent counsel provided under an insurance policy. Component: Insurance  
 Sponsor: Porter  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 324

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

**CAPITAL EXPENDITURES** \_\_\_\_\_

**CHANGE IN REVENUES** \_\_\_\_\_

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: \$ 0.0

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

**ANALYSIS:** (Attach a separate page if necessary)  
 This legislation will have a slight fiscal impact which can be managed by the division. The division currently requires the information requested in Section 38 of the legislation but will have to implement regulations for new compilation and reporting requirements.

Prepared by: Mananne K. Burke, Director Phone: 465-2515  
 Division: Insurance Date: 2-20-97  
 Approved by Commissioner: William L. Hensley Date: 2-20-97  
 Agency: Commerce and Economic Development

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# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO. HB58**

Revision Date: 02/18/97 Dep. Affected: Alaska Judicial Council  
 Title: Civil Actions & Attorneys Provided by Insurance Company BRU: \_\_\_\_\_  
 Sponsor: Reps. Brian Porter and John Cowdery Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 0771

**EXPENDITURES/REVENUES** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	17.5	16.7	16.7	16.7	16.7	16.7
TRAVEL		1.3	1.3	1.3	1.3	1.3
CONTRACTUAL	9.0	1.2	1.2	1.2	1.2	1.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>26.5</b>	<b>19.2</b>	<b>19.2</b>	<b>19.2</b>	<b>19.2</b>	<b>19.2</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.5	19.2	19.2	19.2	19.2	19.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>26.5</b>	<b>19.2</b>	<b>19.2</b>	<b>19.2</b>	<b>19.2</b>	<b>19.2</b>

**POSITIONS**

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	1	1	1	1	1	1

Estimate of current year (FY 97) cost: \$ None

ANALYSIS: (See attached pages)

Prepared by: William T. Cotton, Executive Director Phone: 279-2526  
 Agency: Alaska Judicial Council Date: 2/19/97  
 Approved by: William T. Cotton, Executive Director  
 Agency: Alaska Judicial Council Date: 2/19/97

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**Analysis for Alaska Judicial Council**  
**Fiscal Note on HB 58:**  
**Civil Actions and Attorneys Provided by Insurance Company**

The bill assigns two tasks to the Alaska Judicial Council: (1) review and report on alternative dispute resolution (ADR) programs in other states; and (2) collect, analyze and report on Alaska civil cases which are settled. The costs of the two functions are discussed separately.

**1. Review of ADR Programs**

The bill provides:

**Section 09.42.010. Legislative Intent.** It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive and efficient resolution of civil disputes.

**Sec. 09.42.020. Pilot program for alternative dispute resolution.** The Alaska Judicial Council shall consult with the Alaska Dispute Settlement Association, review court sanctioned alternative dispute resolution programs in other states and in the federal court system, and make recommendations to assist the legislature and the Alaska Court System in the establishment of a pilot program for alternative dispute resolution within the Alaska Court System. The Alaska Judicial Council shall submit a written report to the legislature and to the Alaska Supreme Court within six months after the effective date of this legislation. The report shall include specific types of programs; specific types of cases within each program which are amenable to alternative dispute resolution; the cost to the parties and to the Alaska Court System under these programs; and the qualifications of the neutrals who will provide dispute resolution services under the programs, including nonlawyers.

**Sec. 09.42.030. Definitions.** In this chapter,

(a) "alternative dispute resolution" is limited to arbitration, mediation and early neutral evaluation.

The Council would hire a contract attorney to complete much of the review of ADR programs. The attorney would be paid \$35 per hour for 200 hours for a total of \$7,000. The contract attorney would work with Council staff to complete the project. Other costs would include a temporary secretary, long distance telephone, and costs for various books and other literature.

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## ADR Costs Summarized

### **Personnel**

Temporary Secretary 50 hours @ \$16.38/ hour	\$ 841
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### **Contractual**

Contract Attorney (200 hours @\$35/hour)	\$7,000
Telephone	\$ 500
Books	\$ 300

**TOTAL        \$8,641**

## **2.     Review of Settlement Data**

The bill provides in relevant part:

Sec. 42. AS 09.68 is amended by adding a new section to read:

Sec. 09.68.130. **Collection of settlement information.**

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

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

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

- (1) divorce and dissolution;
- (2) adoption, custody, support, visitation, and emancipation of children;
- (3) children in need of aid cases under AS 47.10 or delinquent minors cases under 47.12;
- (4) domestic violence protective orders under AS 18.66.100- 18.66.180;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

The Council estimates that 8,000 settlement forms would be filed per year. The data would be entered into a Microsoft Access database (estimating four minutes per form). A data entry employee also would review approximately 500 case files per year to check the accuracy of the settlement data and put the settlements in context (estimated 20 minutes per case). Finally, the data employee would spend about 300 hours cleaning the data and working with Judicial Council staff to conduct the preliminary analysis.

Council staff would complete the analysis and issue a fairly brief annual report based on the settlement forms. A more extensive report would be prepared in the third year based on data both from the settlement forms and the case data. The time of existing Council staff is not included in the fiscal note.

Other costs include short trips to Fairbanks and Juneau to collect case data, a temporary secretary for forty hours, and a small amount for printing and postage.

#### Settlement Data Review Annual Costs Summarized

##### Personnel

**One Part-time Data Entry/Analysis Employee**  
 8,000 forms @ 4 minutes each = 533 hours  
 5,000 case files @ 20 minutes each = 167 hours  
 Data cleaning and Prelim Analysis = 300 hours

Total Hours: 1,000 @ \$16.00 per hour = \$16,000.00

**Temporary Secretary**  
 40 hours @ \$16.83 per hour = \$ 673.20

##### Travel

One 5 day trip to Fairbanks \$ 700.00  
 One 3 day trip to Juneau \$ 600.00

##### Contractual

Postage and Printing \$ 1,200.00

**TOTAL \$19,173.20**

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO. CSSSHB 68 (JUD)**

Revision Date: 03/11/97

Dept. Affected: Alaska Court System

Title: Tort Reform

BRU: Trial Courts

Component: \_\_\_\_\_

Sponsor: Rep. Porter

Requestor: House Judiciary

COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	5.7	5.7	5.7	5.7	5.7	5.7
TRAVEL						
CONTRACTUAL	13.7	13.7	13.7	13.7	13.7	13.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>

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

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

**Fund Source**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.4	19.4	19.4	19.4	19.4	19.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>	<b>19.4</b>

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

**Positions**

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

See attached analysis.

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

Agency: Alaska Court System

Phone: 264-8228

Date: 03/11/97

Approved by: Stephanie J. Cole, Acting Administrative Director

Agency: Alaska Court System

Date: 03/11/97

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

**Alaska Court System**  
**Fiscal Analysis**  
**CSSSHB 58 (JUD)**

CSSSHB 58 (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 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 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 11, 12, 13, and 14 of CSSSHB 58 (JUD) give a defendant the option of making periodic payments to a successful plaintiff for judgments in excess of \$100,000. The judgment must set the amounts of the payments, including any increases for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments will be made. 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 parties disagree. Such disagreements 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 a percentage of plaintiffs return to court in later years because the defendant has stopped making periodic payments for some reason. This fiscal note estimates that approximately ten percent of superior court tort judgments are for future damages in an amount in excess of \$100,000.

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 finally upheld.

Section 15 of CSSSHB 58 (JUD) repeals and reenacts AS (9.17.070, relating to collateral benefits. This amendment 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, at the present time 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.

Section 23 of CSSSHB 58 (JUD) modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed thousands of times per year, so even small increases in time spent per case can have a major impact on clerical staff.

**Alaska Court System**  
**Fiscal Analysis**  
**CSSSHB 58 (JUD)**

This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 28 of CSSSHB 58 (JUD) increases the number of medical malpractice three-person expert advisory panels which will be paid for each year by the court system, by requiring the appointment of such panels in cases involving claims against government doctors. The number of additional panels appointed each year should be relatively low, and this note does not include costs for payments to the panel members.

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

This fiscal note makes the following assumptions:

In superior court in FY 96, there were 1005 tort cases filed. Approximately 42 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 53 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 42 default judgments entered, with all entered for the 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 96, there were 515 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and approximately 21 default judgments were entered. 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**  
**CSSHB 58 (JUD)**

**Personal Services****Position****Salary****Benefits****Total**

Pro Tem Judge, fully vested, Anchorage, PPT, 1 3/4 months

\$3,706

\$2,025

\$5,731**Contractual Services****Jury Fees**

8,663

**Superior Court-**

42 - 1/2 day length collateral benefit hearings with 13 jurors at \$12.50 a half day (from trials)

6,825

**District Court-**

21 - 1/2 day length collateral benefit hearings with 7 jurors at \$12.50 a half day (from trials)

1,838

**Programming***(one-time cost)*

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

5,000

**Total Contractual Services**13,663**Estimated Total Cost**\$19,394

AMENDMENT 1

Adopt

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: CSSH 58(JUD).

- 1 Page 16, lines 13 - 14:
- 2 Delete "or delivery of electrical service"
- 3 Insert ", delivery, or sale of electricity"

Adopted

#2  
AMENDMENT

As Amended

OFFERED IN THE HOUSE  
TO: CSSH B 58(JUD)

BY REPRESENTATIVE PORTER

pg 3

1 Page 4, line 6, following "law":

2 Insert "; or

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

4 Page 4, lines 11 - 30:

5 Delete all material.

6 Renumber the following bill sections accordingly.

7 Page 5, following line 8:

8 Insert new bill sections to read:

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

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

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

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

- 1 Renumber the following bill sections accordingly.
  
- 2 Page 6, line 1:
  - 3 Delete "another person"
  - 4 Insert "another person's rights"
  
- 5 Page 24, line 9:
  - 6 Delete "sec. 10"
  - 7 Insert "sec. 11"
  
- 8 Page 24, line 12:
  - 9 Delete "sec. 11"
  - 10 Insert "sec. 12"
  
- 11 Page 24, line 15:
  - 12 Delete "sec. 12"
  - 13 Insert "sec. 13"
  
- 14 Page 24, line 18:
  - 15 Delete "sec. 13"
  - 16 Insert "sec. 14"
  
- 17 Page 24, line 21:
  - 18 Delete "sec. 14"
  - 19 Insert "sec. 15"
  
- 20 Page 24, line 24:
  - 21 Delete "sec. 16"
  - 22 Insert "sec. 17"
  
- 23 Page 24, line 29:
  - 24 Delete "sec. 20"

- 1           Insert "sec. 21"
  
- 2   Page 25, line 1:
- 3           Delete "secs. 21 and 22"
- 4           Insert "secs. 22 and 23"
  
- 5   Page 25, line 6:
- 6           Delete "sec. 24"
- 7           Insert "sec. 25"

Delete Sec 65  
Pg 25, line 30

Also delete Effective date  
from title

AMENDMENT

failed #3

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 3, line 11:

Delete "eight"

Insert "ten"

Page 3, line 4:

Delete "eight"

Insert "ten"

*with drew*

0-LS0056K.4

Ford  
3/14/97

*#1*

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

- 1 Page 4, line 6, following "law":
- 2       Insert "; or
- 3                       (4) the provisions of this section are waived by contract"

Withdraw #5

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 4, delete lines 11 - 30

*failed*

0-LS0056\K.7

Ford  
3/14/97

#6

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

1 Page 5, line 15, following "(c)":

2 Insert " or (e)"

3 Page 5, line 18:

4 Delete "In"

5 Insert "Except as provided under (e) of this section, in"

6 Page 5, following line 27:

7 Insert a new subsection to read:

8 "(e) On January 1 of each year, the amounts specified under (b) and (c) of  
9 this section shall be changed to reflect inflation, if any. The Department of Labor  
10 shall adopt a regulation on or before December 31 of each year announcing the  
11 change in dollar amounts required by this subsection. In this subsection, "inflation"  
12 means the change in the Consumer Price Index for Anchorage, All Items Index,  
13 compiled by the Bureau of Labor Statistics, United States Department of Labor."

W. T. Drew

0-LS0056K.8

Ford

3/14/97

#7

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

- 1 Page 5, line 17, following "\$300,000":
- 2       Insert ", plus \$100,000 for injury or death of each person under 18 years of age"
  
- 3 Page 5, line 19, following "\$500,000":
- 4       Insert ", plus \$100,000 for injury or death of each person under 18 years of age,"

new  
"of a person"  
after claims  
pg 5 line 14  
Adopted

W. Th... 0-LS0056K.5  
Ford  
3/14/97

#6

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

- 1 Page 6, line 1:
- 2 Delete "another person"
- 3 Insert "another person's rights"

#9

*filed*

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

- 1 Page 6, lines 8 - 9:
- 2 Delete "four times the amount of compensatory damages awarded or \$600,000,
- 3 whichever is greater,"
- 4 Insert "three times the annual net profit reasonably attributable to the commercial
- 5 activity"

*failed* #10

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 6, line 21:

Delete through page 7, line 4

Failed 3-5  
AMENDMENT

#11

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 7, line 8:

Following "\$100,000"

Insert "or the total of medical bills and other costs reasonably expected to be incurred by the injured party from the time of the injury through two years after the date of judgment, whichever is greater"

Failed -

0-LS0056K.6  
Ford  
3/14/97

#12

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

- 1 Page 9, line 28, following "action":
- 2       Insert "in this paragraph, "other person responsible" does not include a person
- 3 protected from a civil action under AS 09.10.055"

# Alaska State Legislature



Official Business

House Majority Leader

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

## First Supplemental Sectional Summary

of

CS of SSHB 58 (FIN)

### An Act Relating to Civil Actions

The following amendments were made by the House Judiciary Committee when this bill was reported out:

**Section 12 and 14. Periodic payments.** The word "future" was left intact to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be available to the injured person for the payment of such obligations. Additionally, the inflation index was changed from "Anchorage" to the "United States city average" because the former is updated annually, while the latter is updated monthly.

**Section 17. Apportionment of damages.** The last sentence was deleted as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

**Section 35. Civil liability of electric utility.** This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

**Section 39. Independent counsel.** The words "fees and" were inserted in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that subsection.

# Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER  
HOUSE JUDICIARY COMMITTEE  
HOUSE RULES COMMITTEE  
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE  
LEGISLATIVE COUNCIL JOINT COMMITTEE



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## DISTRICT 20

March 13, 1997

### Sectional Summary of CS of SSHB 58 (JUD)

#### An Act Relating to Civil Actions

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

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

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

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

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

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to eight.

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

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

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;

- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

**Section 6. Limitation of actions against health care providers.** This section amends AS 09.10 by adding a new section. It generally requires that actions for medical malpractice involving children under the age of six at the time of the alleged negligent act or omission be brought before the child's eighth birthday, including actions involving birth injuries. This statute is tolled in cases where fraud or collusion, or intentional concealment of facts can be shown. It is also tolled until the actual discovery of a foreign object in the body of the injured person.

**Section 7. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

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

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

→ **Section 8. Noneconomic damages.** This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places more stringent limits on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought.

This section lowers the recovery cap from \$500,000 to \$300,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage, unless the personal injuries are so severe that the claimant is a hemiplegic, paraplegic, quadriplegic, or has other specified disabilities, in which case the cap remains at \$500,000.

→ **Section 9. Punitive damages.** This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought.

**Section 10. Punitive damages.** This section relates to new subsections which are added to the preceding Section 9 in order to clarify and cap the amount of punitive damages which may be awarded.

Subsection (b) generally limits punitive damages to the greater of three times compensatory damages, or \$300,000.

Subsection (c) carves out an exception to subsection (b) in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be four times compensatory damages, or \$600,000, whichever is greater.

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

**Section 11. Award of damages; periodic payments.** This section clarifies that an award for personal injuries is intended to include damages for death.

This section also includes in a new subsection (2) which requires that the amount of any judgment awarded shall be reduced by the amount of federal and state income taxes which would have been paid on the judgment under tax rates in effect on the date of the injury or death. Should the current federal income tax laws change in the future, with the result that the current tax treatment of personal injury awards (now not includible in gross income) changes, the reduction of judgment effect of this subsection automatically terminates without having to amend the statute.

**Section 12. Award of damages; periodic payments.** This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

This subsection was amended in the House Judiciary Committee to leave the word "future" in the existing language of the statute to make clear that only future damages would be the subject of periodic payments. This is intended to allow damages recovered for medical bills to be immediately available to the injured person for the payment of such obligations.

**Section 13. Award of damages; periodic payments.** This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State

of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

This section also clarifies that annuities are also a recognized method of making periodic payments, and that it is the injured party who decides whether to take a structured settlement or annuity type of periodic payment. However, an annuity type of periodic payment can only be issued by authorized insurers of the same quality as those which offer structured settlement type of periodic payments.

**Section 14. Award of damages; periodic payments.** This section clarifies that damage awards for personal injury or death are controlled by this statute.

This section also requires that either type of periodic payments provide for increases in future payments to compensate for inflation. It uses the Consumer Price Index for Anchorage as the standard for measuring increases in the rate of inflation.

This section was amended at the House Judiciary Committee by changing the inflation index from "Anchorage" to the "United States city average". The former is updated annually, while the latter is updated monthly. An injured person should have the benefit of establishing an inflation baseline as close as possible to the date of judgment.

**Section 15. Collateral benefits.** This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

Under the provisions of the existing collateral benefits statute, no evidence may be offered at the trial that the plaintiff was receiving, or would in the future receive, funds from various collateral sources. It is only after the verdict is in that the defense may offer evidence to show how much the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

The new subsection (c) prevents persons who pay the collateral benefits enumerated in subsection (b) from seeking reimbursement from the injured party, either directly or through subrogation rights.

The existing statute specifically excepts the collateral benefit statute from medical malpractice actions under AS 09.55. The new statute does not make that exception, with the result that the collateral benefit statute will apply in medical malpractice cases.

**Section 16. Apportionment of damages.**

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

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

**Section 17. Apportionment of damages.** This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

**Section 18. Apportionment of damages.** This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

**Section 19. Definition; intentional torts.** This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

**Section 20. Expert witness qualification.** This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

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

**Section 21. Offers of judgment.** This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees expended, based on the time the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 100% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

**Section 22. Offers of judgment.** The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

The second subsection makes clear that if a party makes multiple offers of judgment, the most recent offer revokes an earlier offer by operation of law.

**Section 23. Interest on judgments; prejudgment interest.** This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

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

**Section 24. Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is

consistent with existing Alaska case law. McConkey v. Hart. Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

**Section 25. Judgment for plaintiff; punitive damages.** This section contains a consistency change that applies the Section 23 interest rate to judgments against the State of Alaska.

**Section 26. Interest in condemnation proceedings.** This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 23.

**Section 27. Voluntary arbitration.** This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

**Section 28. Medical advisory panels.** This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

**Section 29. Expert advisory panel; panel questions.** This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

**Section 30. Expert advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

**Section 31. Expert advisory panel; public sector provider.** This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

**Section 32. Definitions; health care provider.** This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

**Section 33. Definitions; professional negligence and professional services.** This section adds new subsections to define professional negligence and professional services in the health care area.

**Section 34. Attorney contingent fee agreements.** This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

**Section 35. Civil liability of electric utility.** This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

**Section 36. Civil liability of hospitals for nonemployees.** This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

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

**Section 37. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs.** In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or watercraft

while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

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

**Section 38. Collection of settlement information.** This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

**Section 39. Insurance report.** This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

This section was amended in the House Judiciary Committee by inserting the phrase "fees and" in the next to the last sentence after the word "allocating" as a consistency change with two other references to "fees and costs" in that section.

**Section 40. Appointment of independent counsel; conflicts of interest.**

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

**Section 41. Appointment of independent counsel; conflicts of interest.** In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

**Section 42. Workers' compensation lien.** This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

**Section 43. Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

**Section 44. Alaska Rule of Civil Procedure 16.1(k)(4).** This section is repealed as a consistency change to the foregoing section 42.

**Section 45. Alaska Rule of Civil Procedure 16.1(n).** This section also is a consistency change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

**Section 46. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

**Section 47. Medical advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

**Section 48. Sanctions for rule violations.** This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$10,000 against attorneys, increased from \$1,000 under the existing rule.

**Section 49. Sanctions for rules violations.** This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

**Section 50. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

**Section 51. Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 42.

**Section 52. Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

**Section 53. Apportionment of damages.** This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

**Section 54 - Section 61. Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

**Section 62. Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

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

**Section 63. Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

**Section 64. Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

**Section 65. Effective date.** This Act takes effect July 1, 1997.

HOUSE MAJORITY LEADER

MEMBER  
HOUSE JUDICIARY COMMITTEE  
HOUSE RULES COMMITTEE  
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE  
LEGISLATIVE COUNCIL JOINT COMMITTEE



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### SPONSOR STATEMENT OF SSHB 58 (JUD): Tort Reform Bill

Many individuals and businesses have already experienced the nightmare of litigation that drags on for years and the high legal costs that go with them. Lawsuits in this country have proliferated. Litigation has become an industry. Contingent fee contracts give up to 40% of injured victims' damage recoveries to trial lawyers. The incentives to create the most litigious society on earth are firmly in place. As a consequence, the cost of liability insurance has become unaffordable to many. In some areas of this state, there are no domestic insurance companies which will write a liability insurance policy for any price. Across the country, and throughout Alaska, there is an outcry for reforming our civil justice system. Ordinary people and businesses of all sizes seek relief from a flawed system. Consistent with the foregoing, a more efficient and fair method of compensating wrongly injured victims must be crafted and maintained.

Tillinghast, a consulting actuarial firm reported in 1992 that only about 50% of damage awards on some \$132 billion nationwide went to the injured party. The remaining 50% went to the cost of litigation and attorney fees. From the foregoing, it is apparent that if the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient because only about half of the cost goes toward any form of compensation for victims. It is unfair because many injured victims receive insufficient compensation to no compensation at all.

In contrast with the foregoing deficiencies, the workers' compensation system returns about 70% of the workers' compensation insurance premium dollars to the injured party. The efficiencies enjoyed in the health insurance industry are even higher, with about 85% of health insurance premium dollars being returned to the beneficiary. The most efficient of them all is Social Security, with 99% of social security taxes collected being returned to the beneficiaries of that system. The relative certainty of recovery, and the certainty in the amount of recovery under these systems, stands in stark contrast to the uncertainties inherent in the litigation of claims and defenses. The absence of uncertainty and high costs of litigation in these alternative

systems makes clear that there is a compelling need for substantial reforms in the civil justice system.

A more specific statement of legislative intent is found in Section 1 of the Act. This Act addresses many of the areas which must be reformed if we are to create an environment which is conducive to rational economic development, a positive business climate, the creation of jobs, and a higher standard of living for all Alaskans. We are all personally responsible for the attainment of these goals, and we are all personally accountable if we fail.

FAX TRANSMITTAL

TO: Representative Therriault, 465-3884

Pages (including cover) 4

SECTIONAL ANALYSIS  
OF  
HOUSE BILL 58

Prepared by:

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March 13, 1997

## SECTIONAL ANALYSIS OF CSSS H.B. 58

Alaska Academy of Trial Lawyers  
Alaska Action Trust

*The Governor's Advisory Task Force on Civil Justice Reform studied court statistics on cases in Alaska and heard from two nationally recognized experts on civil justice reform. Contrary to the stated need for H.B. 58, the Task Force found that there was no explosion in the number of tort cases filed, no evidence of high jury awards, and no evidence of significant numbers of frivolous lawsuits. The Task Force found no evidence of any crisis in insurance cost or availability, or that tort reform in Alaska would have any effect on insurance rates for Alaskans. The following explains why H.B. 58 neither helps Alaskans nor follows the recommendations of the Governor's Task Force.*

**Section 5:** Reduces the ability of those injured by faulty design or construction to recover for their injury by prohibiting claims after eight years from completion of the construction, even if the negligent work is not discovered until after then. *The Governor's Task Force did not recommend any changes to the statute of repose. This provision will prevent local governments, school districts and homeowners from recovering damages for faulty construction which is typically not discovered until a fire, roof collapse or other event occurs long after completion of the project.*

**Section 6:** Gives only doctors and other health care professionals special protection when their negligence injures young children. This section requires malpractice actions affecting children under six years of age to be filed by the child's eighth birthday, even if the effect of the doctor's negligence can't be recognized because of the infant's age. No other person or professional is given this special protection. *The Governor's Task Force did not recommend any changes regarding when lawsuits must be filed for injuries to children.*

**Section 8:** This provision reduces the existing cap on non-economic damages. Section 8 not only limits the non-economic damages which can be recovered for all claims to \$300,000 in most situations, but also does not allow non-economic damages to exceed \$500,000, even when someone is quadriplegic and has suffered permanent brain damage. Current law at least allows the cap to be exceeded when injuries are serious. *The Governor's Task Force did not recommend reductions to the cap on non-economic damages because this only harms those who are most severely injured.*

**Section 9:** This section changes the current legal definition for punitive damages by eliminating reckless conduct as the basis for an award of punitive damages. This means that punitive damages cannot be assessed against a drunk driver and could not have been assessed against Exxon for the oil spill. *The Governor's Task Force did not recommend any changes in the definition of punitive damages.*

**Section 10:** Section 10 places an absolute cap on punitive damages regardless of the wealth of the wrongdoer or the nature of the wrongdoer's conduct. This section also requires 50% of punitive damages to be deposited to go to the state. This section only benefits large multi-national corporations, like Exxon, against whom a punitive damage award of \$600,000 would have no effect. *The proposal of the Governor's Task Force on punitive damages allowed for consideration of the financial gain of the defendant and did not recommend that punitive damages go to the state.*

**Section 11:** This section reduces all damages an injured person might receive by a federal income tax rate, *even though these damages are not taxed under state or federal law.* This unfair provision means that an injured person's recovery is automatically reduced 20%-30%. *No such proposal was made by the Governor's Task Force.*

**Sections 12 - 14:** Force an injured person to accept any damages which are awarded for past injury as installment payments to be paid over time in the future. This takes away the choice of injured Alaskans to decide for themselves whether periodic payments are fair, or meet their needs. *This proposal was rejected by the Governor's Task Force.*

**Section 15:** This section requires a jury to reduce the damages an injured person can receive by the amount of insurance payments the person has received for the injury, or might receive in the future. *The Governor's Task Force concluded that such a proposal would increase the cost of insurance and rejected the idea.* This provision in HB 158 will only make trials more time consuming and complicated.

**Sections 16 - 19:** These sections allow responsibility for injury to be allocated to a person or corporation which is not even brought into the lawsuit or into the courtroom. This means that someone at fault can shift blame to an "empty chair" without the jury ever hearing evidence to the contrary. *The Governor's Task Force rejected this proposal because innocent victims might be denied full recovery.* Section 19 even allows punitive damages to be allocated to someone who is not in the courtroom.

**Section 21:** This section forces injured persons to guess about the outcome of their case with near certainty at the risk of having to pay all of the defendants' actual attorney's fees. This section and

Section 16 encourage a negligent defendant to delay disclosing actors who may be at fault. *The changes to Section 21 are far harsher to victims than the recommendations about offers of judgment made by the Governor's Task Force.*

*Other Sections make it more difficult for those injured to have experts testify on their behalf (Sec. 20); give special protection to hospitals (Sec. 35); limit attorney fee recoveries in punitive damage cases (Sec. 34); and make trials more complicated (Sec. 49). None of these changes were recommended by the Governor's Task Force.*

question of what level of due process protection a respondent attorney was owed with respect to notice of the charges against him. *Id.* at 550-51, 88 S.Ct. at 1225-26. As Bar Counsel points out, commentators and courts treat *Ruffalo* as being limited to procedural due process concerns. Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering* § 8.1:102, at 923 (2d ed. Supp.1996) (stating that "virtually all courts have concluded that the Supreme Court's characterization [of disciplinary proceedings as quasi-criminal] . . . was made in the narrower context of assessing the applicability of procedural Due Process concerns, such as entitlement to notice of the charges"); *see also*, *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561, 564 (9th Cir. 1990), *cert. denied*, 498 U.S. 1087, 111 S.Ct. 963, 112 L.Ed.2d 1050 (1991) ("A lawyer disciplinary proceeding is not a criminal proceeding. As a result, normal protections afforded a criminal defendant do not apply." (citation omitted)); *Mississippi State Bar v. Young*, 509 So.2d 210, 213 n. 1 (Miss.1987) ("Most states which have addressed the matter have held that disciplinary proceedings are not so criminal in nature as to evoke double jeopardy protections."). Double jeopardy is a substantive due process protection and therefore is not extended to attorney grievances under *Ruffalo*.<sup>9</sup>

2. *The Lubin case should not have been dismissed.*

[2] In dismissing Lubin, the Board asserted that procedures, conduct, and delay by the Area Hearing Committee created potential prejudice to Triem which could not be set aside. The Board, however, did not specify what procedures and conduct created potential prejudice. Triem argues a number of due process violations as well as prejudicial delay caused by the committee and Bar Counsel.

Over four years passed from the filing of the Lubin grievance to the issuance of the committee's report and recommendation. Bar Counsel did not file a petition for formal

9. We reject Triem's additional argument that the Alaska Bar Rules afford no right of appeal to Bar Counsel, who is only entitled to limited discretionary review by filing a petition with this court

hearing until nine months after Triem rejected the proposed discipline in April 1991. Triem filed a number of motions and eventually answered this petition late. After three hearings, the committee requested two extensions and did not issue a report until approximately eleven months after the close of evidence.

*Dicta*

A five-year statute of limitations governs the filing of attorney grievances. Alaska Bar R. 18. This reflects a judgment that five years is the outer limit of time in which responding attorneys are able to fairly defend themselves against charges, given the loss of memory, evidence, and witnesses that occurs over time. The alleged misconduct in Lubin occurred between October 1989 and January 1990, and the committee completed its adjudication of the complaint within the five years allowed for filing a complaint. This circumstance militates against the contention that the delay so prejudiced Triem's ability to present a defense as to require dismissal.

The timing and source of the delays also militate against the dismissal. Triem, by moving for a more definite statement, was partially responsible for some of the prehearing delay. Most importantly, the longest delay, the late issuance of the committee's report, occurred after Triem presented his defense, and thus did not prejudice Triem's ability to offer a defense. This eleven-month delay was unjustified, but the persons most hurt by it were the victims of Triem's alleged misconduct and the public, not Triem. The public's faith in the system is harmed by lengthy adjudications of discipline matters, but dismissing the matter would simply exacerbate the injury to the public interest.

*Holding*

Therefore, we hold that the delays in the Lubin proceedings do not warrant dismissal of the complaint. Because we find that the other due process concerns raised by Triem, discussed *infra*, are either invalid or harmless, we reverse the Board's dismissal and

under Alaska Bar Rule 25(h). Alaska Bar Rule 22(p) clearly states that Bar Counsel and respondent have a right of appeal within ten days of an order or recommendation of the Board.



Fall  
1996

# ISSUE BRIEF

## Medical Malpractice Tort Reform: Lessons from the States

*The cost of insuring physicians against medical malpractice claims has increased dramatically in recent years. Skyrocketing premium costs and a string of highly publicized lawsuits have led many physicians to curtail certain high-risk procedures. By reducing the availability of important medical services, this practice of defensive medicine could have serious public-health consequences. In addition, increased malpractice insurance expenses are passed on to patients and health plans, thus fueling medical inflation.*

*To combat these ill effects, several states have adopted reforms designed to reduce the cost of medical malpractice insurance. More recently, Congress has attempted to follow the initiative of the states but has been unable to enact comprehensive medical malpractice tort reforms into law.*

*To date, state efforts have enjoyed varying degrees of success in reducing medical malpractice insurance rates. What can be learned from the experience of the states? How can these conclusions be applied at the federal level? The American Academy of Actuaries Work Group on Medical Malpractice Reform has studied the impact of state reforms and offers its comments to state and federal officials who are considering national tort reform.*

### Findings

Any federal medical malpractice tort reform effort should be based on a package of measures that have exhibited some success in stabilizing medical malpractice costs. The most effective elements of such a package are a cap on noneconomic damages and an

offset for collateral payments from other sources. These reforms would limit the financial exposure of health-care providers to lawsuits and would ensure that damages could not be collected through multiple suits. While there are significant limitations on data used to study specific tort reforms, persuasive results can be observed by looking at medical malpractice costs in certain states over time and relating that experience to the timing of particular tort reform measures.

In the following comparison of cost levels in three states that have enacted tort reform measures, paid losses of the individual states as a percentage of the U.S. total are used as the measure of costs. The percentage of physicians in each state as a total of U.S. physicians is used as a reasonable benchmark. The degree to which the percentage of paid losses differs from the percentage of physicians measures the effectiveness of the reforms. All else being equal, the relative cost percentages of paid medical malpractice claims should remain constant over time. Any observed changes in a state's relative cost levels provide an indication of the effectiveness of tort reform. The three states studied are California, New York, and Ohio.

*The American Academy of Actuaries is the public policy organization for the actuarial profession, providing unbiased actuarial information to elected officials and regulators.*

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• **California.** Since the Medical Injury Compensation Reform Act (MICRA) package of reforms was enacted in 1975, medical malpractice costs have fallen substantially as a percentage of the U.S. total.

• **New York.** Individual reform measures were adopted in 1975, 1981, 1985, and 1986. No observable improvement in the state's relative costs has resulted. The New York reforms did not include a cap on damages.

• **Ohio.** Reforms enacted in 1975 included a cap on damages. The cap was overturned in 1985, after which costs rose dramatically and have remained high.

## California

The California loss data (Exhibit 1) illustrate that while the state's proportion of the U.S. physician population has remained relatively stable, its per-

Exhibit 1  
Malpractice Loss Payments in California as a Percentage of the U.S. Total, 1975-94

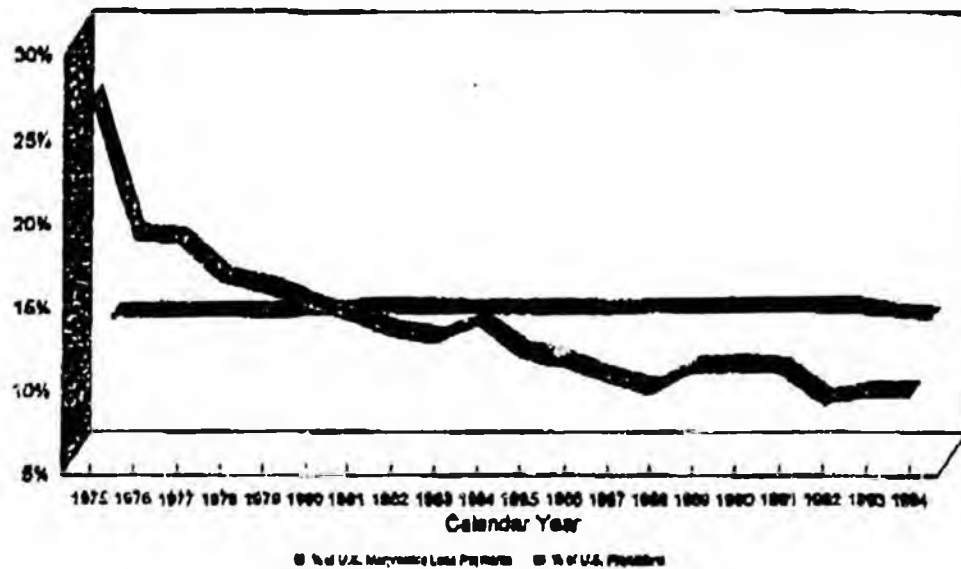
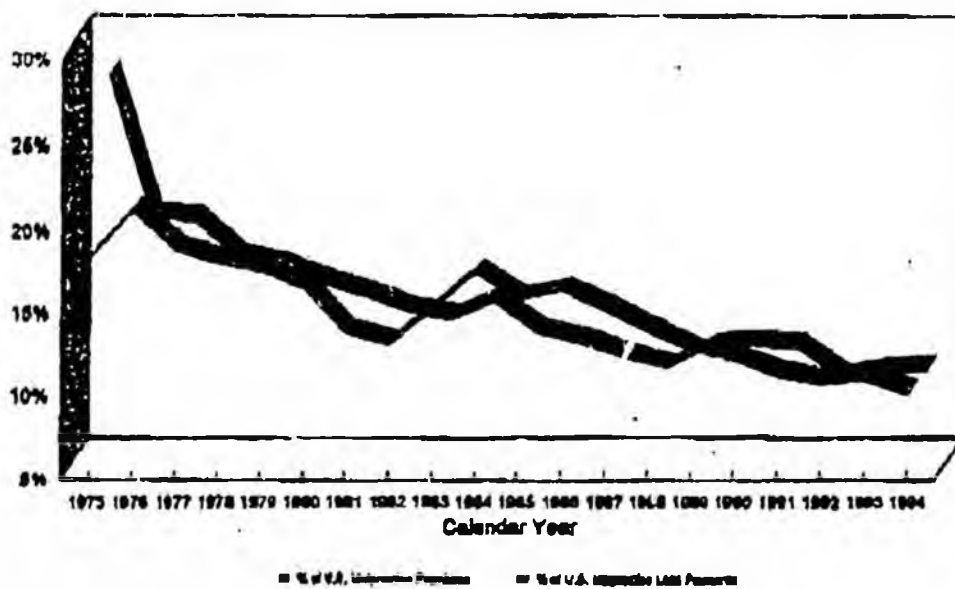


Exhibit 2  
Malpractice Premiums and Malpractice Loss Payments in California as a Percentage of the U.S. Total,



centage of loss payments has dropped dramatically since enactment of the MICRA package of tort reforms. Before MICRA's adoption in 1975, California's percentage of loss payments was significantly higher than its proportion of physicians. By 1981, California's loss payments had dropped and were about even with its percentage of physicians. Since that date, California has continued to benefit from MICRA. Costs continue to drop as a percentage of the U.S. total, even as the percentage of physicians remains stable. Although other factors affect these data, the relationship of decreased relative costs to the timing of reform provides strong evidence for the effectiveness of the MICRA package.

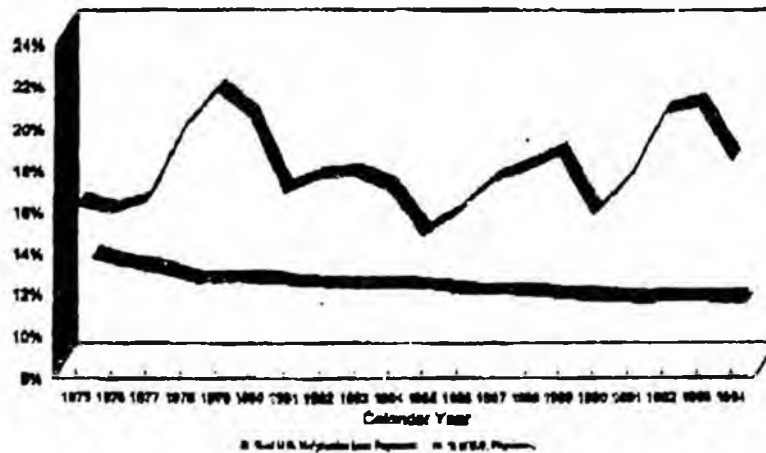
Many opponents of tort reform argue that insurance premiums do not drop after medical malpractice reform. Indeed, costs and premiums normally rise with inflation, and tort reform may only slow the increases. However, the California data show that premiums declined as losses declined. Exhibit 2 compares the paid loss data from Exhibit 1 with California premiums as a percentage of the total U.S.

medical malpractice premiums. Although year-to-year fluctuations do occur, premiums have fallen in proportion to the decline in losses. Competition tends to keep companies at an appropriate profit margin, and any extra profits are normally short-lived.

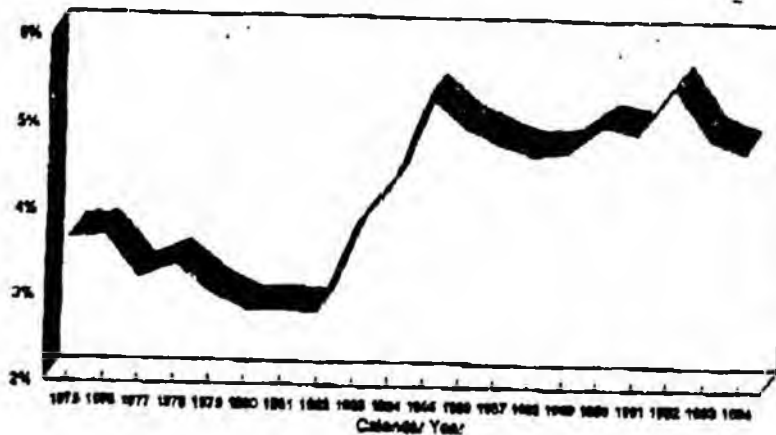
## New York

The New York loss experience is shown in Exhibit 3. It shows that the individual tort reform measures implemented in New York did not improve New York's experience relative to that of other states. New York's loss payment percentage does not show any observable pattern of decline or improvement over the 19-year period, despite the various tort reform measures adopted. The New York reforms did not include a cap on damages and were enacted in piecemeal fashion. Therefore, this result supports the merits of a cap on damages and the concept of a package of reforms.

Exhibit 3  
Malpractice Loss Payments in New York as a Percentage of the U.S. Total, 1975-94



Malpractice Loss Payments in Ohio as a Percentage of the U.S. Total, 1975-94



## Conclusions

California's experience indicates that properly implemented medical malpractice tort reform can reduce the cost of medical malpractice insurance. After reviewing several states' experience with medical malpractice tort reform and examining studies on the issue, the Academy work group has concluded the following:

- a package of reforms is more likely than individual reforms to achieve savings in malpractice losses and insurance premiums, and
- key among the reforms in the package are a cap on noneconomic awards and a mandatory collateral-source offset rule.

For reform to be effective in reducing costs, the cap on noneconomic awards should be established on a

per-medical-injury basis at a level low enough to have an impact (e.g., \$250,000). In addition, a mandatory collateral-source offset rule is needed to ensure that double and triple damages cannot be collected through multiple suits. Under this rule, each suit would have to consider damages already paid from other sources.

Although these reforms have been successful in reducing the cost of medical malpractice insurance, elected officials and regulators must still consider the effects of medical malpractice reform on physicians, consumers, health plans, and other interested parties. When considering medical malpractice reform, state and federal officials should weigh the impact on society as a whole and strive for a balanced, comprehensive solution.



Electric Service for 155,000 Alaskans

Alaska  
Rural  
Electric  
Cooperative  
Association, Inc.  
70703 W. Tudor Rd., #200  
Anchorage, AK 99503-150  
(907) 561-5105  
FAX (907) 561-5547

February 26, 1997

Rep. Brian Porter  
State Capitol  
Juneau, Alaska 99801-1182

Subject: Response to Questions Regarding Strict Liability for Electric Utilities

Dear Representative Porter:

Pursuant to my testimony before the House Judiciary Committee regarding House Bill 58 on Tort Reform on February 22, 1997, you requested that I provide you with information regarding Strict Liability cases that have arisen in the Lower 48. In addition, Representative Eric Croft requested similar information on cases in the state of Alaska. Enclosed is preliminary research performed by our attorneys on both of these subjects. Please let me know if you require any additional information.

We very much appreciate your consideration of our amendment.

Sincerely,

A handwritten signature in black ink that reads "Eric P. Yould". The signature is written in a cursive, slightly slanted style.

Eric P. Yould  
Executive Director

cc: Rep. Jce Green

KEMPEL, HUFFMAN AND ELLIS  
A PROFESSIONAL CORPORATION

ROGER R. KEMPEL  
RICHARD S. HUFFMAN  
DONALD C. ELLIS

ANDREW J. FIERRO  
BOBBY DEAN SMITH  
REBECCA C. PAULI

258 E. FIREWEED LANE, SUITE 200  
ANCHORAGE, ALASKA 99503-2088  
10071 277-1004  
FAX (907) 279-2492

WRITER'S E-MAIL ADDRESS:  
rpk@kha.com

February 24, 1997

Eric Yould  
Executive Director  
Alaska Rural Electric  
Cooperative Association, Inc.  
703 W. Tudor Road, Suite 200  
Anchorage, AK 99503

VIA FACSIMILE: 561-5547

Subject: 1997 Legislation--Strict Liability

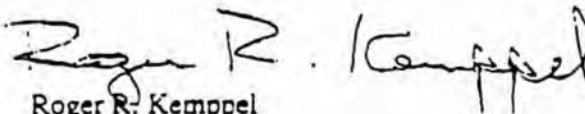
Dear Eric:

At your request, I am enclosing a short summary of some of the other states that have addressed the strict liability issue. Due to the time frame involved, the listing is not exhaustive but should provide some assistance to you in your testimony.

Please call if you have questions.

Sincerely yours,

KEMPEL, HUFFMAN AND ELLIS, P.C.

  
Roger R. Kempel  
General Counsel for ARECA

:lka

Attachment

ARECA\Legis\1997

## WISCONSIN

*Ransome v. Wisconsin Electric Power Company*, 275 N.W.2d 641 (Wis. 1979).

Lightning struck an electric line near a transformer. An electrical insulator was damaged, but power was not interrupted. Four days later, there was a heavy rainstorm. The transformer exploded, and the electricity going to a nearby house was estimated to be in the range of 1,000 to 4,8000 Volts instead of the normal 120-140 Volt service. The house caught fire. The investigator from the fire department believed the fire was caused by an overload of electricity in the service entrance of the house.

Through the application of strict liability, the electric company was liable for the damage to the house. The court said the electricity was unreasonable dangerous and defective when delivered to the house by the electric company.

## ILLINOIS

*Elgin Airport Inn, Inc. v. Commonwealth Edison*, 410 N.E.2d 620 (C.A. 2d Dist. 1980).

During routine testing of a line that service the inn, electric service was switched to an alternate line and then back to the regular line. When service was switched back to the regular line, a switching mechanism failed. The switching mechanism had been tested once a year for the previous five years and was always found to be in good operating condition. The last test had been done about one month prior to the incident. The defect that occurred could not have been discovered by the inspections that took place. The defect caused low voltage which damaged air conditioning motors at the inn. The problem was corrected in five minutes. The court said the electric company was not negligent but could, through strict liability, be liable for the damages.

## OHIO AND NEW YORK

Courts in these states have decided not to apply strict products liability to electricity. These decisions are based upon the acknowledgement that the sale and delivery of electricity by a power company is a service and not the sale of a product. These courts reason that the amount a customer pays is dependent upon the length of time the electricity flows through the customer's meter. If the amount paid is tied to the amount of usage, this is more like a service than a product.

The Alaska Supreme Court has not been asked to decide if it would apply the doctrine of strict liability to the sale of electricity. There are trial courts which have been presented with strict liability claims. For example, in *Fancyboy v. Alaska Village Electric Cooperative, Inc.*, Case No. 4BE-94-97 Civil, the assertion was made that the electric company should be held strictly liable for allegedly defective electric service delivered to the plaintiffs' house. In that case, the plaintiffs had received electricity to their house by running a length of 12/2 Romex wire from a neighboring house. The plaintiffs' house caught fire, and it has been alleged that the fire was caused because of low voltage. The trial court dismissed the strict liability claim when the testimony showed that the electrical service was not defective as of the time AVEC delivered the electricity to the neighbor's house.



**STRUCTURED  
FINANCIAL  
ASSOCIATES, INC.\***



National Structured  
Settlements  
Trade Association  
Member

**A. L. TAMAGNI, SR.**

ANCHORAGE, ALASKA OFFICE  
1205 EAST INTERNATIONAL AIRPORT ROAD  
SUITE 205 • ANCHORAGE, ALASKA 99518  
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March 10, 1997

Representative Gene Therriault  
Co-Chairman  
House Finance Committee  
Room 511  
State Capitol  
Juneau, AK 99801-1182

Re: HB58

Via Fax: 1-907-465-3884

Dear Representative Therriault:

I wish to comment on the proposed legislation (HB58) that is very much needed in this State for reducing the cost and time of litigation. I fully support the bill in general, and the following section in particular.

1. **SECTION 12:** 09.17.404(d) This language is extremely important as proposed. The reasons are as follows:

a. A defendant can now make an offer of periodic payments to replace the future damages as they would have occurred with cost of living adjustments. Section 104(a)(2) of the Internal Revenue Code allows those payments to flow exempt from Gross income.

b. A plaintiff should be demonstratively advised by counsel of his or her options to either receive a partial lump sum, future lump sums and future periodic payments on a tax exempt basis under Section 104(a)(2).

c. This eliminates the potential dissipation of the award and avoids the "Risks of Mismanagement". Industry statistics show that about 25-30% of all accident victims completely dissipate their judgments or settlement within two months of recovery, and 90% if they spend it all within five years. (The Rutter Group, Ltd. from Flahavan, Rea, Kelly & Tener, "California Practice Guide: Personal Injury" TRG 1992 Ch.4)

d. More importantly it allows a person to retain pride and dignity in his or her life, and it eliminates dependence on public assistance programs, as the funds cannot be dissipated through imprudent investments and or spending sprees..

e. Most importantly it makes it highly likely that the injured party is made aware of his or her choices. Currently it is estimated that about 95% of injured parties are not advised or properly advised on this issue. In most cases it could amount from thousands to millions of dollars in increased tax benefits. It also would deter potential plaintiff legal malpractice cases in which the injured party was not demonstratively advised of this choice.

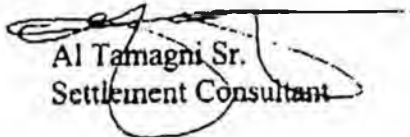
2. **SECTION 13:** 09.17.404(e) This section is excellent as it allows claimants to choose between a "Structured Settlement" funded by United States government obligations or an "Annuity" from a financially sound life insurance company or combination of both. (See Attached Rating Agency Reviews)

Additionally it mandates diversification from affiliated companies, allows potential for independent payment choice, prohibits insurance companies from placing these in house with their own Life Company, and allows placement with an independent carrier in addition to guarantees by a second non affiliated company.

I applaud the action on this bill to make changes in our laws and our courts which we own to facilitate a better system that currently is dysfunctional.

In the event you may have any questions please call at any time.

Very Truly

  
Al Tamagni Sr.  
Settlement Consultant

encl/ratings



ANCHORAGE, ALASKA OFFICE: 1205 EAST INTERNATIONAL AIRPORT ROAD • SUITE 205 • ANCHORAGE, ALASKA 99518  
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# COMP-PARE

## 1995 Life Insurance Company Rating Definitions

### A. M. BEST RATINGS EXPLANATIONS

#### **A++ and A+ (Superior)**

Assigned to companies which, in our opinion, have demonstrated superior overall performance when compared to the standards established by the A. M. Best Company. A++ and A+ companies have a very strong ability to meet their obligations to policyholders over a long period of time.

#### **A and A- (Excellent)**

Assigned to companies which, in our opinion, have demonstrated excellent overall performance when compared to the standards established by the A. M. Best Company. A and A- companies have a strong ability to meet their obligations to policyholders over a long period of time.

#### **B++ and B+ (Very Good)**

Assigned to companies which, in our opinion, have demonstrated very good overall performance when compared to the standards established by the A. M. Best Company. B++ and B+ companies have a good ability to meet their obligations to policyholders over a long period of time.

#### **B and B- (Adequate)**

Assigned to companies which, in our opinion, have demonstrated adequate overall performance when compared to the standards established by the A. M. Best Company. B and B- companies generally have an adequate ability to meet their obligations to policyholders, but their financial strength may be vulnerable to unfavorable changes in underwriting or economic conditions.

#### **C++ and C+ (Fair)**

Assigned to companies which, in our opinion, have demonstrated fair overall performance when compared to the standards established by the A. M. Best Company. C++ and C+ companies generally have a current ability to meet their obligations to policyholders, but their financial strength is vulnerable to unfavorable changes in underwriting or economic conditions.

#### **C and C- (Marginal)**

Assigned to companies which, in our opinion, have demonstrated marginal overall performance when compared to the standards established by the A. M. Best Company. C and C- companies have a current ability to meet their obligations to policyholders, but their financial strength is very vulnerable to unfavorable changes in underwriting or economic conditions.

#### **D (Very Vulnerable)**

Assigned to companies which, in our opinion, have demonstrated poor overall performance when compared to the standards established by the A. M. Best Company. D companies have a current ability to meet their obligations to policyholders, but their financial strength is extremely

vulnerable to unfavorable changes in underwriting or economic conditions.

#### **E (Under State Supervision)**

Assigned to companies which are placed by a state insurance regulatory authority under any form of supervision, control or restraint, such as a conservatorship or rehabilitation, but does not include liquidation. May be assigned to a company under a cease and desist order issued by a regulator from a state other than its state of domicile.

#### **F (In Liquidation)**

Assigned to companies which have been placed under an order of liquidation by a court of law or whose owners have voluntarily agreed to liquidate. Note: Companies that voluntarily liquidate or dissolve their charters are generally not insolvent.

#### **NA-1 (Limited Data Filing)**

Assigned primarily to small companies exempt from filing the standard NAIC annual statement. These company reports are based on selected financial data obtained by the A. M. Best Company.

#### **NA-2 (Less than Minimum Size)**

Assigned to companies that file the standard NAIC annual statement but do not meet our minimum size requirement. To assure reasonable financial stability, we require a company to have a minimum policyholders' surplus of \$2.0 million for assignment of an initial letter rating. Exceptions include: a company that is virtually reinsured by a Best's rated affiliated company; is a member of a group participating in a business pooling arrangement; or is a company writing stable lines of business and has demonstrated a long history of above average performance when compared to Best's Rating standards. Companies assigned to the NA-2 rating category are eligible for assignment of Best's Financial Performance Rating (FPR).

#### **NA-3 (Insufficient Operating Experience)**

Assigned to companies which meet, or are anticipated will shortly meet, our minimum size requirement, but have not accumulated five consecutive years of representative operating experience. This requirement pertains to the age of the company's financial performance and not the actual experience of its management and includes consistency in both the types of coverages written and the relative volume of premium writings. Additional years of operating experience may be required if a company exhibits substantial premium growth or changes in product mix. NA-3 rated companies are eligible for assignment of Best's Financial Performance Rating (FPR).

#### **NA-4 (Rating Procedure Inapplicable)**

Assigned to companies whose business and/or operations are such that our normal rating procedure does not properly

apply. Examples are as follows: companies writing lines of business not common to the property/casualty or life/health fields; companies writing financial guaranty insurance; companies retaining only a small portion of their gross premiums written; companies which have discontinued writing new and renewal business and have a defined plan to run-off existing contractual obligations; companies that are effectively dormant or have no significant premium volume or in-force business; companies that are true captives; companies discounting loss reserves to the extent that the anticipated future investment income represents a significant part of their policyholders' surplus; and companies not soliciting business in the United States. This rating is also assigned to the life/health companies whose sole operation is the acceptance of business written directly by a parent, subsidiary or affiliated insurance company, or those writing predominantly property/casualty insurance under a dual charter.

#### **NA-5 (Significant Change)**

Assigned to previously letter-rated companies which experience a significant change in ownership, management or book of business, or other event which affects the nature of their operations and makes it impossible to render a rating opinion. Depending on the change, our rating procedure may require one to five years before the company is eligible for a rating.

#### **NA-6 (Reinsured by Unrated Reinsurer)**

Assigned to companies which have a substantial portion of their book of business reinsured by, or have reinsurance recoverables from, non-Best's rated reinsurers which represent a substantial portion of their policyholders' surplus. Exceptions are non-Best's rated foreign reinsurers that comply with our reporting requirements and satisfy our financial performance standards.

#### **NA-7 (Below Minimum Standards)**

Replaced by the Best's Rating of D.

#### **NA-8 (Incomplete Financial Information)**

Assigned to companies eligible for a ratings but which failed to submit complete financial information for the five-year period under review, including all domestic insurance subsidiaries in which the company's ownership exceeds 50%.

#### **NA-9 (Company Request)**

Assigned to companies eligible for ratings, but which request that the rating not be published because they disagree with our rating.

#### **NA-10 (Under State Supervision)**

Replaced by the Best's Rating of either E or F.

#### **NA-11 (Rating Suspended)**

Assigned to previously rated companies which have experienced sudden and significant events affecting their financial position and/or operating performance whose impact cannot be evaluated due to a lack of timely or adequate information.

## **STANDARD & POOR'S CLAIMS-PAYING ABILITY RATING DEFINITIONS**

### **AAA**

Insurers rates "AAA" offer superior financial security on both an absolute and relative basis. They possess the highest degree of safety and have an overwhelming capacity to meet policyholders obligations.

### **AA**

Insurers rates "AA" offer excellent financial security, and their capacity to meet policyholder obligations differ only on a small degree from the insurers rates "AAA".

### **A**

Insurers rates "A" offer a strong financial security, but their capacity to meet policyholder obligations is somewhat more susceptible to adverse changes in economic or underwriting conditions than more highly rated insurers.

### **BBB**

Insurers rated "BBB" offer good financial security, but their capacity to meet policyholder obligations is considered more vulnerable to adverse economic or underwriting conditions than that of more highly rated insurers.

### **BB**

Insurers rated "BB" offer adequate financial security for the "short-tail" or short-term policies, but their capacity to meet policyholder obligations is considered vulnerable to adverse economic conditions or underwriting conditions and may not be adequate for "long-tail" or long-term policies.

### **B**

Insurers rated "B" are currently able to meet policyholder obligations, but their vulnerability to adverse economic or underwriting conditions is considered high.

### **CCC**

Insurers rated "CCC" are vulnerable to adverse economic or underwriting conditions to the extent that their continued capacity to meet policyholder obligations is highly questionable unless a favorable environment prevails.

### **R (Regulatory Action)**

As of the date indicated, the insurer is under supervision of insurance regulators following rehabilitation, receivership, liquidation, or any other action that reflects regulatory concern about the insurer's financial condition. Information on this status is provided by the National Association of Insurance Commissioners and other regulatory bodies. Although believed to be accurate, this information is not guaranteed. The R rating does not apply to insurers subject only to non-financial actions, such as market conduct violations.

### "Quantitative" Ratings

A 'q' subscript indicates that the rating is based solely on quantitative analysis of publicly available data. In the case of claims-paying ability ratings, this is the statutory financial data filed with the National Association of Insurance Commissioners. These ratings are issued for each insurer on a standalone basis with out consideration for strength or weakness that might be added by a parent or affiliated companies. These new ratings which were effective July 31, 1995 replace Qualified Solvency Ratings, which are being discontinued.

## MOODY'S CLAIMS-PAYING RATINGS DEFINITIONS

Numeric modifiers are used to refer to the ranking within the groups below - one being the highest and three being the lowest. However, the financial strength of companies within a generic rating symbol is broadly the same.

### **Aaa**

Highest quality.

### **Aa**

High quality by all standards; long-term risks somewhat larger.

### **A**

Upper medium grade; adequate security.

### **Baa**

Medium grade; neither highly protected nor poorly secured.

### **Ba**

Judged to have speculative elements.

### **B**

Lack characteristics of the desirable investment.

### **Caa**

May be in default or there may be present elements of danger with respect to principal or interest.

### **Ca**

Speculative in a high degree; often in default.

### **C**

Lowest rated class.

## DUFF & PHELPS CLAIMS-PAYING ABILITY RATINGS DEFINITIONS

### **AAA**

Highest claims paying ability. Risk factors are negligible.

### **AA+, AA, AA-**

Very high claims paying ability. Protection factors are strong. Risk is moderate, but may vary lightly over time due to economic and/or underwriting conditions.

### **A+, A, A-**

High claims paying ability. Protection factors are average and there is an expectation of variability in risk over time due to economic and/or underwriting conditions.

### **BBB+, BBB, BBB-**

Below average claims paying ability. Protection factors are average. However, there is considerable variability in risk over time due to economic and/or underwriting conditions.

### **BB+, BB, BB-**

Uncertain claims paying ability and less than investment grade quality. However, the company is deemed likely to meet these obligations when due. Protection factors will vary widely with changes in economic and/or underwriting conditions.

### **B+, B, B-**

Possessing risk that policyholder and contractholder obligations will not be paid when due. Protection factors will vary widely with changes in economic and/or underwriting conditions, or company fortunes.

### **CCC**

There is a substantial risk that policyholder and contractholder obligations will not be paid when due. Company has been or is likely to be placed in state insurance department supervision.

# Alaska Oil and Gas Association

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121 West Fireweed Lane, Suite 207  
Anchorage, Alaska 99503-2035  
Phone: (907) 272-1481 Fax: (907) 279-8114

March 10, 1997

The Honorable Gene Therriault, Co-Chairman  
Finance Committee  
Alaska State House of Representatives  
State Capitol  
Juneau, Alaska 99801

## AOGA Position on Tort Reform Legislation

Dear Representative Therriault:

The Alaska Oil and Gas Association (AOGA) is a trade association whose 19 member companies account for the majority of oil and gas exploration, production, transportation, refining and marketing activities in Alaska.

On February 10, 1997, the AOGA Board of Directors adopted the following position on tort reform legislation. AOGA is aware of your interest in tort reform legislation and wanted to forward our position to you for your reference.

The Alaska Oil and Gas Association believes Alaska should adopt reforms to its civil justice system:

- The Alaska civil justice system gives juries and judges discretion to impose unlimited punitive damages awards, without adequate guidelines or criteria necessary to insure the constitutional protection of due process.
- Alaska's civil justice system discourages investment in the state. Firms assessing whether to invest or to conduct business in Alaska rather than in another state or country must take into account the legal risks that Alaskan law allows, and the substantial legal risks that can be incurred even in defending against frivolous civil actions.

A variety of reforms have been suggested to address these problems. The Alaska Oil and Gas Association believes the most important are:

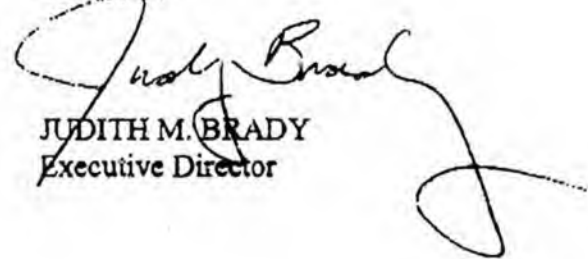
- Limitations on punitive damages. This reform would make it clear that awards beyond those necessary to compensate plaintiffs for real damages would need to be justified by clear and convincing evidence of outrageous conduct, and would be capped - as are sentences in criminal law - so that juries and judges could not impose financially ruinous or unlimited awards.

The Honorable Gene Therriault  
March 10, 1997  
Page 2

• Judgments should be proportionate to fault. It is fundamentally unfair to require a defendant to pay a much larger share of damages than the defendant's share of fault.

Other legitimate and important reforms are appropriate. However, the two reform areas above are particularly significant to companies who are sensitive to the large risks they face from disproportionate awards and unlimited punitive judgements. Reform of these two areas would reduce business risks, establish a greater degree of fairness, and bring Alaskan law into line with that found in progressive states interested in fairness and a competitive business climate.

Sincerely,



JUDITH M. BRADY  
Executive Director

cc: Rep. Brian Porter



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112  
Juneau, Alaska 99801  
907/586-2820  
Fax: 907/463-2545

March 5, 1997

The Honorable Gene Theriault  
House Finance Committee  
State Capitol, MS 3101, Room 511  
Juneau, Alaska 99801-1182

Dear Chairman Hanley and Committee Members:

The following enclosure includes draft amendments United Fishermen of Alaska (UFA) would like to see introduced in HB 58 (Tort Reform). UFA testified twice during the Judiciary Committee hearings with regards to these issues and thought drafting the requests in advance of the Finance Committee hearings would be of some assistance to you.


The concerns of small business people being harmed by frivolous lawsuits and high punitive awards is a valid issue in considering tort reform. The commercial fishing industry is made up of over 18,000 small business owners who are also subject to litigation. Tort reform has its place in protecting the small businessman from frivolous lawsuits.

On the other hand, torts relating to resource damage should be excluded from the lower caps contained in HB 58. These damages have long-term and far reaching effects that are impossible to assess with great precision. In addition, any individual incident can effect tens of thousands of Alaskans - including commercial fishermen. We as Alaskans must send a clear message to those who could damage our natural resources or sensitive ecosystems. If this message is not emphatically expressed, the Exxon Valdez disaster could be the first in a long line of such incidents. Capped punitive damages could be easily absorbed and considered as just another cost of doing business.

In regard to Section 10(d), please refer to the second paragraph of the sponsor statement that accompanies this bill. The fishing community fully agrees with these statements and see the plaintiff as not receiving the fair treatment noted in this statement. If the state were to receive 50% of any punitive award, after attorney fees the plaintiff would be lucky to walk away with 25%. That is definitely not justice.

Please consider these statements and introduce the amendments attached. We are committed to working with the legislature on this bill. I will be happy to answer any questions you may have and thank you for your consideration.

Sincerely,

  
Theo Matthews, President *eyes*  
UNITED FISHERMEN OF ALASKA

TM/cas

Enclosures

cc: Governor Tony Knowles  
Alaskan Congressional Delegation  
Senate & House Resource Committees  
Representative Gail Phillips, Speaker of the House

#### MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Dinkners Association • Concerned Area "M" Fishermen  
Cook Inlet Aquaculture Association • Cordova District Fishermen Union • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association  
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Seafood Producers Cooperative  
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gineffers



# UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112  
Juneau, Alaska 99801  
907/586-2820  
Fax: 907/463 2545

March 5, 1997

## Amendment offered for consideration to HB 58

Amend Section 10. AS 09.17.020 is amended by adding new subsections to read:

(b) Except as provided under (c) of this section, the amount of punitive damages awarded by a court or jury under (a), may not exceed three times the amount of compensatory damages awarded or \$300,000, whichever amount is greater, with the exception of torts relating to natural resource damages and ecosystem disruptions.

For purposes of this exception, the amount of punitive damages shall not exceed the greatest of

- (1) the amount calculated under the limitation in (c) of this section;
- (2) the average net annual income earned by the defendant for the five years before the date the trial began; or
- (3) two times the amount of financial gain that the defendant received or expected to receive as a result of the defendant's misconduct as determined by the jury.

Delete in its entirety, Section 10 (d) relating to 50% of any award being deposited into the general fund of the state

Delete Section 34 AS 09.60: Section 09.60.080 contingent fee agreements as proposed.

### MEMBER ORGANIZATIONS

Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Outrigger Association • Concerned Area Fishermen  
Cock Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association  
Kodiak Seiners Association • North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association  
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purse Seine Vessel Owners Association • Sealood Producers Cooperative  
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet Drift Association • United Southeast Alaska Gillnetters



# ALASKA MINERS ASSOCIATION, INC.

501 W. Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503 FAX: (907) 279-7997 Telephone: (907) 276-0347

March 10, 1997

Honorable Gene Therriault  
Co-Chairman, House Finance  
Capitol Building  
Juneau, AK 99801

RE: Tort Reform

Dear Representative Therriault,

The Alaska Miners Association wishes to go on record in support of House Bill 58, regarding tort reform. The Alaska Miners Association has over 1000 members from all parts of the mining industry. Our membership includes suction dredgers, small mom & pop miners, independent prospectors, suppliers, and major international mining companies.

The time has come for meaningful and comprehensive reform of Alaska's tort law. This bill will accomplish what is needed. We support fair compensation for injured persons but we do not support the current system that encourages abuse of the law. Many, and possibly most, tort cases are now settled out of court because that is less costly for the company. When this happens to our vendors, they have to increase the cost of goods and services to the miner to cover the settlement as well as the cost of insurance to cover the uncertainty of other tort issues.

Other tort reform needs include a change to insure that each party is liable only to the extent that each is responsible. Another needed change is to ensure that a person cannot receive an award for an injury that occurs while committing a criminal act.

Lastly, this area of law is a major factor in the general and wide-spread distrust and contempt in this country for the legal system, the courts, and attorneys in this country. The changes and reasonable limits in this bill will help restore the public faith in our legal system.

Thank you for the opportunity to comment on this important bill. We urge its passage.

Sincerely,

Steven C. Borrell, P.E.  
Executive Director

cc: Representative Brian Porter



November 26, 1996

Magone Marine  
P. O. Box 442  
Dutch Harbor, Ak 99692

Dear Dan:

On September 30 we concluded a very, very difficult liability insurance renewal. Not only did the price increase drastically, but for the second year in a row we were unable to get passenger liability limits over one million dollars per passenger seat.

After our accident of August 11, it has become apparent that under present Alaska law judgements in wrongful death claims can be many millions of dollars, even without any negligence.

So I have been looking at each charter customer, trying to analyze the possible exposure of Penair. It occurs to me that your divers are probably young and highly compensated, which would lead to such an excessive award.

Therefore, I must decline to provide you with such charter services, we simply cannot accept the risk.

My attorney is working on some sort of "hold harmless" or limitation of liability that the passenger could execute, we hope to have that available in the next few weeks.

Meanwhile, the real problem is the present Alaska laws, this situation clearly illustrates the need for Tort reform. I intend to be working on this issue during the upcoming legislative session, and would appreciate any help you might be able to give.

Very truly yours,

Orin D Seybert  
President



11/21/96 11:07 AM

November 21, 1996

Rep Brian Porter  
State Capitol  
Juneau, Ak 99801-1182

Dear Brian:

Penair is involved right now in a scenario that clearly highlights the need for tort reform.

We lost a Goose ~~\_\_\_\_\_~~. The one passenger was a highly compensated, ~~\_\_\_\_\_~~. He was relatively young, and left a wife and two daughters.

Enclosed is copy of the letter from her attorney, estimating purely economic value of \$2.7 million. (by the way, there will be no finding of any negligence on our part whatsoever).

In past years, we normally carried a \$20 million Combined Single Limit (CSL) for any accident. As you know, that sum is available for all the passengers collectively. If there were nine passengers, each estate would be entitled to over two million, or varying amounts as the case proved. In this case the entire twenty million would have been available.

Two years ago the London underwriters, primarily the BAIG, (British Aviation Insurance Group) simply refused to write any more Alaskan computers, period. That leaves us with only two underwriters in the world, AIG (Aviation Insurance Group in Atlanta) and USAIG (US Aviation Insurance Group in New York, different company!).

They absolutely refuse to write the CSL any more, so we are now limited to one million dollars per seat. Most of the other operators only have \$500,000 per seat, and some of the real small operators are at \$150,000.

The reason given is not particularly related to the perceived accident rate or difficult operating conditions in Alaska. Rather the overwhelming problem is the fact, or at least perception, that Alaska has a history of the highest punitive damage jury awards in the nation.

PAGE TWO

So back to the letter from [redacted], you see his [redacted] about the punitive damages being 12 to 16 million. And this apparently is possible without any negligence by the defendant!

My first reaction was to realize that Fenair is exposed, so I examined our customer base to see where potential problems lay. That resulted in the enclosed letter to the Alaska Marine Pilot group. So a direct result of the insurance problem is impacting the ability of some companies to do business. I am preparing similar letters to other customers.

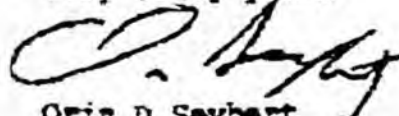
I have thought of another argument for reform. Since the limits are so low, there is actually less money available for the average Alaskan claimant. If we could just cap the punitive damages there would be more insurance coverage available.

For instance the Jisair crash at Lake Hood in September killed three tourists, but they only had \$150,000 per seat insurance. Since there were no other assets, it doesn't make any difference what the judgement is, but if it were easier for underwriters to write higher limits, there would then be more money available in cases such as that.

Anyway, as I told you I am now highly motivated to help write the bill this session, and I intend to be there.

I would like to ask for your help in letting me know what things are happening during the session, and who the key players are that I need to work on.

Very truly yours



Orin D Seybert  
President

CC: Gail Phillips  
Rick Halford



November 8, 1966

Capt. Stephan Moreno  
Alaska Marine Pilots  
2622 38th Ave S. W.  
Seattle, Wa 98126

Dear Steve:

We recently concluded a very, very difficult insurance renewal. Not only did the price increase drastically, we were not able to get any increase in limits. We still have only one million dollars for passenger liability.

In view of our recent tragedy it has made me realize that Penair cannot afford to be put in such a position again.

So I am in the process of identifying charter groups and individuals where the resource generated does not justify the risk associated with the contract. Certainly the Alaska Marine Pilots (and any marine pilot) is a perfect example.

Therefore, I am sorry to say that effective immediately we will no longer be able to provide transportation to your group.

This limitation applies only to charter or contract operations involving the nine or less passenger planes. We were able to get proper limits on the larger aircraft operating the schedules out of Anchorage.

I am having our attorney look into the possibility of having a limitation of liability agreement the customer could execute which would limit the exposure in the event of an accident. If such becomes available we will contact your groups at that time for the purpose of discussing the resumption of service.

Very truly yours

Crin D Seybert  
President

CC: Hal Snow

BISS AND HOLMES

ATTORNEYS AT LAW

AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS, OF COUNSEL  
ROGER F. HOLMES

3948 CLAY PRODUCTS DRIVE  
ANCHORAGE, ALASKA 99517  
TELEPHONE (907) 248-8013  
FAX (907) 243-6895

WASILLA OFFICE  
MC31 BOX 8111  
WASILLA, ALASKA 99654  
TELEPHONE (907) 376-5218

February 23, 1997

Representative Brian S. Porter  
Alaska State Legislature  
House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

Re: House Bill 58 (Sponsor substitute)

Dear Representative Porter:

This will confirm my conversation with Jim Sourant of your office concerning the Statute of Repose. I mentioned to Jim that all professionals in the State of Alaska are now covered by "claims made" professional liability insurance. This means that the claim must arise and be made during the policy period. When a professional retires the custom is to buy "tail insurance." This insurance covers the professional for claims made during the policy period but which do not arise until after the professional has retired and no longer carries insurance.

At the present time, most professional "tail" endorsements only cover three years into the future. In certain limited situations a five year "tail" endorsement is possible. You do not need much insurance savvy to figure out that without a statute of repose, all professionals who spend their lives practicing in Alaska have a substantial uninsurable risk in their retirement years.<sup>1</sup>

Most professionals carry insurance to protect their clients (patients) as well as to protect themselves and their families. An uninsured loss over five years after retirement without adequate resources to combat the suit or income potential to recoup the loss is a devastating situation for the retired professional. Such a claim could result in the professional and his/her family requiring substantial state aid in their declining years.

---

<sup>1</sup>The alternative if for the retired professional to continue to purchase "claims made" insurance for the remainder of his/her retirement years. For most professionals this is prohibitively expensive without income from the practice of their profession. For instance, some many physicians pay in excess of \$50,000 a year for "claims made" insurance.

Representative Brian S. Porter  
February 23, 1997

Very truly yours,

BISS & HOLMES

A handwritten signature in dark ink, appearing to read "Roger F. Holmes", written over a horizontal line.

Roger F. Holmes  
RFH

LAW OFFICES OF  
FAULKNER, BANFIELD, DOOGAN & HOLMES

A PROFESSIONAL CORPORATION  
FIRST INTERSTATE CENTER  
999 THIRD AVE., SUITE 2600  
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JUNEAU OFFICE  
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JUNEAU, ALASKA 99801  
(907) 598-7210

ANCHORAGE OFFICE  
530 W. 7TH AVENUE, SUITE 1000  
ANCHORAGE, ALASKA 99501-3510  
(907) 274-0088

February 21, 1997

VIA FACSIMILE - (907) 465-3422

Marianne Burke  
Commissioner of Insurance  
State of Alaska  
333 Willoughby Ave.  
Juneau, AK 99811-1720

Dear Ms. Burke:

Thank you very much for talking with me yesterday about the proposed Sections 39 and 40 of SSHB58. I have attempted to find some published decision or article which discuss the abuses that these sections are intended to counter. Unfortunately, I have been unable to locate any such publication. I do, however, have very real firsthand knowledge of these abuses by independent counsel in specific cases. I have spoken with the clients that I have represented in those cases and while they are very comfortable with me providing the details, they are concerned about providing client names or case names.

I do harken back to our conversation, however, and your apparent opinion that independent counsel's bill for uncovered claims should not be the responsibility of the carrier. If that is the case, we presume that the Division would not object to codifying that concept rather than leaving it to the vagaries of the litigation process.

I would be most happy to provide whatever additional information I can. I will be in my office for the rest of this day and in our Juneau office Monday morning.

Very truly yours,

  
Michael A. Barcott

MAB/amf

AMF\C:\WP51\MATTER\BURKE.LTR

# Ketchum



**AIR SERVICE, INC.**

MAIL: P.O. BOX 190588

ANCHORAGE, ALASKA 99519-0588

*On the North Shore of Lake Hood*

907-243-5525

800-433-9114

FAX 907-243-8311

E-mail: [ketchum@alaska.net](mailto:ketchum@alaska.net)

Rep. Brian Porter

2-21-97

Dear Congressman Porter,

We support HB 58 regarding Tort Reform. The escalating costs of litigating and the awards for aviation accidents continue to hamstring our industry.

It has become increasingly difficult to factor our costs due to the unpredictable insurance rates. Currently the market of available insurances are so limited that many small operators are being forced out of business or are uninsuring.

This added cost effects all other aspects of our business. This fluctuating cost detracts from maintenance, pilot training, new equipment acquisitions, payrolls, etc., etc.

We support protecting the traveling public with liability coverages comparable with the rest of the country.

Sincerely,

Craig Ketchum  
President



ACVB

Home Page- <http://www.alaska.net/~ketchum/KETCHUMFLYINALASKA.html>

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# Alaska State Legislature



Official Business  
Fax: (907) 465-3472

State Capitol  
Juneau, AK. 99801-1182  
(907) 465-3720  
(907) 465-2689

Speaker of the House of Representatives

February 19, 1997

Mr. Willem S. Van Hemert  
CRW Engineering Group  
3900 Arctic Blvd., Suite 203  
Anchorage, AK 99503-5781

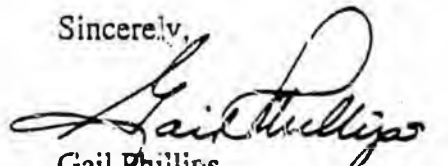
Dear Mr. Van Hemert:

Although I look forward to meeting with constituents and friends, sometimes the busy schedule here in Juneau and last minute changes make that impossible. I sincerely appreciate your taking the time to stop by and am glad that you were willing to meet with my aide, Judi Jordan, when I couldn't be there.

From what Judi tells me, the Alaska Professional Design Council emphasizes its support for a change to the Statute of Repose to 8 years as presented in Rep. Porter's bill as well as the mandatory arbitration provision in the Governor's version. In addition, she mentioned the need to extend the AELS for 6 years and to change the Mining Engineer position to a non-designated position. I will keep in mind AELS' desire to add the Landscape Architects for licensing under the AELS and the need for changing the current examiners position to an Executive Director position as well. Your position statement is very helpful, and I will refer to it often and the various issues come up during the session.

Again, I would like to thank you for bringing your concerns to my attention. I hope that you will continue to let me know the issues that are important to you. Whenever I can be of help, please feel free to call on me.

Sincerely,

  
Gail Phillips  
SPEAKER OF THE HOUSE

GP:jmj

cc: Representative Brian Porter - re: HB 58

# CITY OF SEWARD

P.O. BOX 167  
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Fax (907) 224-3248

February 18, 1997

Representative Brian Porter  
Alaska State Legislature  
State Capitol  
M/S 3100  
Juneau, Alaska 99801-1182

FAXED & MAILED

Dear Representative Porter:

The City of Seward continues to support your tort reform legislation, including the revisions to-date. Municipalities and taxpayers are deeply impacted by rising costs associated with claims. Since 1986, insurance and claim costs have been a major factor in municipal tax increases and have, in some cases, influenced communities to limit or eliminate recreation and other public services.

We are concerned for our youth, yet due to the increase in public liability, municipalities are reducing and/or eliminating recreational facilities and activities, such as skateboard parks, that would provide our youth with constructive activities instead of idle time which causes many of our youth to get in trouble in their communities.

The City supports tort reform legislation that will:

- ▶ Relieve hospitals of liability for negligent acts of an emergency room contract physician if the doctor carries malpractice insurance.
- ▶ Decrease the statute of limitations from 6 to 3 years for contract disputes, attorney malpractice and damages to personal property.
- ▶ Set a "statute of repose" which is like a statute of limitations, at 8 years for damages caused by exposure to hazardous substances, defective products or fraud. The limit is currently 15 years.
- ▶ Establish a pilot program for alternative dispute resolution.
- ▶ Cap a punitive damage award by tying it to the compensatory award in the case, with limits.

**REPRESENTATIVE PORTER**

**Tort Reform Legislation**

**Page 2**

We should work together to provide services the public wants in the safest, most cost-efficient manner. High insurance premiums and claims interfere with local government's ability to do our part of the job. We all want to do more for our citizens, but must not be afraid to provide needed services like skate parks because of punitive legal actions.

Thanks for your help!

Sincerely,

City of Seward

A handwritten signature in cursive script, appearing to read "Dick S. Garzini".

Ronald A. Garzini,  
City Manager

RAG:rg

cc: Governor Tony Knowles  
Senator John Torgerson  
Representative Gary Davis  
Seward Mayor and Council Members  
Alaska Municipal League  
Alaska Municipal League Joint Insurance Association



February 21, 1997

Representative Brian Porter  
Alaska State Legislature  
State Capital, Room 118  
Juneau, AK 99801-1182

Dear Representative Porter:

The Ounalashka Corporation is a small village corporation in the land leasing business.

We are very supportive of HB58 for several reasons.

1. It puts a reasonable cap on punitive damages.

Almost all small businesses do not have insurance that covers punitive damages, therefore the outrageous award's being given can put a small business out of business.

2. It will most certainly keep nuisance lawsuits out of the court system.

3. I also believe that the legal cost per case will decline and therefore keep some cost control on insurance costs.

Please keep this bill on track and persuade the Governor to sign it this time.

Sincerely,

Richard L. Davis, Jr.  
Chief Executive Officer

STUTZMANN ENGINEERING ASSOC., INC.

P.O. BOX 1429  
FAIRBANKS, ALASKA 99707  
(907) 452-4094

February 20, 1997

House Judiciary Committee

Re: HB 58, Tort Reform

Dear Sir:

Please support HB 58, the tort reform bill.

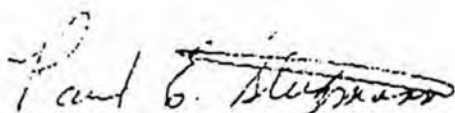
We are a small engineering firm and while we have not had legal problems, I do think there should be a limit in personal injury cases, especially where a plaintiff sues a firm that many not be even remotely connect with the injury. You will still be required to hire an attorney and defend yourself, which adds to the cost of business.

There should also be a time limit. Someone who sues years and years later should not be allowed to do so.

Many times an insurance company will pay just to get rid of the nuisance, which in turn makes business costs go up.

Lost wages and medical costs are not limited by this bill so please support it.

Sincerely,



Paul E. Stutzmann, President