

ALASKA LEGISLATURE

1631

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

7. Some people say there are too many frivolous lawsuits being filed in Alaska and that they are having a negative impact on our economy; others disagree. How much negative impact do *you* think frivolous lawsuits are having on the Alaska economy? Would you say they are having...

An extremely negative impact -----	8%
A very negative impact -----	18
A somewhat negative impact -----	37
Not a very negative impact -----	15
No negative impact -----	8
Don't Know/Refused [DO NOT READ]-----	14

8. Which of the following statements comes *closer* to your opinion regarding the liability law system? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: There are too many lawsuits being filed in Alaska these days.

Other people say: Not enough people in Alaska are exercising their right to sue.

Too many lawsuits/strongly-----	37%	67%
Too many lawsuits/somewhat -----	30	
Don't Know [DO NOT READ] -----	19	
Not enough exercising their right/somewhat-----	11	
Not enough exercising their right/strongly -----	4	15%

9. Which of the following statements comes *closer* to your opinion? [WAIT FOR RESPONSE, ASK:] And would that be strongly or somewhat more like your opinion?

Some people say: Too many people are taking unfair advantage of the system in order to get their hands on large damage awards.

Other people say: Although it may have some loopholes, the system is fair in nearly all cases.

Too many people taking advantage/strongly -----	39%	62%
Too many people taking advantage/somewhat-----	23	
Don't Know [DO NOT READ] -----	11	
System is fair/somewhat-----	22	
System is fair/strongly -----	5	27%

Please tell me whether you agree or disagree with the following statements about frivolous lawsuits in the liability law system. Frivolous lawsuits are lawsuits that are unnecessary in many people's views. [WAIT FOR RESPONSE, ASK:] And would that be a somewhat or strongly (agree/disagree)? [ROTATE Q10 - Q16]

10. Frivolous civil lawsuits are the main reason the civil courts are so clogged and cases are delayed.

Agree/strongly -----	37%	68%
Agree/somewhat-----	31	
Don't Know [DO NOT READ] -----	13	
Disagree/somewhat-----	13	
Disagree/strongly -----	6	19%

11. Frivolous lawsuits have increased the cost of medical care in Alaska.

Agree/strongly -----	40%	66%
Agree/somewhat-----	26	
Don't Know [DO NOT READ] -----	16	
Disagree/somewhat-----	13	
Disagree/strongly -----	5	18%

12. I am afraid that one day I, or someone in my family or my business, will be the victim of a frivolous lawsuit.

Agree/strongly -----	28%	61%
Agree/somewhat-----	33	
Don't Know [DO NOT READ] -----	9	
Disagree/somewhat-----	20	
Disagree/strongly -----	11	31%

13. Frivolous lawsuits have increased the cost of consumer products in Alaska.

Agree/strongly -----	27%	55%
Agree/somewhat-----	28	
Don't Know [DO NOT READ] -----	18	
Disagree/somewhat-----	19	
Disagree/strongly -----	8	27%

14. Fear of frivolous malpractice suits causes doctors to practice defensive medicine which has raised health care costs.

Agree/strongly -----	55%	80%
Agree/somewhat-----	25	
Don't Know [DO NOT READ] -----	7	
Disagree/somewhat-----	7	
Disagree/strongly -----	6	13%

15. Frivolous lawsuits have caused higher insurance premiums for everyone.

Agree/strongly -----	64%	87%
Agree/somewhat-----	23	
Don't Know [DO NOT READ] -----	5	
Disagree/somewhat-----	5	
Disagree/strongly -----	3	8%

16. The number of frivolous lawsuits delays compensation to legitimate victims.

Agree/strongly -----	44%	73%
Agree/somewhat-----	29	
Don't Know [DO NOT READ] -----	12	
Disagree/somewhat-----	10	
Disagree/strongly -----	5	15%

People have mentioned a number of different proposals to address the issue of frivolous lawsuits. Please tell me whether you would favor or oppose each of the following proposals. [WAIT FOR RESPONSE, ASK:] And would that be somewhat or strongly (favor/oppose)? [ROTATE Q17 - Q29]

17. A proposal to limit the percentage that a personal injury trial lawyer can receive as a fee from any settlement or award from his or her client.

Favor/strongly -----	53%	78%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	6	
Oppose/somewhat-----	9	
Oppose/strongly -----	6	15%

18. Having a no-fault insurance system where people involved in accidents receive insurance payments from their own insurance company regardless of who is at fault.

Favor/strongly -----	24%	49%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	13	
Oppose/somewhat-----	18	
Oppose/strongly -----	21	39%

19. A proposal requiring the loser of a lawsuit to pay legal fees for both sides.

Favor/strongly -----	35%	63%
Favor/somewhat-----	28	
Don't Know [DO NOT READ]-----	9	
Oppose/somewhat-----	16	
Oppose/strongly -----	12	28%

20. A proposal requiring that disputes of less than \$100,000 automatically go to arbitration or mediation before going to a jury trial.

Favor/strongly -----	44%	73%
Favor/somewhat-----	29	
Don't Know [DO NOT READ]-----	10	
Oppose/somewhat-----	9	
Oppose/strongly -----	8	17%

21. A proposal to strengthen the penalties and fines against attorneys who are guilty of improper client solicitation.

Favor/strongly -----	58%	83%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	8	
Oppose/somewhat-----	5	
Oppose/strongly -----	4	9%

22. A proposal requiring harsher penalties for people who bring or aid in bringing a frivolous lawsuit.

Favor/strongly -----	53%	80%
Favor/somewhat-----	27	
Don't Know [DO NOT READ]-----	6	
Oppose/somewhat-----	9	
Oppose/strongly -----	5	14%

23. A proposal to limit the ability of convicted felons in prison to bring liability lawsuits.

Favor/strongly -----	58%	76%
Favor/somewhat-----	18	
Don't Know [DO NOT READ]-----	5	
Oppose/somewhat-----	7	
Oppose/strongly -----	11	18%

24. A proposal that would make jurors aware of all the different sources of compensation an injured party has already received before trial, and stop injured parties from secretly collecting twice for the same injury without the jury's knowledge.

Favor/strongly -----	68%	86%
Favor/somewhat-----	18	
Don't Know [DO NOT READ]-----	5	
Oppose/somewhat-----	5	
Oppose/strongly -----	5	10%

25. A proposal that puts a limit on punitive damage awards by juries to three times economic and pain and suffering damages.

Favor/strongly -----	38%	66%
Favor/somewhat-----	28	
Don't Know [DO NOT READ]-----	15	
Oppose/somewhat-----	10	
Oppose/strongly -----	9	19%

26. A proposal to limit the kinds of medical expert witnesses who are asked to testify in trials. This proposal will only permit medical expert witnesses to testify who are currently licensed doctors, and who have also practiced the same kind of medical specialty that is being questioned in the trial, and actively practiced that specialty sometime within the last 10 years.

Favor/strongly -----	56%	80%
Favor/somewhat-----	24	
Don't Know [DO NOT READ]-----	8	
Oppose/somewhat-----	6	
Oppose/strongly -----	6	12%

27. A proposal that will stop forcing someone who is found only 10% responsible to pay 100% of a damage award, and instead require them only to pay their percentage of fault and no more.

Favor/strongly -----	59%	84%
Favor/somewhat-----	25	
Don't Know [DO NOT READ]-----	7	
Oppose/somewhat-----	4	
Oppose/strongly -----	5	9%

28. A proposal to prohibit lawsuits by individuals for injuries sustained in the commission of a felony.

Favor/strongly -----	61%	80%
Favor/somewhat-----	19	
Don't Know [DO NOT READ]-----	8	
Oppose/somewhat-----	5	
Oppose/strongly -----	7	12%

[SPLIT SAMPLE Q29]

29A. A proposal that would reduce to **SIX** years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly -----	49%	73%
Favor/somewhat -----	24	
Don't Know [DO NOT READ] -----	8	
Oppose/somewhat -----	8	
Oppose/strongly -----	12	20%

29B. A proposal that would reduce to **TEN** years the time limit allowed to file a lawsuit for an injury someone is claiming happened years ago in the past.

Favor/strongly -----	53%	75%
Favor/somewhat -----	22	
Don't Know [DO NOT READ] -----	8	
Oppose/somewhat -----	8	
Oppose/strongly -----	9	17%

Now, I am going to read you a list of groups, and I would like you to tell me if you think these groups would be helped or hurt by all these lawsuit liability reform proposals I just read you.
[ROTATE Q30-37]

30. Personal injury lawyers

Helped -----	18%
Hurt -----	73
Don't Know [DO NOT READ] -----	8
Refused [DO NOT READ] -----	1

31. Small businesses

Helped -----	78%
Hurt -----	14
Don't Know [DO NOT READ] -----	7
Refused [DO NOT READ] -----	*

32. Large corporations

Helped -----	71%
Hurt -----	21
Don't Know [DO NOT READ] -----	8
Refused [DO NOT READ] -----	*

33. Taxpayers

Helped -----	74%
Hurt -----	17
Don't Know [DO NOT READ] -----	8
Refused [DO NOT READ] -----	1

34. People with legitimate lawsuits

Helped -----	71%
Hurt -----	20
Don't Know [DO NOT READ] -----	9
Refused [DO NOT READ] -----	*

35. Insurance companies

Helped -----	69%
Hurt -----	24
Don't Know [DO NOT READ] -----	7
Refused [DO NOT READ] -----	*

36. Doctors and other medical professionals
- | | |
|--------------------------------|-----|
| Helped ----- | 74% |
| Hurt ----- | 16 |
| Don't Know [DO NOT READ] ----- | 10 |
| Refused [DO NOT READ]----- | * |
37. People with frivolous lawsuits
- | | |
|--------------------------------|-----|
| Helped ----- | 10% |
| Hurt ----- | 82 |
| Don't Know [DO NOT READ] ----- | 7 |
| Refused [DO NOT READ]----- | 1 |

There has been some talk about reforming the liability law system. I'd like to read you a brief list of groups and individuals who might speak out on this topic. For each one, on a scale of one to five where one means you don't trust that group or individual at all, and five means you trust that group or individual completely, please tell me how much you trust each on this topic. [READ LIST:] [ROTATE]

	Don't Trust At All			Trust Completely			Don't Know
38. Alaska Trial Lawyers Association-----	20%	19%	33%	10%	6%	12%	
39. Insurance companies-----	24	25	33	11	4	3	
40. Personal injury lawyers -----	44	23	21	6	2	4	
41. Medical Doctors -----	6	10	29	36	16	2	
42. Your local Chamber of Commerce-----	6	9	26	34	19	6	
43. Local small business owners -----	3	5	25	42	21	3	
44. Hospitals -----	7	10	35	32	13	3	

[SPLIT SAMPLE Q45]

45A. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who was endorsed by personal injury trial lawyers.[WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much -----	2%	9%
More likely to vote for/somewhat -----	7	
Don't Know [DO NOT READ] -----	22	
More likely to vote against/somewhat-----	41	
More likely to vote against/much -----	28	69%

45B. Would you be more likely to vote FOR or more likely to vote AGAINST a candidate for state office who accepts campaign contributions from personal injury trial lawyers.[WAIT FOR RESPONSE, ASK:] And would that be somewhat or much more likely to vote (for/against)?

More likely to vote for/much -----	2%	9%
More likely to vote for/somewhat -----	7	
Don't Know [DO NOT READ] -----	25	
More likely to vote against/somewhat-----	35	
More likely to vote against/much -----	31	66%

46. If State Legislature passes a liability reform measure aimed at reducing frivolous law suits, do you think the governor should sign it?
- | | |
|--------------------------------|-----|
| Yes ----- | 83% |
| No----- | 8 |
| Don't Know [DO NOT READ] ----- | 10 |

Now we have a few questions for statistical purposes....

47. How long have you lived in Alaska?
- | | |
|--------------------------------|----|
| Less than one year----- | 3% |
| One to three years ----- | 11 |
| Four to ten years----- | 17 |
| Eleven or more years----- | 68 |
| Don't Know [DO NOT READ] ----- | 1 |
| Refused [DO NOT READ]----- | 1 |
48. Have you or anyone in your household ever been involved in a personal injury lawsuit?
- | | |
|--------------------------------|----|
| Yes/self ----- | 9% |
| Yes/family member----- | 11 |
| No----- | 79 |
| Don't Know [DO NOT READ] ----- | * |
| Refused [DO NOT READ]----- | - |
49. Have you ever served on a jury in a civil -- that is a non-criminal -- court case?
- | | |
|---------------------------------------|-----|
| Yes ----- | 16% |
| No----- | 83 |
| Don't Know/Refused [DO NOT READ]----- | 1 |
50. What type of radio station do you listen to most ? [ACCEPT UP TO 3 RESPONSES]
- | | |
|---------------------------------------|-----|
| Country Western music----- | 26% |
| Classic Rock and Roll ----- | 21 |
| News talk/sports talk----- | 17 |
| Oldies/Easy listening----- | 16 |
| Public radio/NPR----- | 15 |
| Contemporary Pop music ----- | 9 |
| Classical music ----- | 7 |
| Christian radio ----- | 7 |
| Modern/New Wave/alternative Rock----- | 7 |
| Jazz----- | 5 |
| Soul/Rap----- | 1 |
| Other ----- | 3 |
| Don't Know/Refused [DO NOT READ]----- | 6 |
51. Would you generally describe yourself as conservative or liberal? [IF SAY MODERATE OR NEITHER:] Well which way do you lean?
- | | |
|-------------------------------------|-----|
| Conservative ----- | 48% |
| Lean Conservative----- | 13 |
| Moderate/Neither [DO NOT READ]----- | 14 |
| Lean Liberal----- | 9 |
| Liberal ----- | 14 |
| Don't Know [DO NOT READ] ----- | 2 |

52. What is the highest level of education you have completed? [READ IF NECESSARY]

Less than High School-----	5%
High School Graduate -----	25
Some College/Vocational-----	35
College Graduate -----	24
Post-Graduate-----	11
Refused/Don't Know [DO NOT READ]-----	*

53. Which of the following groups includes your estimated total family income for 1995?
[READ LIST]

Less than \$20,000-----	10%
\$20,000 to \$39,999-----	27
\$40,000 to \$59,999-----	25
\$60,000 to \$99,999-----	20
\$100,000 or more -----	7
Refused [DO NOT READ]-----	10

54. What do you consider to be your racial or ethnic background? [READ, IF NECESSARY]

White/Caucasian -----	82%
Black-----	3
Hispanic/Spanish/Latino -----	2
Asian -----	2
Native Alaskan-----	7
Other [DO NOT READ]-----	2
Refused [DO NOT READ]-----	2

[RECORD DEMOGRAPHIC INFO FROM SAMPLE]

55. Party Affiliation

Republican -----	34%
Democrat -----	17
Independent/Other-----	44
Don't Know [DO NOT READ] -----	5

56. Age

18 - 24 -----	10%
25 - 34 -----	21
35 - 44 -----	28
45 - 54 -----	23
55 - 64 -----	10
65 or older-----	7
No Age Data on Sample -----	1

57. City: _____ Code: _____

58. Zip Code: _____

+++++

RESPONDENT'S NAME: _____

TELEPHONE NUMBER: _____

I HAVE RE-READ THIS COMPLETED QUESTIONNAIRE AND CERTIFY THAT ALL QUESTIONS REQUIRING ANSWERS HAVE BEEN APPROPRIATELY FILLED AND THAT THIS INTERVIEW HAS BEEN OBTAINED FROM THE INDIVIDUAL DESIGNATED.

INTERVIEWER: _____ DATE: _____

NOTE: THIS INTERVIEW IS THE SOLE PROPERTY OF CHARLTON RESEARCH COMPANY. ANY ATTEMPT TO DUPLICATE OR SELL THE CONTENTS CONSTITUTES AN ILLEGAL ACT AND IS SUBJECT TO PROSECUTION.

Amended
pg 5**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/27/97

Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL**FOR AN ACT ENTITLED**

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

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

7 * Section 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this
 8 legislature as a matter of public policy to
 9 (1) encourage the efficiency of the civil justice system by discouraging
 10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
 11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
 12 compensation for tortious injuries caused by others;
 13 (2) provide for reasonable, but not excessive, punitive damage awards against

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Amended
pg 5

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10 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without
11 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
12 compensation for tortious injuries caused by others;

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

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

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

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

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

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

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

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

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

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

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

30 (h) After the payment of all other claims, including interest at the rate of 10.5
31 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay

1 claims that are otherwise valid but that were not filed within the time prescribed.

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

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

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

7 **Sec. 09.10.053. Contract actions to be brought in three years.** Unless the
8 action is commenced within three years, a person may not bring an action upon a
9 contract or liability, express or implied, except as provided in AS 09.10.040 or as
10 otherwise provided by law.

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

12 **Sec. 09.10.055. Statute of repose of eight years.** (a) Notwithstanding the
13 disability of minority described under AS 09.10.140(a), a person may not bring an
14 action for personal injury, death, or property damage unless commenced within eight
15 years of the earlier of the date of

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

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

25 (b) This section does not apply if

26 (1) the personal injury, death, or property damage resulted from

27 (A) prolonged exposure to hazardous waste;

28 (B) an intentional act or gross negligence;

29 (C) fraud or fraudulent misrepresentation;

30 (D) breach of an express warranty or guarantee; or

31 (E) a defective product; in this subparagraph, "product" means

1 an object that has intrinsic value, is capable of delivery as an assembled whole
2 or as a component part, and is introduced into trade or commerce;

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

5 (3) a shorter period of time for bringing the action is imposed under
6 another provision of law.

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

11 * Sec. 6. AS 09.10 is amended by adding a new section to read:

12 **Sec. 09.10.065. Limitation of actions against health care providers.** (a)
13 Notwithstanding the disability of minority described under AS 09.10.140(a), an action
14 based on professional negligence may not be brought against a health care provider if
15 the injured person is, on the date of the alleged negligent act or omission, less than six
16 years of age unless the action is commenced before the person's eighth birthday.

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

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

22 (2) intentional concealment of facts that would give notice of a
23 potential action; or

24 (3) the undiscovered presence of a foreign object that has no
25 therapeutic or diagnostic purpose or effect in the body of the injured person and the
26 action is based on the presence of the foreign object.

27 (c) In this section,

28 (1) "health care provider" has the meaning given in AS 09.55.560;

29 (2) "professional negligence" has the meaning given in AS 09.55.560;

30 (3) "professional services" has the meaning given in AS 09.55.560.

31 * Sec. 7. AS 09.10.070(a) is amended to read:

1 (a) Except as otherwise provided by law, a [A] person may not bring an
 2 action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2)
 3 [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights
 4 of another not arising on contract and not specifically provided otherwise; (3) for
 5 taking, detaining, or injuring personal property, including an action for its
 6 specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or
 7 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless
 8 the action is commenced within two years of the accrual of the cause of action.

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

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

15 (b) Except as provided under (c) of this section, the damages awarded by a
 16 court or a jury under (a) of this section for all claims, ^{"of a person"} including a loss of consortium
 17 claim, arising out of a single injury or death may not exceed \$300,000.

18 (c) In an action for personal injury, the damages awarded by a court or jury
 19 that are described under (b) of this section may not exceed \$500,000 when the
 20 claimant, as a result of the injury,

21 (1) is a hemiplegic, paraplegic, or quadriplegic and has permanent
 22 functional loss of one or more limbs resulting from injury to the spine or spinal cord;
 23 or

24 (2) has permanently impaired cognitive capacity and is incapable of
 25 making independent, responsible decisions.

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

28 * Sec. 9. AS 09.17.020 is amended to read:

29 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in
 30 an action, whether in tort, contract, or otherwise, unless supported by clear and
 31 convincing evidence of malice or conscious acts showing deliberate disregard of

1 another person by the person from whom the punitive damages are sought.

2 * Sec. 10. AS 09.17.020 is amended by adding new subsections to read:

3 (b) Except as provided under (c) of this section, the amount of punitive
4 damages awarded by a court or jury under (a) of this section may not exceed three
5 times the amount of compensatory damages awarded or \$300,000, whichever amount
6 is greater.

7 (c) The amount of punitive damages awarded by a court or jury under (a) of
8 this section may not exceed four times the amount of compensatory damages awarded
9 or \$600,000, whichever amount is greater, if

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

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

17 (d) If a person receives an award of punitive damages, the court shall require
18 that 50 percent of the award be deposited into the general fund of the state. This
19 subsection does not grant the state the right to file or join a civil action to recover
20 punitive damages.

21 * Sec. 11. AS 09.17.040(a) is amended to read:

22 (a) In every case where damages for personal injury or death are awarded by
23 the court or jury,

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

26 (A) [(1)] past economic loss;

27 (B) [(2)] past noneconomic loss;

28 (C) [(3)] future economic loss;

29 (D) [(4)] future noneconomic loss; [AND]

30 (E) [(5)] punitive damages; and

31 (2) the amount of damages awarded shall be reduced by the

1 amount of federal and state income tax that would have been paid on damages
 2 contained in the verdict under tax rates in effect on the date of the injury or
 3 death; this paragraph does not apply to an award of damages if the damages are
 4 taxable under federal or state law.

5 * Sec. 12. AS 09.17.040(d) is amended to read:

6 (d) In an action to recover damages, the court shall, at the request of a [AN
 7 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
 8 for future damages that exceed \$100,000 be paid to the maximum extent feasible by
 9 periodic payments rather than by a lump-sum payment. If a portion of the judgment
 10 awarded is owed to an attorney under a contingent fee agreement, that portion
 11 of the judgment shall be reduced to present value, if necessary, and paid in a
 12 lump sum, and the remaining portion of the judgment shall be paid as provided
 13 under this subsection.

14 * Sec. 13. AS 09.17.040(e) is amended to read:

15 (e) Except as provided in this subsection, if a judgment is paid by
 16 structured settlement type periodic payments, the [THE] court shall [MAY] require
 17 security be posted in the form of United States government obligations [,] in order
 18 to ensure that funds are available as periodic payments become due. The court may
 19 not require security to be posted if the state, a self-insured municipality, or an
 20 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
 21 obligation to discharge the judgment, provided that an authorized insurer must be
 22 rated by two nationally recognized independent rating agencies to be in the two
 23 highest categories of quality and financial soundness. If a judgment is paid by
 24 annuity type period payments, the court shall require the annuity be purchased
 25 from an authorized insurer that is rated by two nationally recognized independent
 26 rating agencies to be in the two highest categories of quality and financial
 27 soundness. The injured party shall determine whether a structured settlement or
 28 an annuity is the source of the periodic payments. The injured party may not be
 29 required to accept a structured settlement or annuity from the defendant's or
 30 other party's insurer or from any affiliated companies of the insurer.

31 * Sec. 14. AS 09.17.040(f) is amended to read:

1 (f) A judgment ordering payment of future damages for personal injury or
 2 death by periodic payment shall specify the recipient, the dollar amount of the
 3 payments, including any increases in future payments for anticipated inflation, the
 4 interval between payments, and the number of payments or the period of time over
 5 which payments shall be made. Payments may be modified only in the event of the
 6 death of the judgment creditor, in which case payments may not be reduced or
 7 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
 8 of support, as provided by law, immediately before death. In the event the judgment
 9 creditor owed no duty of support to dependents at the time of the judgment creditor's
 10 death, the money remaining shall be distributed in accordance with a will of the
 11 deceased judgment creditor accepted into probate or under the intestate laws of the
 12 state if the deceased had no will. In this subsection, "inflation" means the change
 13 in the consumer price index for United States city average, all urban consumers,
 14 all items indices, compiled by the Bureau of Labor Statistics, United States
 15 Department of Labor.

16 * Sec. 15. AS 09.17.070 is repealed and reenacted to read:

17 **Sec. 09.17.070. Collateral benefits.** (a) A claimant in an action for personal
 18 injury or death may only recover damages that exceed amounts received by the
 19 claimant, or that with reasonable probability will be received in the future by the
 20 claimant, as compensation for the injuries from collateral sources, whether private,
 21 group, or governmental, and whether contributory or noncontributory, except when

22 (1) the collateral source is a federally funded program that by law must
 23 seek subrogation;

24 (2) the collateral source has a right of subrogation under federal law;

25 (3) the collateral source is the payment of a dependent child's medical
 26 bills by the injured child's parent that does not result from insurance coverage;

27 (4) the benefit consists of death benefits paid under life insurance; or

28 (5) the benefit consists of workers' compensation benefits received
 29 under AS 23.30.

30 (b) A person defending a claim may introduce into evidence at trial an amount
 31 paid or payable as a benefit to the claimant as a result of the personal injury or death

1 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 2 sickness, disability, accident, or income-disability insurance; insurance that provides
 3 health benefits or income-disability coverage; and a contract or agreement of a group,
 4 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 5 or reimburse the cost of medical, hospital, dental, or other health care services,
 6 disability, or lost wages. However, evidence of a collateral source described under
 7 (c)(1) - (5) of this section may not be introduced into evidence at trial. If a person
 8 defending a claim elects to introduce evidence described in this subsection, the
 9 claimant may introduce evidence of the amount that the claimant has paid or
 10 contributed to secure the claimant's right to the collateral benefit, including the cost
 11 to the claimant resulting from depleted or exhausted coverage.

12 (c) A person who provides a collateral benefit admissible under (b) of this
 13 section may not recover an amount against the claimant as reimbursement for those
 14 benefits and may not be subrogated to the rights of a claimant against a person
 15 defending a claim.

16 * Sec. 16. AS 09.17.080(a) is amended to read:

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

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

24 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
 25 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
 26 [AND] person who has been released from liability, or other person responsible for
 27 the damages to each claimant regardless of whether the other person, including
 28 an employer, is or could have been named as a party to the action [UNDER
 29 AS 09.16.040].

30 * Sec. 17. AS 09.17.080(b) is amended to read:

31 (b) In determining the percentages of fault, the trier of fact shall consider both

1 the nature of the conduct of each person [PARTY] at fault, and the extent of the
 2 causal relation between the conduct and the damages claimed. [THE TRIER OF
 3 FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE
 4 TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE
 5 DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH
 6 PERSON CANNOT BE DISTINGUISHED.]

7 * Sec. 18. AS 09.17.080(c) is amended to read:

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

19 * Sec. 19. AS 09.17.900 is amended to read:

20 **Sec. 09.17.900. Definition.** In this chapter, "fault" includes acts or omissions
 21 that are in any measure negligent, [OR] reckless, or intentional toward the person or
 22 property of the actor or others, or that subject a person to strict tort liability. The term
 23 also includes breach of warranty, unreasonable assumption of risk not constituting an
 24 enforceable express consent, misuse of a product for which the defendant otherwise
 25 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
 26 Legal requirements of causal relation apply both to fault as the basis for liability and
 27 to contributory fault.

28 * Sec. 20. AS 09.20 is amended by adding a new section to read:

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

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

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

5 (3) certified by a board recognized by the state as having acknowledged
6 expertise and training directly related to the particular field or matter at issue; however,
7 this paragraph does not apply if a board does not exist that could certify the witness
8 in the particular field or matter at issue.

9 * **Sec. 21.** AS 09.30.065 is amended to read:

10 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
11 the trial begins, either the party making a claim or the party defending against a claim
12 may serve upon the adverse party an offer to allow judgment to be entered in complete
13 satisfaction of the claim for the money or property or to the effect specified in the
14 offer, with costs then accrued. If within 10 days after the service of the offer the
15 adverse party serves written notice that the offer is accepted, either party may then file
16 the offer and notice of acceptance together with proof of service, and the clerk shall
17 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
18 evidence of that offer is not admissible except in a proceeding to determine the form
19 of judgment after verdict. If the judgment finally entered on the claim as to which an
20 offer has been made under this section is at least five percent, less [NOT MORE]
21 favorable to the offeree than the offer, ~~the offeree, whether the party making the~~
22 claim or defending against the claim, shall pay all costs as allowed under the
23 Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees
24 incurred by the offeror from the date the offer was made, [THE INTEREST
25 AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE
26 JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

27 (1) if the offer was served no later than 60 days after both parties
28 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
29 shall pay 100 percent of the offeror's reasonable actual attorney fees [OFFEREE
30 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
31 REDUCED BY FIVE PERCENT A YEAR];

1 (2) if the offer was served more than 60 days after both parties
 2 made the disclosures required by the Alaska Rules of Civil Procedure but more
 3 than 90 days before the trial began, the offeree shall pay 75 percent of the
 4 offeror's reasonable actual attorney fees;

5 (3) if the offer was served 90 days or less but more than 10 days
 6 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
 7 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
 8 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
 9 YEAR].

10 * Sec. 22. AS 09.30.065 is amended by adding new subsections to read:

11 (b) If an offeror receives costs and reasonable actual attorney fees under (a)
 12 of this section, that offeror shall be considered the prevailing party for purposes of an
 13 award of attorney fees under the Alaska Rules of Civil Procedure. Notwithstanding
 14 (a) of this section, if the amount awarded an offeror for attorney fees under the Alaska
 15 Rules of Civil Procedure is greater than a party would receive under (a) of this section,
 16 the offeree shall pay to the offeror attorney fees specified under the Alaska Rules of
 17 Civil Procedure and is not required to pay reasonable actual attorney fees under (a) of
 18 this section. A party who receives attorney fees under this section may not also
 19 receive attorney fees under the Alaska Rules of Civil Procedure.

20 (c) If an offeror makes more than one offer of judgment, the last offer served
 21 on the adverse party shall be considered to be a revocation of any prior offer of
 22 judgment.

23 * Sec. 23. AS 09.30.070(a) is amended to read:

24 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
 25 and decrees for the payment of money, including prejudgment interest, is three
 26 percentage points above the 12th Federal Reserve District discount rate in effect
 27 on January 2 of the year in which the judgment or decree is entered [10.5
 28 PERCENT A YEAR], except that a judgment or decree founded on a contract in
 29 writing, providing for the payment of interest until paid at a specified rate not
 30 exceeding the legal rate of interest for that type of contract, bears interest at the rate
 31 specified in the contract if the interest rate is set out in the judgment or decree.

1 * **Sec. 24.** AS 09.30.070 is amended by adding a new subsection to read:

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

4 * **Sec. 25.** AS 09.50.280 is amended to read:

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

9 * **Sec. 26.** AS 09.55.440(a) is amended to read:

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

20 * **Sec. 27.** AS 09.55.535(k) is amended to read:

21 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
22 apply to arbitrations under this section if they do not conflict with the provisions of
23 this section; arbitrations under this section shall be conducted in accordance with
24 procedures established by any rules of court which may be adopted and according to
25 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
26 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

27 * **Sec. 28.** AS 09.55.536(a) is amended to read:

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

1 20 days after filing of answer to a summons and complaint a three-person expert
 2 advisory panel unless the court decides that an expert advisory opinion is not necessary
 3 for a decision in the case. When the action is filed, the court shall, by order,
 4 determine the professions or specialties to be represented on the expert advisory panel,
 5 giving the parties the opportunity to object or make suggestions.

6 * Sec. 29. AS 09.55.536(c) is amended to read:

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

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

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

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

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

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

24 (6) What specifically caused the medical injury?

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

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

29 * Sec. 30. AS 09.55.536(f) is amended to read:

30 (f) Discovery may not be undertaken in a case until the report of the expert
 31 advisory panel is received or 60 days after selection of the panel, whichever occurs

1 first. However, the court may relax this prohibition upon a showing of good cause by
 2 any party. If the panel has not completed its report within the 30-day period
 3 prescribed in (c) of this section, the court may, upon application, grant the panel [IT]
 4 an additional 30 days.

5 * Sec. 31. AS 09.55.536 is amended by adding a new subsection to read:

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

9 * Sec. 32. AS 09.55.560(1) is amended to read:

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

25 * Sec. 33. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

1 * **Sec. 34.** AS 09.60 is amended by adding a new section to read:

2 **Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or
3 collects a contingency fee in connection with an action for personal injury, death, or
4 property damage and the damages awarded by a court or jury include an award of
5 punitive damages, the contingent fee due the attorney shall be calculated after that
6 portion of punitive damages due the state under AS 09.17.020(d) has been deducted
7 from the total award of damages.

8 * **Sec. 35.** AS 09.65 is amended by adding a new section to read:

9 **Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering
10 electrical service to the public for compensation under a certificate of public
11 convenience and necessity issued by the Alaska Public Utilities Commission under
12 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
13 injury resulting from an act or omission of the utility relating to the production or
14 delivery of electrical service.

15 (b) This section does not preclude liability for civil damages that are the result
16 of an intentional, reckless, or negligent act or omission.

17 * **Sec. 36.** AS 09.65 is amended by adding a new section to read:

18 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
19 hospital is not liable for civil damages as a result of an act or omission by an
20 emergency room physician who is not an employee or actual agent of the hospital if
21 the hospital provides notice that the emergency room physician is an independent
22 contractor and the emergency room physician is insured as described under (c) of this
23 section. The hospital is responsible for exercising reasonable care in granting
24 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
25 and for taking appropriate steps to revoke or restrict privileges in appropriate
26 circumstances. The hospital is not otherwise liable for the acts or omissions of an
27 emergency room physician who is an independent contractor. The notice required by
28 this subsection must be posted conspicuously in all admitting areas of the hospital,
29 published at least annually in a newspaper of general circulation in the area, and must
30 be in substantially the following form:

31 Notice of Limited Liability

1 The following emergency room physicians are independent
2 contractors and are not employees of the hospital:

3 (List specific emergency room physicians)

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

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

12 (d) In this section,

13 (1) "emergency room physician" means a physician who provides health
14 care services in a hospital emergency room;

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

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

20 * **Sec. 37.** AS 09.65.210 is repealed and reenacted to read:

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

26 (1) engaged in the commission of a felony, the person has been
27 convicted of the felony, including conviction based on a guilty plea or plea of nolo
28 contendere, and the felony substantially contributed to the personal injury or death;

29 (2) engaged in conduct that would constitute the commission of an
30 unclassified felony, a class A, or a class B felony for which the person was not
31 convicted and the conduct

1 (A) substantially contributed to the personal injury or death; and
 2 (B) is proven by the defendant in the civil trial by clear and
 3 convincing evidence;

4 (3) fleeing after the commission, by that person, of conduct that would
 5 constitute an unclassified felony, a class A felony, or a class B felony or being
 6 apprehended for conduct that would constitute an unclassified felony, a class A felony,
 7 or a class B felony if the conduct

8 (A) during the flight or apprehension substantially contributed
 9 to the injury or death; and

10 (B) is proven by the defendant in the civil trial by clear and
 11 convincing evidence;

12 (4) operating a vehicle, aircraft, or watercraft while under the influence
 13 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
 14 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
 15 the conduct substantially contributed to the personal injury or death; or

16 (5) engaged in conduct that would constitute a violation of
 17 AS 28.35.030 for which the person was not convicted if the conduct substantially
 18 contributed to the personal injury or death and the conduct is proven by the defendant
 19 in the civil trial by clear and convincing evidence.

20 * Sec. 38. AS 09.68 is amended by adding a new section to read:

21 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
 22 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
 23 information relating to the compromise or other settlement of all civil litigation. The
 24 information, including the case name and file number, a general description of the
 25 claims being settled, the dollar amount of the settlement, to whom the settlement was
 26 paid, and any nonmonetary terms, shall be collected on a form developed by the
 27 council for that purpose.

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

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

- 3 (1) divorce and dissolution;
4 (2) adoption, custody, support, visitation, and emancipation of children;
5 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
6 cases under 47.12;
7 (4) domestic violence protective orders under AS 18.66.100 -
8 18.66.180;
9 (5) estate, guardianship, and trust cases filed under AS 13;
10 (6) small claims under AS 22.15.040.

11 * Sec. 39. AS 21.06 is amended by adding a new section to read:

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

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

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

25 (d) Beginning June 1, 2000, the information compiled under (a) of this section
26 shall be reported annually to the governor and the judiciary committees of both houses
27 of the legislature.

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

31 * Sec. 40. AS 21.89.100(d) is amended to read:

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

16 * Sec. 41. AS 21.89.100 is amended by adding a new subsection to read:

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

22 * Sec. 42. AS 23.30.015(g) is amended to read:

23 (g) If the employee or the employee's representative recovers damages from
 24 the third person, the employee or representative shall promptly pay to the employer the
 25 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
 26 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 27 and expenses. Any excess recovery by the employee or representative shall be
 28 credited against any amount payable by the employer thereafter. If the employer is
 29 allocated a percentage of fault under AS 09.17.080, the amount due the employer
 30 under this subsection shall be reduced by an amount equal to the employer's
 31 equitable share of damages assessed under AS 09.17.080(c).

1 * Sec. 43. AS 44.77.015(a) is amended to read:

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

9 * Sec. 44. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

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

30 * Sec. 45. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

31 (1) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as

1 soon as practicable after the exchange of initial disclosures required under Rule
2 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
3 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
4 their claims and defenses and the possibilities for a prompt settlement of the case and
5 to develop a proposed discovery plan. The attorneys of record and all unrepresented
6 parties that have appeared in the case are jointly responsible for arranging and being
7 present or represented at the meeting, for attempting in good faith to agree on the
8 proposed discovery plan, and for submitting to the court within 10 days after the
9 meeting a written report outlining the proposed discovery plan. The proposed
10 discovery plan shall indicate the parties' views and proposals concerning

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

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

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

19 (4) whether a scheduling conference is unnecessary;

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

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

25 * **Sec. 46.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new
26 paragraph to read:

27 (3) **Settlement Information.** If a voluntary dismissal under this rule
28 is the result of compromise or other settlement of the parties, the parties shall submit
29 to the Alaska Judicial Council the information required under AS 09.68.130. A notice
30 of dismissal made under (1)[a] of this subsection must be accompanied by a
31 certification signed by or on behalf of the plaintiff that the information required under

1 AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of
2 dismissal made under (1)[b] of this subsection must be accompanied by a certification
3 signed by or on behalf of all parties who have appeared in the action. The
4 requirements of this paragraph do not apply to the types of cases listed in
5 AS 09.68.130(c).

6 * **Sec. 47.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

11 * **Sec. 48.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

12 (b) In addition to its authority under (a) of this rule and its power to punish
13 for contempt, a court may, after reasonable notice and an opportunity to show cause
14 to the contrary, and after hearing by the court, if requested, impose a fine not to
15 exceed \$10,000.00 [\$1,000.00] against any attorney who practices before it for failure
16 to comply with these rules or any rules promulgated by the supreme court.

17 * **Sec. 49.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new
18 subsection to read:

19 (c) If the trier of fact determines that a party to a civil action has intentionally
20 made a false statement of a material fact in connection with the prosecution or defense
21 of a civil action, the court shall enter judgment against the party making the false
22 statement on the issue to which the false statement relates. If the civil action involves
23 multiple claims and the false statement does not apply to all claims, the judgment
24 required under this subsection shall apply only to those claims to which the false
25 statement relates.

26 * **Sec. 50.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
27 subsection to read:

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

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

7 * **Sec. 51.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

8 * **Sec. 52.** AS 09.55.548 is repealed.

9 * **Sec. 53.** AS 09.17.020(d), as enacted by sec. 10 of this Act, has the effect of amending
10 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
11 percentage of an award of punitive damages be deposited into the general fund.

12 * **Sec. 54.** AS 09.17.040(a), as amended by sec. 11 of this Act, has the effect of amending
13 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of
14 damages by certain tax rates in effect on the date of injury or death if taxable.

15 * **Sec. 55.** AS 09.17.040(d), as amended by sec. 12 of this Act, has the effect of amending
16 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid
17 periodically if requested by a party, with a lump sum payment for certain attorney fees.

18 * **Sec. 56.** AS 09.17.040(e), as amended by sec. 13 of this Act, has the effect of amending
19 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment
20 is paid by periodic payments.

21 * **Sec. 57.** AS 09.17.040(f), as amended by sec. 14 of this Act, has the effect of amending
22 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any
23 increases for future inflation.

24 * **Sec. 58.** AS 09.17.080(a), as amended by sec. 16 of this Act, has the effect of amending
25 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
26 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
27 among the claimants, defendants, third-party defendants, persons who have been released from
28 liability, or other person who is responsible for the damages.

29 * **Sec. 59.** AS 09.20.185, enacted by sec. 20 of this Act, has the effect of amending
30 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
31 testifying as an expert witness.

1 * **Sec. 60.** AS 09.30.065, as amended by secs. 21 and 22 of this Act, has the effect of
2 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
3 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
4 eliminating provisions relating to interest and by providing that a subsequent offer revokes
5 prior offers.

6 * **Sec. 61.** AS 09.30.070(c), added by sec. 24 of this Act, has the effect of amending
7 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
8 awarded for future economic or noneconomic damages.

9 * **Sec. 62. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
10 legislation to create a pilot alternative dispute resolution procedure within the existing civil
11 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
12 disputes.

13 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
14 Association, review court sanctioned alternative dispute resolution programs in other states and
15 in the federal court system, and make recommendations to assist the legislature and the Alaska
16 Court System in the establishment of a pilot program for alternative dispute resolution within
17 the Alaska Court System. The Alaska Judicial Council shall submit a written report to the
18 legislature and to the Alaska Supreme Court within six months after the effective date of this
19 Act. The report must include specific types of programs, specific types of cases within each
20 program that are amenable to alternative dispute resolution, the cost to the parties and to the
21 Alaska Court System under these programs, and the qualifications of the neutral parties,
22 including nonlawyers, who will provide dispute resolution services under the program.

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

25 * **Sec. 63. APPLICABILITY.** This Act applies to all causes of action accruing on or after
26 the effective date of this Act.

27 * **Sec. 64. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
28 application of a provision of this Act to any person or circumstance is held invalid, the
29 remainder of this Act and the application to other persons shall not be affected.

30 * **Sec. 65.** This Act takes effect July 1, 1997.

HB

58

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT OF

DATE: 3/19/97

FURTHER:

APR 11 1997

DATE TURNED
IN TO OFFICE:

4-14-97

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

and recommends:

be replaced with SCS CS SS HB 58 (FIN)

adopt previous _____ CS _____

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>John McConnell</i>	✓	<i>Paul E. [unclear]</i>	✓		
		<i>Jan R. Parnell</i>	✓		
		<i>Al [unclear]</i>		X	NOT NECESSARY
		<i>David [unclear]</i>			✓
Co-Chair: <i>Beauce</i>	✓	Co-Chair:			
Co-Chair: <i>Bea [unclear]</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

DOA	4/4	✓	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

2 Law	2/20	✓	
3 DCED	2/20	✓	
4 Judicial Council	2/19		26.5
5 COURTS	3/11		19.4

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

REPORTED OUT OF
SEC APR 11 1997

BILL NO. CS SSHB 58 (FIN) am

STATE OF ALASKA
1997 LEGISLATIVE SESSION

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

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

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE:

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

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

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

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

Phone: 465-5723
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 4/8/97

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FISCAL NOTE

Bill Version: CSSSHB 58(FIN)

(H) Publish Date: 3/17/97

STATE OF ALASKA 1997 LEGISLATIVE SESSION

REPORTED OUT OF
APR 11 1997

Revision Date: 03/11/97

Title: Tort Reform

Dept. Affected: Alaska Court System

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						
TOTAL OPERATING	19.4	19.4	19.4	19.4	19.4	19.4

CAPITAL EXPENDITURES						
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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						
TOTAL	19.4	19.4	19.4	19.4	19.4	19.4

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

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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 09.17.070, 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
CSSSHB 58 (JUD)

Personal ServicesPositionSalaryBenefitsTotal

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

\$3,706

\$2,025

\$5,731Contractual ServicesJury 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

FISCAL NOTE

Version: 4 CSSHB 58(FIN)
 Publish Date: 3/17/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

REPORTED OUT OF
 APR 11 1997

Revision Date: 02/18/97 Dept. Affected: Alaska Judicial Council
 Title: Civil Actions & Attorneys Provided by Insurance Company BRU: _____
 Components: _____
 Sponsor: Reps. Brian Porter and John Cowdery
 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						
TOTAL OPERATING	26.5	19.2	19.2	19.2	19.2	19.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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 GFMHTIA						
Other						
TOTAL	26.5	19.2	19.2	19.2	19.2	19.2

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.

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

TOTAL

Page 4 of 4

FISCAL NOTE

No. 3

Bill Version: CSSSHB 58 (JUD)

(H) Publish Date: 2/27/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

REPORTED OUT OF
 SFC APR 11 1997

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						
TOTAL OPERATING	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						
TOTAL	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: Marianne 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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COMMITTEE COPY

FISCAL NOTE

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

STATE OF ALASKA
1997 LEGISLATIVE SESSION

RECEIVED
APR 11 1997

Revision Date: _____ Dept. Affected: Department of Law
Title: "An Act relating to civil actions; . . . amending . . . AK Rules of Civil Procedure, . . . AK Rules of Evidence . . ." BRU: Civil Division
Sponsor: Representative Porter Component: General Legal Services
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						
TOTAL OPERATING	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 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (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*
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho*
Agency: Department of Law

Phone: 465-5370
Date: 2/20/97
Date: 2/20/97

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SENATE FINANCE
COMMITTEE

Amendment Number: 1
Bill Number: CSSSHB 58(FW)am
Sponsor: Torgerson Date: 4-3-97

Moved by Torgerson
ADOPTED W/O

0-LS0056LA.12

Ford
4/2/97

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSSHB 58(FIN) am

1 Page 1, following line 7:

2 Insert a new paragraph to read:

3 "(1) ensure that this Act does not apply to or in any way have an effect on
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Reinsert the following paragraphs accordingly.

Moved by Tory
Adopted w/o

OFFERED IN SENATE FINANCE

BY SENATOR TORGERSON

TO: CSSSHB 58 (FIN) am

Amendment to Amendment #1:

following line 6, insert new language at end of sentence to read:

"or any other federal admiralty action now or in the future."

Am to Am #16 - Moved by Donley
To program obj. / w/d
Adopted / w/o

SENATE FINANCE Donley moved
COMMITTEE Adopted w/o
0-LS0036LA.44

Amendment Number: 6 Ford
Bill Number: HB 58 4/7/97
Sponsor: Donley Date: 4/8/97
Logged In By: Boltare

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSH B 58(FIN) am

Am to
Am #16

- 1 Page 16, line 24:
- 2 Following "must":
- 3 Insert "(1)"
- 4 Delete ","
- 5 Insert "; (2) consist of a sign at least four ^{feet} inches high and two ^{feet} inches wide, with print
- 6 at least two inches high; (3) ~~appear in all printed documents relating to emergency room~~ ^{Am to Am}
- 7 ~~services provided by the hospital;~~ (4) be"

- 8 Page 16, line 25:
- 9 Delete ", and must"
- 10 Insert "; and (5)"

- 11 Page 16, line 27, before "Notice":
- 12 Insert "^{Notice}Warning to Hospital Users and"
_{Am Am}

- 13 Page 16, line 28, before "The":
- 14 Insert "(Name of Hospital) may not be responsible for the actions of emergency room
- 15 physicians in (Name of Hospital's) emergency room."

- 16 ~~Page 17, line 5:~~
- 17 ~~Delete "\$500,000"~~
- 18 ~~Insert "\$5,000,000"~~

SENATE FINANCE
COMMITTEE

*Parnell Motion
Torgerson Object*
0-LS0056LA.3 6/1 ADOPTE
Ford -
3/21/97

Amendment Number: 19

Bill Number: _____

Sponsor: _____ Date: 4-11-97

A M E N D M E N T Proposed By: RF

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: CSSSHB 58(FIN) am

- 1 Page 7, lines 1 - 2:
- 2 Delete "a [AN INJURED]"
- 3 Insert "an injured"

- 4 Page 24, line 13:
- 5 Delete "a"
- 6 Insert "an injured"

SENATE FINANCE
COMMITTEE

Amendment Number: 20

Bill Number: _____

AMENDMENT

Date: 4-11-77

Logged In By: [Signature] BY SENATOR PARNELL

*Moved by Parnell
Sharp object/w/o
ADOPTED w/o*

OFFERED IN THE SENATE
TO: CSSSHB 58(FIN) am

p. 5, Ins. 25-27 Delete all material

p.5, Ins. 25-27 Insert "convincing evidence of outrageous conduct, including acts done with malice or bad motives, or reckless indifference to the interest of another person."

Moved by Ferguson
w/indree
Adams obj.
MOTION CARRIED 6/1
0-LS0056L.a

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN) am
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 3/18/97
Offered: 3/17/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

12 (2) provide for reasonable, but not excessive, punitive damage awards against
13 tortfeasors sufficient to deter conduct and practices that harm innocent Alaskans while not
14 hampering a positive business environment by allowing excessive penalties;

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

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

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

11 (6) ensure that hospitals that comply with the disclosure requirements set out
12 in this Act are not liable for the negligence of independent contractors; to this extent, this Act
13 is intended to overrule Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

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

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

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

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

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

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

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

SENATE FINANCE
COMMITTEE

TORGERSON MOVED
PEARCE OBJ.
3/11 11/14/97
0-LS0056LA.13

Amendment Number: 2
Bill Number: CSSSHB 58(FIN)am
Sponsor: Torgerson Date: 4-3-97

Ford
4/2/97

Logged In By: PJ
A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSSHB 58(FIN) am

1 Page 6, line 13:

2 Following "award":

3 Insert "or the amount of the award that is equivalent to 100 percent of the costs
4 incurred by the state to adjudicate and litigate the action, whichever is lesser,"

5 Following "state.":

6 Insert "For purposes of determining the costs incurred by the state to adjudicate and
7 litigate the action, the administrative director of the court system shall prepare a fiscal note
8 for each action in which punitive damage is awarded."

9 Page 6, line 15, following "damages.":

10 Insert "In this subsection, "costs incurred by the state to adjudicate and litigate"
11 includes the cost of providing a judge, jury, clerk, or any other administrative support
12 required to litigate the civil action and, if applicable, reasonable litigation costs and the
13 reasonable cost of attorneys paid by the state."

SENATE FINANCE
COMMITTEE

not offered

Amendment Number: 3 0-LS0056\LA.5
Bill Number: CSSSHB 58(FW)am Ford
Sponsor: Adams Date: 4-3-97 3/24/97
Logged In By: PA Adams

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

- 1 Page 17, line 5:
- 2 Delete "\$500,000"
- 3 Insert "\$5,000,000"

SENATE FINANCE
COMMITTEE

not offered
0-LS0056\LA.11
Ford
3/31/97

Amendment Number: 4
Bill Number: CSSSHB 58 (FIN) am
Sponsor: _____ Date: 4-7-97

A M E N D M E N T Logged In By: [Signature]

OFFERED IN THE SENATE

BY SENATOR MACKIE

TO: CSSSHB 58(FIN) am

1 Page 1, following line 7:

2 Insert a new paragraph to read:

3 "(1) ensure that this Act does not apply to or in any way have an effect on
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Renumber the following paragraphs accordingly.

SENATE FINANCE
COMMITTEE

DONLEY MOVED
OBJECTIVUS HEARD
FAILED 2/5
0-LS0056/LA.41

Amendment Number: 5 Ford

Bill Number: HB 58 4/7/97

Sponsor: Donley Date: 4/8/97

Logged In By: J. Sottani

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSH B 58(FIN) am

- 1 Page 16, line 13, through page 17, line 15:
- 2 Delete all material.
- 3 Renumber the following bill sections accordingly.

Not offered

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSSHB 58(FIN) am

1 Page 19, following line 26:

2 Insert a new bill section to read:

3 **** Sec. 41.** AS 21.36 is amended by adding a new section to read:

4 **Sec. 21.36.128. Civil action for claim settlement practices.** (a) A person
5 who alleges a violation of AS 21.36.125 or a violation of a trade practice or claim
6 settlement regulation adopted by the director may bring a civil action for damages.
7 Notwithstanding any other provision of law, a person bringing an action under this
8 section may not be required to prove that the violation occurred with a frequency that
9 indicates a general business practice.

10 (b) Before filing a civil action under (a) of this section, the person filing the
11 action shall give at least 60 days written notice to the person who committed the
12 violation. Notice required under this subsection must include

13 (1) a copy of the statute or regulation that the person is claimed to
14 have violated;

15 (2) the facts and circumstances giving rise to the violation;

16 (3) the name of any individual involved in the violation;

17 (4) reference to any policy that is relevant to the violation; this
18 paragraph does not apply if the person bringing the civil action is a third party
19 claimant unless the insurer has provided the person bringing the civil action with a
20 copy of the policy; and

21 (5) a statement that the notice is given in compliance with this
22 subsection.

23 (c) If, within 60 days after notice required under (b) of this section is received
24 by the insurer, the insurer pays the damages claimed by the person bringing the action
25 or corrects the settlement practice giving rise to the action, a person may not bring

1 an action under (a) of this section.

2 (d) If an insurer receives a notice described under (b) of this section or settles
3 an alleged violation as provided under (c) of this section, the insurer shall provide a
4 copy of the notice to the director or notify the director of the settlement within 30
5 days after receiving the notice or settling the matter.

6 (e) Upon mailing or delivering the notice required under (b) of this section,
7 the applicable time limit for commencing an action under (a) of this section shall be
8 tolled for 65 days.

9 (f) If the person filing an action under (a) of this section is a prevailing party,
10 the person may recover

11 (1) costs and attorney fees as allowed under the Alaska Rules of Civil
12 Procedure; and

13 (2) damages that are foreseeable as a result of the violation, including
14 damages in excess of applicable insurance policy limits.

15 (g) Notwithstanding any other provision of law, a person filing an action
16 under (a) of this section may recover punitive damages if the act or omission giving
17 rise to the violation is

18 (1) wilful, wanton, or malicious; or

19 (2) in reckless disregard of the rights of the person filing the civil
20 action.

21 (h) The rights provided under this section are in addition to other rights
22 provided by law."

23 Renumber the following bill sections accordingly.

SENATE FINANCE
COMMITTEE

Amendment Number: 8
Bill Number: C.S.S.H.B. 58 (Fin) am
Sponsor: Dunley Date: 4-11-97

Moved by Dunley
Pence Obj.
0-LS0056\LA.46 W/D by Dunley
Ford/Chenoweth
4/11/97

A M E N D M E N T BY: PK

OFFERED IN THE SENATE

TO: C.S.S.H.B. 58(FIN) am

- 1 Page 5, line 31:
- 2 Following "awarded":
- 3 Insert ","
- 4 Following "\$300,000":
- 5 Insert ", or 25 percent of the defendant's net worth"

- 6 Page 6, line 1:
- 7 Delete "greater"
- 8 Insert "greatest"

- 9 Page 6, line 3, following "awarded":
- 10 Insert ","

- 11 Page 6, line 4:
- 12 Following "\$600,000":
- 13 Insert ", or 35 percent of the defendant's net worth"
- 14 Delete "greater"
- 15 Insert "greatest"

- 16 Page 6, following line 15:
- 17 Insert a new subsection to read:
- 18 "(e) In (b) and (c) of this section, "net worth" is the average net worth of the
- 19 defendant for the three calendar years immediately preceding the defendant's conduct
- 20 on which the action to recover damages and the punitive damage award is made
- 21 except that, if the defendant is an entity that was not in existence for at least three

1 years preceding the defendant's conduct giving rise to the damage action, "net worth"
2 shall be calculated using the calendar year in which the defendant was in existence
3 during which the defendant's net worth was greatest."

Moved by Adams
Police object
LA-1
FAILED 2/5

SENATE FINANCE
COMMITTEE

Amendment Number: 9
Bill Number: 11358
Sponsor: _____ Date: _____
Logged In By: Adams

CS for SS HB 58(FIN) am

On page 3, line 9 through page 4 line 9:

Delete all material.

Re-number accordingly.

Adams Moved
Peace object
LA-2

SENATE FINANCE
COMMITTEE

Amendment Number: 10
Bill Number: H
Sponsor: _____ Date: _____
Logged In By: By Adams

CS for SS HB 58(FIN) .am

On page 3, line 25:
- following "(A)" delete "prolonged" - ?
following the word "to", insert "a"

following the word "hazardous" insert the word "substance" and
delete the word "waste"

Adams Moved
Togersn. object
2/5 FAILED LN-3

SENATE FINANCE
COMMITTEE

Amendment Number: 11

Amendment Bill Number: _____

Sponsor: _____ Date: _____

Logged In By: By Adams

CS for SS HB 58(FIN) am

On page 5, lines 1-21:

delete all material

renumber the following sections accordingly

Moved by Adams
Objections heard
FILED 1/6 LA-4

SENATE FINANCE
COMMITTEE

Amendment Number: 12

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

CS for SS HB 58(FIN) am

By Adams

On page 6, line 6, following the word "gain":

Delete "and"

Insert "or"

SENATE FINANCE
COMMITTEE

Amendment Number: 13

Bill Number: _____

Amendment: _____ Date: _____

Logged In By: _____

By Adams

*Moved by Adams
Placed Object
FAILED 2/5
LA-5*

CS for SS HB 58(FIN) am

Page 8, Line 11, through page 9, line 10:
Delete entire section.

Renumber following sections accordingly.

SENATE FINANCE
COMMITTEE

*Adams moved
Pence obj.
FAILED 1/6 LA-6*

Amendment Number: 14

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

By Adams

CS for SS HB 58(FIN) am

On page 10, delete lines 28 and 29.

On page 10, line 30 delete (2).

On page 10, line 31, following the word "issue" delete "; and" insert "."

On page 11, delete lines 1-4.

SENATE FINANCE
COMMITTEE

Amendment Number: 15

Bill Number: _____

Amendment _____ Date: 4-11-97

Logged In By: PJ

By Adams

*Adams moved
to Jensen obj.
FAILED 2/5
LB-1*

CS for SS HB 58(FIN) am

On page 9, line 11 through page 10, line 14:
Delete all material.

Re-number sections accordingly.

On page 20, lines 18-27:
Delete all material.

Re-number sections accordingly.

On page 24, lines 20-24:
Delete all material.

Re-number sections accordingly.

Moved by Adams
objections Panel

By: Adams
SENATE FINANCE
COMMITTEE

Amendment Number: 16
Bill Number: CSSSHB 08(FIN) 16
Sponsor: _____ Date: 4-11-97
Logged In By: py

On page 11, line 6

AMENDMENT 16

AS. 09.30.065 is amended to read:

After " Section .09.30.065. Offers of Judgment " Insert:

a. Prior to Commencement of an Action: Upon receipt of a written offer of final settlement, prior to filing a complaint, in the form of an Offer of Judgment, pursuant to Alaska Civil Rule 68, an insurance company shall make payment of all monetary amounts, if any, due the offeror within 90 days of receipt of the written offer. If the judgment entered on the claim to which the payment was made under this section is at least 10% greater than the insurance company payment, the insurance company shall pay all actual costs and the reasonable actual attorneys incurred by the offeror from the date the offer was made through judgment or the termination of the action. This section in addition to any other remedy held by an insured or offeror specified in statute or common law.

b. After Commencement of an Action:

Not offered

SENATE FINANCE
COMMITTEE

Amendment Number: 17

Bill Number: _____

Amendment Sponsor: _____ Date: 4-11-97

Logged In By: PA

By Adams

CS for SS HB 58(FIN) am

On page 11, line 16:

following "is" delete "at least five, less", insert "not more"

On page 11, line 17: following the word "offer":
delete "the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made,"

Insert: "the interest awarded under AS 09.30.070 and accrued up to the date judgment is entered shall be adjusted"

Delete all material contained on page 11, lines 23 through page 12 line 18.

And insert on page 11, line 23:

" (1) if the offeree is the party making the claim, the interest rate shall be adjusted as follows:

A) if the offer was served no later than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure 26(a)(1), the interest rate shall be reduced by five percent:

B) if the offer was served more than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure 26(a)(1), but more than 90 days before the trial began, the interest rate shall be reduced by three percent:

C) if the offer was served 90 days or less but more than 10 days before the trial began, the interest rate shall be reduced by two percent [REDUCED BY FIVE PERCENT A YEAR]

(2) if the offeree is the party defending against the claim, the interest rate shall be adjusted as follows:

A) if the offer was served no later than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure 26(a)(1), the interest rate shall be increased by five percent:

B) if the offer was served more than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure

26(a)(1), but more than 90 days before the trial began, the interest rate shall be increased by three percent:

C) if the offer was served 90 days or less but more than 10 days before the trial began, the interest rate shall be increased by two percent [REDUCED BY FIVE PERCENT A YEAR]

Renumber sections accordingly.

Adams moved
Place Obj.
SENATE FINANCE FAILED 1/6

SENATE FINANCE
COMMITTEE

Amendment Number: 18
Bill Number: CSSS HB 25 (770) cur-
Sponsor: _____ Date: 4-11-97
Logged In By: _____

AMENDMENT # _____

OFFERED BY SENATOR ADAMS

Page 25, delete lines 5 thru 20, replace with the following & renumber accordingly

A.S. 09 is amended to add a new chapter to read:
CHAPTER 42. ALTERNATIVE DISPUTE RESOLUTION.

Sec. 09.42.010. PURPOSE. The legislature finds that providing a formalized program of alternative dispute resolution procedures within the existing civil litigation system can promote the timely and efficient resolution of many civil disputes. To that end, the legislature enacts AS 09.42.010 - 09.42.050 to provide for an initial pilot program of alternative dispute resolution of certain civil cases.

Sec. 09.42.020. PILOT PROGRAM FOR ALTERNATIVE DISPUTE RESOLUTION. (a) The supreme court shall provide for a pilot program of no less than five years' duration for the submission of civil cases filed in the superior court, third judicial district, to alternative dispute resolution procedures. The program shall operate in accordance with the provisions of AS 09.42.010 - 09.42.050.

(b) The following types of cases shall not be included in the pilot program:

- (1) divorce and dissolution;
- (2) child custody and visita. on;
- (3) other children's matters;
- (4) probate;
- (5) cases where no answer is filed.

Sec. 09.42.030. STRUCTURE OF PILOT PROGRAM. (a) The program established under AS 09.42.020 shall provide criteria for the screening of covered cases to determine if they are appropriate for referral to alternative dispute resolution. The criteria shall be constructed so that at least 50 percent of the covered cases filed in a calendar year are referred.

(b) The program shall provide for a list of qualified persons to whom cases may be referred and a schedule of the fees charged by these individuals. The court shall establish minimum qualifications for those persons. Under the program, parties shall be permitted by mutual agreement to choose a person from the panel or to choose a person not on the panel to conduct the alternative dispute resolution procedure. In the event that the parties cannot agree, the person to conduct the procedure shall be appointed from the panel by the trial court.

(c) The program shall provide that the parties to an alternative dispute resolution procedure shall share the costs of the procedure equally. A party found indigent under guidelines established by the supreme court shall be eligible to have that

party's share of the costs borne at public expense. The costs borne at public expense on behalf of an indigent party shall constitute a lien on any recovery by that party to be paid first out of the recovery.

(d) The program shall provide procedures and rules promoting the timely referral to and conclusion of the alternative dispute resolution procedure. The time from the filing of defendant's answer to the conclusion of the alternative dispute resolution procedure shall not exceed 100 days unless permitted by the trial court in exceptional cases and for good cause shown. Unless a longer period is agreed to by mutual consent of the parties, the alternative dispute resolution session shall be limited to no more than 12 hours.

(e) A person appointed to conduct an alternative dispute resolution procedure under the program established pursuant to AS 09.42.010 - 09.42.050 shall have judicial immunity to the same extent as a judge and shall abide by applicable rules of confidentiality established by the supreme court.

Sec. 09.42.040. EVALUATION OF PILOT PROGRAM. (a) The Alaska Judicial Council shall evaluate the efficacy of the program established pursuant to AS 09.42.010 - 09.42.050 annually. The evaluation shall address factors such as the speed with which cases are resolved, the satisfaction of the litigants, the expenditure of court resources, and the expenditure of litigant resources.

(b) The council shall work with the court system to create a system for efficient collection of information needed to evaluate the program. The council shall report the results of its evaluation to the legislature each year by March 31.

Sec. 09.42.050. DEFINITION. As used in AS 09.42.010 - 09.42.050, "alternative dispute resolution procedure" includes mediation and early neutral evaluation.

- * Sec. 33. AS 09.42, as enacted by sec. 11 of this Act, has the effect of amending Alaska Rule of Civil Procedure 100 by making the mediation process mandatory for certain civil cases in the superior court, third judicial district, and by expanding the scope of the rule to include other forms of alternative dispute resolution in addition to mediation.

FISCAL NOTE

No. 1
 Bill Version: CSSSHB 58 (JUD)
 (H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Revision 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

State agency civil liability exposure and the amount Risk Management will ultimately pay in future liability loss settlements 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 Thompson, Director Phone: 465-5723
 Division: Risk Management Date: _____

Approved by Commissioner: Mark Bover *Alison M. Elger*
 Agency: Department of Administration Date: 2/20/97

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Not adopted



Alaska State Legislature

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APR 17 1997

Please enter into the record my testimony to the Tort Reform Committee
committee name

committee on HB 58, dated 4/11/97
bill/subject

I feel that taking away my rights to be compensated for injury, either physical or ~~financially~~ financially, is an infringement on my constitutional rights. However in this case I would support HB 58 if it included all amendments submitted by U.F.A. (United Fishermen of Alaska) and those submitted by Cordova District Fishermen united (C.D.F.U.) ~~there~~. Juries should decide amounts, and there should be no caps. Thank you

Signed: Robert A. Martinson

Testifier
CDFU Gillnet division

Representing (Optional)
900 IROQUOIS DRIVE Wasilla, AK 99654

Address:
907-373-2627

Phone No.
Robert Martinson



Alaska State Legislature

Please enter into the record my testimony to the TORT COMMITTEE
committee name

committee on HB 58, dated 4/11/97
bill/subject

I would be in support of HB 58 only if the following changes be made:

- 1) Amend Section 10 to include as exceptions to the punitive damages cap to include: RECKLESS INDIFFERENCE TO THE RIGHTS or SAFETY OF OTHERS AS WELL AS THE EXISTING "EVIDENCE OF MALICE".
- 2) Punitive damage cap is acceptable only if there is an exception of torts relating to natural resource damages and ecosystem disruptions.
- 3) Section 11 (50% being given to state) should be eliminated in its entirety.

my testimony. Thank you for considering

Signed: _____

James Sutt
Testifier

Representing (Optional)

P.O. Box 878810

Wasilla, Ak. 99687

Address

(907) 892-8187

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the Senate Finance
 committee name
 committee on HR 58, dated 4/11/97
 bill/subject

I am opposed to tort reform unless
 the amendments as proposed by
 CDFU + UFA ~~and~~ are adopted.

Signed: Tom Nantvedt
 Testifier

Representing (Optional)
5140 Postage Dr Wasilla 99654
 Address
376 7060
 Phone No.



Alaska State Legislature

Please enter into the record my testimony to the SENATE FINANCE
committee name

committee on HB 58 TORT REFORM, dated 4-11-97
bill/subject

I SUPPORT TORT REFORM AS AMENDED PROPOSED BY CDFU and UFA. I AM OPPOSED TO 2 PARTS AS FOLLOWS:

1) PUNITIVE DAMAGES SHOULD NOT BE LIMITED. EACH CASE NEEDS TO BE DECIDED ON A CASE BY CASE BASIS. THERE IS A LIMITING FACTOR BUILT IN. THE JURY IS THE DECIDER OF THE DEFENDANT'S CONDUCT & THE DAMAGES TO BE AWARDED; ALSO WHETHER PUNITIVE DAMAGES SHOULD BE AWARDED. THERE ARE FURTHER SAFEGUARDS. THE APPEAL PROCESS WHICH REVIEWS THE JURY'S VERDICT & DETERMINES IF PUNITIVES ARE REASONABLE.

2) THE STATE SHOULD NOT SHARE IN ANY PUNITIVE DAMAGE AWARD. IF THE STATE WAS NOT HARMED, IT HAS NO STANDING TO JOIN THE LAWSUIT OR SHARE IN THE PUNITIVE DAMAGE AWARD. IF THE STATE WAS HARMED, THEN IT HAS THE RIGHT TO SUE. QUESTION: IF THE STATE IS COMPENSATED FOR HARM TO THE STATE, IS IT ENTITLED TO RECEIVE MORE THAN IT SUED FOR? THAT IS WHAT COULD HAPPEN IN THE INSTANCE OF THE EXXON SETTLEMENT(S) IF THIS BILL PASSES.

Signed: Bill Pace
Testifier

Self
Representing (Optional)

Hc 31, Box 5029P, 9000 Seward, AK 99654
Address

1 (907) 326-2286
Phone No.