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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 09.10.053. Contract actions to be brought in three years. Unless the action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, except as provided in AS 09.10.040, the provisions of this section may be waived by contract, or as otherwise provided by law.

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

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

(3) a shorter period of time for bringing the action is imposed under another provision of law; or

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

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

*** Sec. 6.** AS 09.10.070(a) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(3) has third degree burns over one half or more of the claimant's body; or

(4) is totally blind.

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

* **Sec. 10.** AS 09.17.020 is amended to read:

Sec. 09.17.020. Punitive damages. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence **of malice or conscious acts showing deliberate disregard of another person's rights by the person from whom the punitive damages are sought**.

* **Sec. 11.** AS 09.17.020 is amended by adding new subsections to read:

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

is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*** Sec. 15.** AS 09.17.040(f) is amended to read:

(f) A judgment ordering payment of future damages **for personal injury or death** by periodic payment shall specify the recipient, the dollar amount of the payments, **including any increases in future payments for anticipated inflation,** the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the

death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will. **In this subsection, "inflation" means the change in the consumer price index for United States city average, all urban consumers, all items indices, compiled by the Bureau of Labor Statistics, United States Department of Labor.**

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

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

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

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

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

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

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

(b) A person defending a claim may introduce into evidence at trial an amount paid or payable as a benefit to the claimant as a result of the personal injury or death under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health, sickness, disability, accident, or income-disability insurance; insurance that provides health benefits or income-disability coverage; and a contract or agreement of a group, organization, partnership, or corporation, or other collateral source, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services,

disability, or lost wages. However, evidence of a collateral source described under (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person defending a claim elects to introduce evidence described in this subsection, the claimant may introduce evidence of the amount that the claimant has paid or contributed to secure the claimant's right to the collateral benefit, including the cost to the claimant resulting from depleted or exhausted coverage.

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

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

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

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

(2) the percentage of the total fault [OF ALL OF THE PARTIES TO EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant, [AND] person who has been released from liability**, or other person responsible for the damages to each claimant regardless of whether the other person, including an employer, is or could have been named as a party to the action; in this paragraph, "other persons responsible" does not include a person protected from a civil action under AS 09.10.055** [UNDER AS 09.16.040].

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each **person** [PARTY] at fault, and the extent of the causal relation between the conduct and the damages claimed. [THE TRIER OF FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE

DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH PERSON CANNOT BE DISTINGUISHED.]

*** Sec. 19.** AS 09.17.080(c) is amended to read:

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

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

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

*** Sec. 21.** AS 09.20 is amended by adding a new section to read:

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

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

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

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

*** Sec. 22.** AS 09.30.065 is amended to read:

Sec. 09.30.065. Offers of judgment. At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn, and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is **at least five percent, less** [NOT MORE] favorable to the offeree than the offer, **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,** [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

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

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

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

*** Sec. 23.** AS 09.30.065 is amended by adding new subsections to read:

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

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

*** Sec. 24.** AS 09.30.070(a) is amended to read:

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

*** Sec. 25.** AS 09.30.070 is amended by adding a new subsection to read:

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

*** Sec. 26.** AS 09.50.280 is amended to read:

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

*** Sec. 27.** AS 09.55.440(a) is amended to read:

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

*** Sec. 28.** AS 09.55.535(k) is amended to read:

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

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

(a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider**, including a person providing services on behalf of a governmental entity,** when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed, the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel,

giving the parties the opportunity to object or make suggestions.

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

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

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

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

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

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

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

(6) What specifically caused the medical injury?

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

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

*** Sec. 31.** AS 09.55.536(f) is amended to read:

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received **or 60 days after selection of the panel, whichever occurs first**. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant **the panel** [IT] an additional 30 days.

*** Sec. 32.** AS 09.55.536 is amended by adding a new subsection to read:

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

*** Sec. 33.** AS 09.55.560(1) is amended to read:

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

*** Sec. 34.** AS 09.55.560 is amended by adding new paragraphs to read:

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

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

*** Sec. 35.** AS 09.60 is amended by adding a new section to read:

Sec. 09.60.080. Contingent fee agreements. If an attorney contracts for or collects a contingency fee in connection with an action for personal injury, death, or property damage and the damages awarded by a court or jury include an award of

punitive damages, the contingent fee due the attorney shall be calculated after that portion of punitive damages due the state under AS 09.17.020(d) has been deducted from the total award of damages.

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

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

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

*** Sec. 37.** AS 09.65 is amended by adding a new section to read:

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

Notice of Limited Liability

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

(List specific emergency room physicians)

(b) This section does not preclude liability for civil damages that are the

proximate result of the hospital's negligence or intentional misconduct.

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

(d) In this section,

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

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

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

*** Sec. 38.** AS 09.65.210 is repealed and reenacted to read:

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

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

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

(A) substantially contributed to the personal injury or death; and

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

(3) fleeing after the commission, by that person, of conduct that would

constitute an unclassified felony, a class A felony, or a class B felony or being apprehended for conduct that would constitute an unclassified felony, a class A felony, or a class B felony if the conduct

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

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

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

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

*** Sec. 39.** 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 the settlement 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.

*** Sec. 40.** AS 21.06 is amended by adding a new section to read:

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

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

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

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

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

*** Sec. 41.** AS 21.89.100(d) is amended to read:

(d) If the insured selects independent counsel at the insurer's expense, the insurer may require that the independent counsel have at least four years of experience in civil litigation, including defense experience in the general subject area at issue in the civil action, and malpractice insurance. Unless otherwise provided in the insurance

policy, the obligation of the insurer to pay the fee charged by the independent counsel is limited to the rate that is actually paid by the insurer to an attorney in the ordinary course of business in the defense of a similar civil action in the community in which the claim arose or is being defended. **In providing independent counsel, the insurer is not responsible for the fees and costs of defending an allegation for which coverage is properly denied and shall be responsible only for the fees and costs to defend those allegations for which the insurer either reserves its position as to coverage or accepts coverage. The independent counsel shall keep detailed records allocating fees and costs accordingly.** A dispute between the insurer and insured regarding attorney fees that is not resolved by the insurance policy or this section shall be resolved by arbitration under AS 09.43.

*** Sec. 42.** AS 21.89.100 is amended by adding a new subsection to read:

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

*** Sec. 43.** AS 23.30.015(g) is amended to read:

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

*** Sec. 44.** AS 44.77.015(a) is amended to read:

(a) For the purposes of filing claims for medical services provided under AS 47.07 or AS 47.25.120 - 47.25.300, "promptly," in AS 44.77.010(a), means (1) within six months after the date of service, or as provided in (b) of this section, if

there is no third-party claim, or (2) within 12 months after the date of service if there is a third-party claim. Except as provided in (c) of this section, a claim may not be paid if it is not filed promptly; an inference to the contrary may not be drawn from **AS 09.10.053** [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

*** Sec. 45.** Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

(1) That the issues in the case have actually been joined;

(2) That all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;

(3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;

(4) Whether trial by jury has been timely demanded;

(5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;

(6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;

(7) Which, if any, statute or rule entitles the case to preference on the trial calendar;

(8) That the parties have complied with [PARAGRAPH] (k) of this rule.

*** Sec. 46.** Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

(n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as soon as practicable after the exchange of initial disclosures required under Rule 26(a)(1) and in any event at least 14 days before a scheduling conference is held or a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and

to develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and being present or represented at the meeting, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 10 days after the meeting a written report outlining the proposed discovery plan. The proposed discovery plan shall indicate the parties' views and proposals concerning

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

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

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

(4) whether a scheduling conference is unnecessary;

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

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

*** Sec. 47.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new paragraph to read:

(3) **Settlement Information.** If a voluntary dismissal under this rule is the result of compromise or other settlement of the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A notice of dismissal made under (1)[a] of this subsection must be accompanied by a certification signed by or on behalf of the plaintiff that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A stipulation of dismissal made under (1)[b] of this subsection must be accompanied by a certification signed by or on behalf of all parties who have appeared in the action. The requirements of this paragraph do not apply to the types of cases listed in

AS 09.68.130(c).

*** Sec. 48.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

*** Sec. 49.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

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

*** Sec. 50.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new subsection to read:

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

*** Sec. 51.** Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new subsection to read:

(e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the result of compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A dismissal by agreement under (a) of this rule must be accompanied by a certification signed by the attorneys of record for all parties that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the appellant or petitioner made under (b) of this rule must be accompanied by a certification signed by the appellant's or petitioner's attorney of record. The

requirements of this subsection do not apply to the types of cases listed in AS 09.68.130(c).

*** Sec. 52.** Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

*** Sec. 53.** AS 09.55.548 is repealed.

*** Sec. 54.** AS 09.17.020(d), as enacted by sec. 11 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain percentage of an award of punitive damages be deposited into the general fund.

*** Sec. 55.** AS 09.17.040(a), as amended by sec. 12 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of damages by certain tax rates in effect on the date of injury or death if taxable.

*** Sec. 56.** AS 09.17.040(d), as amended by sec. 13 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid periodically if requested by a party, with a lump sum payment for certain attorney fees.

*** Sec. 57.** AS 09.17.040(e), as amended by sec. 14 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment is paid by periodic payments.

*** Sec. 58.** AS 09.17.040(f), as amended by sec. 15 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any increases for future inflation.

*** Sec. 59.** AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is responsible for the damages.

*** Sec. 60.** AS 09.20.185, enacted by sec. 21 of this Act, has the effect of amending Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person testifying as an expert witness.

*** Sec. 61.** AS 09.30.065, as amended by secs. 22 and 23 of this Act, has the effect of amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by eliminating provisions relating to interest and by providing that a subsequent offer revokes

prior offers.

*** Sec. 62.** AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be awarded for future economic or noneconomic damages.

*** Sec. 63.** ALTERNATIVE DISPUTE RESOLUTION. (a) 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.

(b) 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 Act. The report must include specific types of programs, specific types of cases within each program that 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 neutral parties, including nonlawyers, who will provide dispute resolution services under the program.

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

*** Sec. 64.** APPLICABILITY. This Act applies to all causes of action accruing on or after the effective date of this Act.

*** Sec. 65.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application of a provision of this Act to any person or circumstance is held invalid, the remainder of this Act and the application to other persons shall not be affected.

Alaska State Legislature

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Official Business

House Majority Leader

State Capitol
Juneau, AK 99801-1182
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March 18, 1997

Sectional Summary
of
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An Act Relating to Civil Actions

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

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

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

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

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

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

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

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

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

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

(b) hazardous waste exposure;
(c) intentional act or gross negligence;
(d) fraud or fraudulent misrepresentation;
(e) breach of express warranty or guarantee;
(f) a defective product;
(g) intentional concealment of facts;
(h) where a shorter statute of limitations applies.

Section 6. **Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

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

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

Section 7. **Disabilities of minority and incompetency.** This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

Section 8. **Disabilities of minority and incompetency.** This new subsection was added by amendment by the House Finance Committee. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of six years at the time of the injury or death, until the minor's sixth birthday. This means the minor may bring an action for birth trauma injuries anytime before the minor's eighth birthday.

Section 9. **Non economic damages.** This new section replaces an earlier version of this statute pertaining to non economic damages. This section generally places more stringent limits on the amounts which may be awarded for non economic damages. It also specifically adds loss of consortium to the list of items for which non economic damages may be sought.

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

On the floor of the House, this section was amended to include total blindness and third degree burns over one half of the injured person's body to the category of injuries having a $500,000 cap.

Section 10. **Punitive damages.** This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

Section 11. **Punitive damages.** This section relates to new subsections which are added to the preceding section in order to clarify and cap the amount of punitive damages which may be awarded.

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

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

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

Section 12. **Award of damages; tax reductions.** This section clarifies that an award for personal injuries is intended to include damages for death.

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

Section 13. **Award of damages; periodic payments.** This section clarifies that cases involving judgments in excess of $100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced

to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

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

Section 14. **Award of damages; periodic payments.** This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

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

Section 15. **Award of damages; periodic payments.** This section clarifies that damage awards for personal injury or death are controlled by this statute.

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

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

Section 16. **Collateral benefits.** This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

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

the plaintiff has received, or will receive in the future, from collateral sources.

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

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

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

Section 17. **Apportionment of damages.**

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

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

On the floor of the House, this section was amended to exclude persons protected by the statute of repose from the operation of this section, with the result that fault of a person not present in the litigation because of the statute of repose is not attributable to that absent person.

Section 18. **Apportionment of damages.** This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

Section 19. **Apportionment of damages.** This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

Section 20. **Definition; intentional torts.** This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 21. **Expert witness qualification.** This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

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

Section 22. **Offers of judgment.** This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

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

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

Section 23. **Offers of judgment.** The first new subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

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

Section 24. **Interest on judgments; prejudgment interest.** This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the usury statute, AS 45.45.010(b).

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

Section 25. **Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

Section 26. **Judgment for plaintiff; punitive damages.** This section contains a consistency change that applies the Section 24 interest rate to judgments against the State of Alaska.

Section 27. **Interest in condemnation proceedings.** This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 24.

Section 28. **Voluntary arbitration.** This section modifies subsection (k) of the statute to make a consistency change regarding the repeal of AS 09.55.548, pertaining to collateral source setoffs in medical malpractice arbitrations. That statute was repealed for the reason that it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including arbitrated medical malpractice cases.

Section 29. **Medical advisory panels.** This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

Section 30. **Expert advisory panel; panel questions.** This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are

within the purview of the questions to be answered by the medical advisory panel.

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Section 44. **Claims against the state for medical claims.** This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 45. **Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 46. **Alaska Rule of Civil Procedure 16.1(n).** This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

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

Section 64. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

[Section 65. **Effective date.** This section was deleted by amendment by the House Finance Committee. There is no effective date.]

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
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DISTRICT 20

March 13, 1997

Sectional Summary
of
CS of SSHB 58 (JUD)

An Act Relating to Civil Actions

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

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

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

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

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

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

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

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

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

(b) hazardous waste exposure;

(c) intentional act or gross negligence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 16. **Apportionment of damages.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

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DISTRICT 20

Sectional Summary
of
SSHB 58 (JUD)

An Act Relating to Civil Actions

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

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

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

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

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

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

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

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

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

(b) hazardous waste exposure;

(c) intentional act or gross negligence;

(d) fraud or fraudulent misrepresentation;

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

This section also eliminates the conflict between exisiting subsections AS09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 16. **Apportionment of damages.**

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

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

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

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

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

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

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

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

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

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as

evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

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

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

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

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

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

Section 24. **Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

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

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

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

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

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

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

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

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

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

Section 34. **Attorney contingent fee agreements.** This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted

under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 35. **Civil liability of hospitals for nonemployees.** This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

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

Section 36. **Damages resulting from commission of a felony, or while under the influence of alcohol or drugs.** In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or watercraft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

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

Section 37. **Collection of settlement information.** This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 38. **Insurance report.** This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the

Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 39. **Appointment of independent counsel; conflicts of interest.** This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved it right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 40. **Appointment of independent counsel; conflicts of interest.** In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 41. **Workers'compensation lien.** This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 42. **Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 43. **Alaska Rule of Civil Procedure 16.1(k)(4).** This section is repealed as a consistency change to the foregoing section 42.

Section 44. **Alaska Rule of Civil Procedure 16.1(n).** This section also is a consistnecy change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 45. **Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

Section 46. **Medical advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 47. **Sanctions for rule violations.** This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to $10,000 against attorneys, increased from $1,000 under the existing rule.

Section 48. **Sanctions for rules violations.** This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 49. **Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 50. **Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 42.

Section 51. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 51. **Apportionment of damages.** This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

Section 52 - Section 60. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 61. **Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

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

Section 62. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 63. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Section 64. **Effective date.** This Act takes effect July 1, 1997.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
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SPONSOR STATEMENT
OF
SSHB 58 (JUD): Tort Reform Bill

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

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

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

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

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

Alaska State Legislature

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

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

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under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 35. **Civil liability of hospitals for nonemployees.** This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

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

Section 36. **Damages resulting from commission of a felony, or while under the influence of alcohol or drugs.** In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or watercraft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

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

Section 37. **Collection of settlement information.** This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 38. **Insurance report.** This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the

Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 39. **Appointment of independent counsel; conflicts of interest.** This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved it right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 40. **Appointment of independent counsel; conflicts of interest.** In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 41. **Workers'compensation lien.** This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 42. **Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 43. **Alaska Rule of Civil Procedure 16.1(k)(4).** This section is repealed as a consistency change to the foregoing section 42.

Section 44. **Alaska Rule of Civil Procedure 16.1(n).** This section also is a consistnecy change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 45. **Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

Section 46. **Medical advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

Section 47. **Sanctions for rule violations.** This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to $10,000 against attorneys, increased from $1,000 under the existing rule.

Section 48. **Sanctions for rules violations.** This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

Section 49. **Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

Section 50. **Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 42.

Section 51. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 51. **Apportionment of damages.** This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

Section 52 - Section 60. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 61. **Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

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

Section 62. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 63. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Section 64. **Effective date.** This Act takes effect July 1, 1997.

evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

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

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

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

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

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

Section 24. **Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

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

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

2-25-97
For Roger

To: Mike Ford

From: Jim Sourant

February 24, 1997

Re: Additional amendments to SSHB 58

Mike:

Representative Brian Porter has the following amendments for the bill:

1. Section 17, at top of page 10, lines 1 thru 4, delete the second sentence in its entirety, starting with the phrase: "The trier of fact....." and ending with "cannot be distinguished." Leave the rest of line 1 on that page intact.

2. Section 39, at top of page 20, line 2, insert the word "fees and" between the words "allocating" and "costs".

3. Section 12, page 7, line 8, do not take out the word "[FUTURE]". Leave that part of the statute the way it was before we made all the other changes.

Thanks for your help,

JS

cc: Brian

bcc: Lisa Kirsch
bcc: Mary Gore

Alaska State Legislature

House of Representatives

Official Business

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

House Majority Leader

March 15, 1997

Sectional Summary
of
CS of SSHB 58 (FIN)

An Act Relating to Civil Actions

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

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

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

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

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

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

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

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

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

(b) hazardous waste exposure;

(c) intentional act or gross negligence;

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

Section 6. **Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

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

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

Section 7. **Disabilities of minority and incompetency.** This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

Section 8. **Disabilities of minority and incompetency.** This new subsection was added by amendment by the House Finance Committee. This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of six years at the time of the injury or death, until the minor's sixth birthday. This means the minor may bring an action for birth trauma injuries anytime before the minor's eighth birthday.

Section 9. **Non economic damages.** This new section replaces an earlier version of this statute pertaining to non economic damages. This section generally places more stringent limits on the amounts which may be awarded for non economic damages. It also specifically adds loss of consortium to the list of items for which non economic damages may be sought.

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

Section 10. **Punitive damages.** This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska

Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

Section 11. **Punitive damages.** This section relates to new subsections which are added to the preceding section in order to clarify and cap the amount of punitive damages which may be awarded.

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

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

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

Section 12. **Award of damages; tax reductions.** This section clarifies that an award for personal injuries is intended to include damages for death.

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

Section 13. **Award of damages; periodic payments.** This section clarifies that cases involving judgments in excess of $100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

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

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

Section 14. **Award of damages; periodic payments.** This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of US government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

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

Section 15. **Award of damages; periodic payments.** This section clarifies that damage awards for personal injury or death are controlled by this statute.

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

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

Section 16. **Collateral benefits.** This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

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Section 36. **Civil liability of electric utility.** This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

Section 37. **Civil liability of hospitals for non employees.** This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

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

Section 38. **Damages resulting from commission of a felony, or while under the influence of alcohol or drugs.** In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or water craft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

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

Section 39. **Collection of settlement information.** This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 40. **Insurance report.** This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

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

Section 41. **Appointment of independent counsel; conflicts of interest.**

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

Section 42. **Appointment of independent counsel; conflicts of interest.** In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer

has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 43. **Workers'compensation lien.** This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

Section 44. **Claims against the state for medical claims.** This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

Section 45. **Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 46. **Alaska Rule of Civil Procedure 16.1(n).** This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

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Section 52. **Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 45.

Section 53. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 54 - Section 62. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 63. **Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

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

Section 64. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

[Section 65. **Effective date.** This section was deleted by amendment by the House Finance Committee. There is no effective date.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
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Sectional Summary
of
SSHB 58 (JUD)

An Act Relating to Civil Actions

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

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

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

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

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

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

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

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

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

(b) hazardous waste exposure;

(c) intentional act or gross negligence;

(d) fraud or fraudulent misrepresentation;

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

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

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

This section also eliminates the conflict between exisiting subsections AS09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. **Award of damages; periodic payments.** This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of U.S. government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

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

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

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

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

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

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

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

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

Section 16. **Apportionment of damages.**

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

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

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

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

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

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

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

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

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

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as

evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

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

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

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

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

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

Section 24. **Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

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

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

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

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

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

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

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

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

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

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Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

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Section 51. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 51. **Apportionment of damages.** This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

Section 52 - Section 60. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

Section 61. **Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. The report shall be ready in time for the second term of this 20th Legislature.

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

Section 62. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 63. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

Section 64. **Effective date.** This Act takes effect July 1, 1997.

Alaska State Legislature

Working Copy

Representative Brian S. Porter

CHAIRMAN
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HOUSE LABOR & COMMERCE COMMITTEE
HOUSE STATE AFFAIRS COMMITTEE
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DISTRICT 20

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Sectional Summary

of

CSHB 158 (FIN) am CIVIL LIABILITY

Section 1

PURPOSES

Section 2

GENERAL STATUTE OF REPOSE

Statute of Repose: A law that prevents suits from being brought after a certain period of time, regardless of whether or not the statute of limitations has expired. Statutes of repose begin running when a product is sold or a procedure is performed, instead of at the time an injury is discovered.

The purpose of this section is to make it clear that legal actions involving personal injury, death, or property damage be brought within fair and reasonable time. All crimes have a statute of limitations in our legal code. The same standard of fairness should also apply to civil lawsuits.

This section is considered a statute of repose, prescribing an eight year period within which any civil action involving injury, death, or property damage must be filed with the courts. The time period is measured from the date the construction was completed or the last act that allegedly caused the harm.

NOT

The eight year period would not apply if the injury, death, property damage was caused by an intentional act or if there was intentional concealment of facts that resulted in a delay of over eight years before the basis for legal action was known. This section does apply if a shorter period of time for bringing a particular legal action imposed under another provision of law.

This section does not apply to personal injury resulting from exposure to hazardous substance, a defectivie product, an intentional act or gross negligence, fraud or fraudulent misrepresentation, facts that are intentionally concealed, or undiscovered presence of a foreign body that has no therapeutic or diagnostic purpose or effect.

Section 3

CERTAIN STATUTORY LIABILITIES TO BE BROUGHT INTO YEARS

This section removes unclear and conflicting language from the statute. The existing two year limit for actions involving libel, slander, assault, battery, seduction, or false imprisonment remains the same.

Section 4

GENERAL STATUTE OF LIMITATIONS

This section places a two-year limit on actions involving injury, death, or property damage after the date claimants could reasonably believe they had a claim.

Requires that a person commence a civil action for personal injury, death, or property damage within two years of the time the person knows or should have known of the injury, death or damage. Provides that this section does not apply if a shorter period of time is required under another provision of law.

Section 5

NONECONOMIC DAMAGES

Noneconomic damages: Money awarded that does not compensate the injured person for monetary loss, but rather, for example, for pain and suffering.

Economic damages: Money awarded to an injured person to compensate for his or her actual monetary loss. For example, economic damages compensate for medical costs and lost wages.

This section extends the definition for noneconomic losses to include claims for wrongful death as well as personal injury. The definition clarified by removing "negligence", which is difficult to establish or disprove. The change further defines noneconomic losses to include loss of consortium (i.e., the right to a husband's or wife's fellowship).

This section provides that damages for noneconomic losses are limited to certain types of injuries, such as pain and suffering. Limits damages for noneconomic losses to $300.000, except that damages are limited to $500,000 for certain specified injuries. Provides an exception for damages awarded against a person committing or attempting to commit a felony. Provides that multiple injuries sustained as a result of a single incident shall be treated as a single injury for the purpose of this section.

Section 6

PUNITIVE DAMAGES

Punitive damages: Sometimes called exemplary damages, punitive damages are awarded in to punish a defendant for malicious, intentional act rather than one that is merely negligent.

The current statute allows punitive damages to be awarded when there is "clear and convincing evidence," but, does not explain evidence in what actions. This section requires that punitive damages may not be awarded unless outrageous conduct such as acts done with malice or bad motives, or reckless indifference to the interest of another.

Section 7

LIMIT OF PUNITIVE DAMAGE AWARD

Any awards for punitive damages will be at least $300,000 or up to three times the amount of compensatory damages awarded, whichever is greater. Further, one-half of the award will be deposited into the general fund of the state.

Section 8

SECURITY FOR PERIODIC PAYMENTS

Require that the court require security be posted for periodic payments, except when the obligation is recognized by the state or an insurer. Requires that the judgment include increases for future anticipated inflation. Provides to the judgment creditor damages caused by the failure to make periodic payments, including costs and attorney fees.

Section 9

INFLATION ADJUSTMENTS FOR PERIODIC PAYMENTS

The words "for personal injury or death" are added to the statute. This section clarifies what types of damage awards are being regulated by this statute.

Courts must specify the percentage or the method for increases by future periodic payments will increase to cover inflation.

By specifying the amount or method allowed for inflation, the amendment prevents future litigation for an adjustment of the original award.

Section 10

COLLATERAL BENEFITS

Collateral Source Rule: A trial rule where the jury is not told that the injured person has received money for their injury from other sources, such as an insurance policy or another defendant.

This prevents unjust enrichment from claimants who collect multiple awards for the same loss.

Prohibits a claimant from recovering damages that duplicate amounts received from collateral sources. Provides exceptions for certain collateral sources that are subrogated to the claimant, and for death benefits and workers' compensation benefits. Allows a person defending a claim to introduce evidence of amounts received from certain collateral sources. Prohibits a person who provides a collateral benefit that is introduced into evidence from recovering that amount from the claimant or being subrogated the rights of the claimant.

Section 11

APPORTIONMENT OF FAULT

Provides that the court shall determine each party's equitable share of the obligation to each claimant. Provides than assessment may only be used to measure percentages of fault and not to subject a person to civil liability.

The word "party" creates a loophole that restricts apportionment fault to those named in the legal action. By considering all persons or entities which contributed to a loss, each is fairly apportioned a degree of fault based on their own actions.

Thus, this section provides that the court shall determine each party's equitable share of the obligation to each claimant. Provides that an assessment may only be used to measure percentages of fault and not to subject a person to civil liability.

Section 12

APPORTIONMENT OF FAULT

Changes the statute number to conform with revised law and clarifies the rules so that while all parties that contributed to injury or death are fairly considered when assessing the percentage of fault.

Section 13

OFFERS OF JUDGMENT

The existing statute says that prior to 10 days before trial begins, either party can make an offer to settle a claim, plus accrued cost. This must be accepted within 10 days and correctly recorded by the clerk.

If the court's judgment is less favorable to the recipient of the offer, the person who refused the offer must pay the offerer's costs and attorney fees incurred since the date when the higher offer to settle was made.

Section 14

PREJUDGMENT INTEREST

The section changes the interest rates on judgments and decrees from a set 10.5% a year to a floating rate of 3% above the federal discount rate in effect January 2nd of the year of the judgment. This rate is not used if a different rate has previously been agreed to by contract.

Federal discount rates have been as low as 1%(1942) and as high as 14%(1981). Allowing annual adjustments for prejudgment interest brings charges in line with the current market and prevents unfairly high or low rates.

Provides that the rate of interest on judgments and decrees, including prejudgment interest, is equal to prejudgment interest for certain future damages or punitive damages.

Section 15

PREJUDGMENT INTEREST

The purpose for the prejudgment interest is to allow claimants reimbursement of funds that would normally have been in their possession plus any interest that amount could have earned prior to the trial. This is not the case in damages awarded for future losses and these sums can be invested and interest earned on the funds.

Prejudgment interest is subject to federal income tax and attorney fees commission.

Section 16

UNIFORM ARBITRATION ACT

Amends the section on application of the Uniform Arbitration Act so that it applies to the statutes as listed after adoption of House Bill 158.

Section 17

MEDICAL EXPERT WITNESS QUALIFICATION

This section establishes qualifications for an expert witness to testify on issues relating to appropriate medical standard of care unless the witness is a health care provider.

Section 18

DEFINITION

Provides definitions for professional negligence and professional services.

Section 19

CIVIL LIABILITY OF HOSPITALS FOR NON EMPLOYEES

The purpose of this section is to clarify the circumstances in which hospitals are held directly liable for the actions of health care providers not employed by the hospital. Current law permits claimant to sue only the hospital rather than the independent contractor who may have less ability to pay.

Provides that a hospital is not liable for civil damages resulting from an act or omission by a health care provider who is not an employee or actual agent of the hospital. However, the hospital must provide notice that the health care provider is an independent contractor and a notice of limited liability must be posted in all admissions areas and published in area newspapers annually.

The hospital must also use caution and prudence in granting privileges to independent health care providers, have a review proceeding to monitor independent contractors, and be prepared to revoke or restrict privileges when

needed.

Hospitals are libel for civil damages if the hospital or its employees were negligent or acted with intentional misconduct.

The final section defines health care providers and hospital as the terms are used in this statute.

Section 20

DAMAGES RESULTING FROM COMMISSION OF A CRIME

Provides that a person committing, attempting to commit, or fleeing from the commission of a felony whose action substantially contributed to the person's injury or death, is prohibited from recovering damages for personal injury or death.

Section 21

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS

Sanctions for failure to sign a pleading or filing a frivolous lawsuit is a matter in the discretion of the trial court. This section imposes monetary sanctions against any attorney in civil cases for filing frivolous, unnecessary and legally deficient pleadings.

If it is alleged or appears that a pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, may set the matter for hearing. If the court determines that the motion is in violation, monetary sanctions will be implemented.

Section 22

Repealing AS 09.55.548

Section 23 through 24

Technical sections relating to amending Alaska Rule of Civil Procedure 49,68,702 and 95.

Section 25

This Act applies to all causes of action accruing on or after the effective date of this Act.

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

MEMBER
HOUSE JUDICIARY COMMITTEE
HOUSE RULES COMMITTEE
HEALTH, EDUC. & SOCIAL SERVICES COMMITTEE
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SPONSOR STATEMENT
OF
SSHB 58 (JUD): Tort Reform Bill

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

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

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

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

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

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SS FOR HOUSE BILL NO. 58(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: January 13, 1997
Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER and Cowdery.

A BILL FOR AN ACT ENTITLED

"An Act relating to civil actions; amending Alaska Rules of Civil Procedure 16.1, 26, 41,49, 68, 72.1 and 95; amending Alaska Rule of Evidence 702; amending Alaska Rules of Appellate Procedure 511; and providing for an effective date."

BE IT ENACTED BY THE STATE OF ALASKA:

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

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

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

3. encourage individual savings and economic growth by fostering a reduction in liability insurance rates to individuals and businesses alike;

4. encourage the traditionally recognized Alaska values of self reliance and independence by underscoring the need for personal responsibility in making choices, and the personal accountability for the consequences of those choices.;

5. alleviate the high cost of malpractice insurance premiums which discourage physicians, architects, engineer, attorneys and other professionals from initiating or continuing their practice or offering needed services to the public;

6. ensure that hospitals which comply with the disclosure requirements set forth in this Act should not be liable for the negligence of independent

contractors; to this extent, this Act is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

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

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

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

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

*Sec. 3. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.051. **Contract actions to be brought in three years.** Unless an action is commenced within three years, a person may not bring an action upon a contract or liability, express or implied, excepting those described in AS 09.10.040 or as otherwise provided by law.

* Sec. 4. AS 09.10.055 is repealed and reenacted to read:

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

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; or

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

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

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

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

(d) In this section, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended.

* Sec. 5. AS 09.10 is amended by adding a new section to read:

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

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

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

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

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

(c) In this section,

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

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

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

* Sec. 6. AS 09.10.070(a) is amended to read:

Sec. 09.10.070. **Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** (a) Except as otherwise provided by law, a [A] person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY PROVIDED OTHERWISE]; (2) for taking, detaining, or injuring personal property, including an action for its specific recovery; (3) [(2)] upon a statute for a forfeiture or penalty to the state; or (4) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years.

* Sec. 7. AS 09.10 is amended by adding a new section to read:

Sec. 09.10.075. **Limitation on actions involving injury to person or property.** (a) Except as otherwise provided by law, a person may not bring an action for personal injury, death, property damage, or injury to the rights of another not arising on contract, unless the action is brought within two years of the accrual of the action.

(b) This section does not apply if a shorter period of time for bringing the action is imposed under another provision of law.

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

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

(b) Except as provided under (c) of this section, the amount of damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed $300,000.

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

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

(B) has permanently impaired cognitive capacity, is incapable of making independent, responsible decisions, and is permanently incapable of independently performing the activities of normal, daily living.

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

* Sec. 9. AS 09.17.020 is repealed and reenacted to read:

Sec. 09.17.020. **Punitive damages.** (a) Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence of malice or conscious acts showing deliberate disregard of another person by the person from whom the punitive damages are sought.

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

(b) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed three times the amount of compensatory damages awarded or $300,000, whichever amount is greater.

(c) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed four times the amount of compensatory damages awarded or $600,000, whichever amount is greater in cases where

the wrongful conduct or omission arose in connection with commercial activities motivated by financial gain, but only if the wrongful conduct was outrageously egregious, and the likelihood of death or serious bodily injury was fully known and understood by the person, persons, management committee, or board of directors of the wrongdoer who were responsible for making such policy decisions, based on actual knowledge gained by such policy makers from previous instances of death or serious bodily injury arising from the same wrongful conduct or omission, no matter where such previous wrongful conduct or omission occurred.

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

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

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

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

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

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

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

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

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

(2) the amount of economic damages awarded for past or future gross earnings shall be reduced by the amount of federal and state income tax that would be paid on the earnings under tax rates in effect on the date of the injury or death. This subsection applies to cases where, as now is the tax law, such damage recoveries are not taxable. If in the future such damage recoveries become taxable under federal or state law, such damage recoveries shall no longer be subject to reduction under this subsection.

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

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

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

(e) Except as provided in this subsection, if a judgment is paid by periodic payments, the [THE] court shall [MAY] require security be posted [,] in order to ensure that funds are available as periodic payments become due.

The court may not require security to be posted if the state, a self-insured municipality, or an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment.

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

(f) A judgment ordering payment of future damages for personal injury or death by periodic payment shall specify the recipient, the dollar amount of the payments, including any increases in future payments for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be distributed in accordance with a will of the deceased judgment creditor accepted into probate,or under the intestate laws of the state if the deceased had no will. In this subsection, "inflation" means the change in the Consumer Price Index for Anchorage, all items index, compiled by the Bureau of Labor Statistics, United States Department of Labor.

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

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

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

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

(3) the benefit consists of death benefits paid under life insurance.

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

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

(b) A person defending a claim may introduce into evidence at trial an amount paid or payable as a benefit to the claimant as a result of the personal injury or death under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health, sickness, disability, accident, or income-disability insurance; insurance that provides health benefits or income-disability coverage; and a contract or agreement of a group, organization, partnership, or corporation, or other collateral source, to provide, pay for, or reimburse the

cost of medical, hospital, dental, or other health care services, disability, or lost wages. However, evidence of a collateral source set forth in subsections (a)(1)-(5) of this section may not be introduced into evidence at trial.. If a person defending a claim elects to introduce evidence described in this subsection, the claimant may introduce evidence of the amount that the claimant has paid or contributed to secure the claimant's right to the collateral benefit, including the cost to the claimant resulting from depleted or exhausted coverage.

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

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

(a) In all actions involving fault of more than one person [PARTY TO THE ACTION], including third-party defendants and persons who have been released under AS 09.17.091 [AS 09.16.040], the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

(2) the percentage of the total fault [OF ALL OF THE PARTIES TO EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant, [AND] person who has been released from liability under AS 09.17.091, or other person responsible for the damages to each claimant regardless of whether the other person, including an employer, is or could have been named as a party to the action [AS 09.16.040].

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each person [PARTY] at fault, and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.091 [AS 09.16.040], and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault as determined under (a) of this section. An assessment of a percentage of fault against a person who is not a party may only be used as a measure for accurately determining the percentages of fault of a named party. Assessment

of a percentage of fault against a person who is not a party does not subject that person to civil liability in that action and may not be used as evidence of civil liability in another action.

* Sec. 19. AS 09.17 is amended by adding a new section to read:

Sec. 09.17.091. **Effect of release.** When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons civilly liable for the same injury or the same wrongful death

(1) it does not discharge any of the other persons from liability for the injury or wrongful death unless its terms so provide; but it reduces the total amount awarded by the jury or court to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the person to whom it is given from all liability for contribution to any other person.

* Sec. 20. AS 09.30.065 is amended to read:

Sec. 09.30.065. **Offers of judgment.** At any time more than 10 days before the trial begins either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is not more favorable to the offeree than the offer, the interest awarded under AS 09.30.070 and accrued up to the date judgment is entered shall be adjusted as follows:

(1) if the offeree is the party making the claim, the interest rate shall be 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 ten 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 six 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 three 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 ten 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 six 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 three percent [INCREASED BY FIVE PERCENT A YEAR].

(3) If the interest rate adjustment in subsections (1) or (2) of this section results in a negative interest rate, the amount of the judgment attributable to noneconomic and punitive damages (if the offeree is the party making the claim) shall be reduced by an amount equivalent to such negative interest rate in addition to the interest rate reduction of this section. If the offeree is the party defending against the claim, the amount of the judgment attributable to noneconomic and punitive damages shall be increased by an amount equivalent to such negative interest rate in addition to the interest rate increase of this section.

* Sec. 21. AS 09.30.070(a) is amended to read:

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

* Sec. 22. AS 09.30.070 is amended by adding a new subsection to read:

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

* Sec. 23. AS 09.55.535(k) is amended to read:

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

* Sec. 24. AS 09.20 is amended by adding a new section to read:

Sec. 09.20.185. **Expert witness qualification.** Except as provided under (b) of this section, in an action based on professional negligence, a

person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness is a professional who is licensed in this state or in another state or country and is

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

(2) certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue, unless there is no such board which can make such certifications in the particular field or matter at issue.

*Sec. 25. AS 09.55.560(1) is amended to read:

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08..68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed inder AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; [AND] an employee of a health care provider acting within the course and scope of employment; an ambulatory surgical facility and other organizations whose primary purpose is the delivery of health care, including, but not limited to, health maintenance organizations, individual practice associations, integrated delivery systems, preferred provider organizations/arrangements, and physician hospital organizations.

* Sec. 26. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

* Sec. 27. AS 09.60 is amended by adding a new section to read:

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

* Sec. 28. AS 09.65 is amended by adding a new section to read:

Sec. 09.65.095. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES. (a) A hospital is not liable for civil damages as a result of an act or omission by a health care provider who is not an employee or actual agent of the hospital if the hospital provides notice that the health care provider is an independent contractor. The notice required by this subsection must be posted conspicuously in all admitting areas of the hospital, published at least annually in a newspaper of general circulation in the area, and must be in substantially the following form:

Notice of Limited Liability

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

(List specific health care providers)

The hospital is responsible for exercising reasonable care in granting staff privileges to practice in the hospital, for reviewing those privileges on a regular basis, and for taking appropriate steps to revoke or restrict privileges in appropriate circumstances. The hospital is not otherwise liable for the acts or omissions of a health care provider who is an independent contractor.

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

(c) In this section,

(1) "health care provider" means a doctor of medicine, psychologist, osteopath, dentist, optometrist, chiropractor, optician, pharmacist, podiatrist, or certified registered nurse anesthetist, who is licensed in this state;

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

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

* Sec. 29. AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A FELONY, OR WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS. A person who suffers personal injury or death may not recover damages for the personal injury or death if the injury or death occurred while the person

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

(b) was engaged in conduct that would constitute the commission of an unclassified felony or a class A or class B felony for which the person was not convicted and if

(1) the conduct substantially contributed to the injury or death; and

(2) the conduct is proven by the defendant in the civil trial by clear and convincing evidence; or

(c) was fleeing after the commission, by that person, of conduct that would constitute an unclassified felony or a class A or class B felony, or being apprehended for conduct that would constitute an unclassified felony or class A or class B felony, if

(1) the conduct during the flight or apprehension substantially contributed to the injury or death; and

(2) the conduct that would constitute a felony is proven by the defendant at the civil trial by clear and convincing evidence; or

(d) was convicted, including conviction based on a guilty plea or pleas of nolo contendere, of operating a vehicle, aircraft or watercraft while under the influence of intoxicating liquor, or any controlled substance in violation of AS 28.35.030, and the conduct substantially contributed to the injury or death; or was engaged in conduct that would constitute a violation of AS 28.35.030 for which the person was not convicted if the conduct substantially contributed to the injury or death and the conduct is proven by the defendant in the civil trial by clear and convincing evidence.

*Sec. 30. AS 18.23.070(5) (A) is amended to read:

(5) "Review organization" means

(A) a [HOSPITAL] governing body or a committee whose membership is limited to health care providers and administrative staff, except where otherwise provided for by state or federal law, and that is established by a hospital, by an ambulatory surgical facility, by a clinic, by one or more state or local associations of health care providers, by an organization of hgealth care providers from a particular area or medical institution (including , but not limited to Health Maintenance Organizations, Individual Practice Associations, Integrated Delivery Systems, Preferred Provider Organizations/Arrangements and Physician Hospital Organizations), or by a professional standards review organization established under 42 U.S.C. 1320c-1, to gather and review information relating to the care and treatment of patients for the purposes of

(i) evaluating and improving the quality of health care rendered in the area or medical institution;

(ii) reducing morbidity or mortality;

(iii) obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness, and injuries;

(iv) developing and publishing guidelines showing the norms of health care in the area or medical institution;

(v) developing and publishing guidelines designed to keep the cost of health care within reasonable bounds;

(vi) reviewing the quality or cost of health care services provided to enrolees of health maintenance organizations;

(vii) acting as a professional standards review organization under 42 U.S.C. 1320c;

(viii) reviewing, ruling on, or advising on controversies, disputes, or questions between a health insurance carrier or health maintenance organization and one or more of its insured or enrollees; between a professional licensing board, acting under its powers of discipline or license revocation or suspension, and a health care provider licensed by it when the matter is referred to a review organization by the professional licensing board; between a health care provider and the provider's patients concerning diagnosis, treatment, or care, or a charge or fee; between a health care provider and a health insurance carrier or health maintenance organization concerning a charge or fee for health care services provided to an insured or enrollee; or between a health care provider or the provider's patients and the federal or a state or local government, or an agency of the federal or a state or local government

(ix) acting on the recommendation of a credential review committee or a grievance committee;

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

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

*Sec. 32. AS 21.89.100 is amended by adding a new section to read:

(h) When an insured is represented by independent counsel, the insurer may settle directly with the plaintiff, provided the settlement includes all claims based upon the allegations for which the insurer previously either reserved its position as to coverage or accepted coverage, regardless of whether or not the settlement extinguishes all claims against the insured.

*Sec. 33. AS 09. is amended by adding a new chapter to read:

Chapter 42. **Alternate Dispute Resolution.**

Sec. 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.**

(a) The Alaska Judicial Council shall establish a pilot program under this chapter for the submission of no more than __% of the tort and __% of the contract cases filed after January 1, 1998 in the Superior Court for the Third Judicial District. The program shall operate for ___ years.

(b) In establishing the pilot program, the Alaska Judicial Council shall confer with the Alaska Supreme Court, the Alaska Court System, the Alaska Dispute Settlement Association, other states which have alternative dispute resolution programs, and whomever else may be appropriate to contribute to the successful establishment of the program.

(c) The Alaska Judicial Council shall develop the minimum qualifications for a person to be listed on the roster of persons determined to meet those qualifications, together with a schedule of fees to be charged. Nonlawyers shall, if they meet the minimum qualifications, be permitted to be listed on the roster.

(d) All persons who are listed on the roster in subsection (c) above have judicial immunity for conducting the alternative dispute resolution procedures to the same extent as judges have immunity in Alaska.

(e) The Alaska Judicial Council shall establish procedures for ensuring the confidentiality of all matters disclosed during alternative dispute resolution. Matters disclosed during alternative dispute resolution proceedings are not admissible in subsequent proceeding in the event of no resolution under this chapter, unless such matters are discoverable under the Alaska Rules of Civil Procedure.

(f) Fees and costs to conduct an alternative dispute resolution proceeding under this chapter shall be shared equally among the parties to the case, unless a party is determined to be an indigent by the trial court, in which case payment shall be made at public expense under procedures to be developed by the Alaska Judicial Council. Fees and costs borne at public expense under this subsection shall constitute a lien on any recovery by the indigent party. Reimbursement shall be paid first from the recovery.

(g) The procedures to be developed shall establish standards for the timely referral to alternate dispute resolution by the trial court. The alternative dispute resolution shall terminate no more than 100 days after the defendant's answer is served, unless the trial court grants a time extension in an exceptional case for good cause shown. The alternative dispute resolution proceeding shall be limited to no more than 12 hours, unless the parties mutually agree to a longer period.

(h) The Alaska Judicial Council shall evaluate the alternate dispute resolution procedure annually, and submit a written report to the Governor and to the judiciary committees of both houses of the Alaska Legislature. The evaluation shall measure the overall success of the project

in terms of its ability to quickly, inexpensively and efficiently resolve civil disputes. It shall also report on the satisfaction of the parties to the cases, and the expenditure of court resources, including amounts paid at public expense for the benefit of indigents and the recoupment under subsection (f) of this section.

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

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

*Sec. 34. AS 09.55.536(c) is amended to read:

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

(1) Why did the claimant come [WHAT WAS THE DISORDER FOR WHICH PLAINTIFF CAME] to medical care?

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

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

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

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

(6) What specifically caused the medical injury?

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

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

*Sec. 35. AS 09.55.536(f) is amended to read:

(f) Discovery may not be undertaken in a case until the report of the expert advisory panel is received, or 60 days after selection of the panel, whichever first occurs. However, the court may relax this prohibition upon a showing of good cause by any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant it an additional 30 days.

*Sec. 36. AS 09.55.536 is amended by adding a new subsection to read:

(i) This section applies regardless of whether a party in the action or the health care provider whose professional services are the subject of the action is a government entity or in the public or private sector. Nothing stated in this subsection is intended to waive any prohibition against the imposition of punitive damages.

*Sec. 37. AS 09.17.900 is amended to read:

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

*Sec. 38. 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.

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

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

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

(c) The director shall adopt regulations to implement and interpret this section, including requiring insurers doing business in the state to provide information necessary for the division of insurance to carry out its responsibilities under (a) and (b) of this section.

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

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

*Sec. 40. AS 09.50.280 is amended to read:

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

*Sec. 41. Alaska Rule of Civil Procedure 16.1(c) is amended to read:

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

(1) that the issues in the case have actually been joined;

(2) that all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;

(3) that the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in paragraph (d) of this rule has been completed;

(4) whether trial by jury has been timely demanded;

(5) the estimated number of days for the trial, including estimates for each party's case and for jury selection;

(6) the names, addresses, and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;

(7) which, if any, statute or rule entitles the case to preference on the trial calendar; and

(8) that the parties have complied with Rule (k) of this rule.

*Sec. 42. Alaska Rule of Civil Procedure 16.1(n) is repealed and reenacted to read:

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

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

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

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

(4) whether a scheduling conference is unnecessary;

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

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

*Sec. 43. Alaska Rule of Civil Procedure 41(a) is amended by adding a new paragraph to read:

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

of all parties who have appeared in the action. The requirements of this paragraph do not apply to the types of cases listed in AS 09.68.130(c).

*Sec. 44. Alaska Rule of Civil Procedure 72.1(g) is amended to read:

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

* Sec. 45. Alaska Rule of Civil Procedure 95(b) is amended to read:

(b) In addition to the authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed $10,000 against any attorney who practices before it for failure to comply with these rules or any rules promulgated by the supreme court.

*Sec. 46. Alaska Rule of Civil Procedure 95 is amended by adding a new subsection (c) to read:

(c) In addition to the authority under (a) and (b) of this rule, a court may, after the notice, opportunity and hearing requirements of (b) of this rule have been complied with, if requested, enter judgment against a party who, either by the party or through the attorney for the party, intentionally makes a false statement of material fact in violation of Rule 11 of these rules. The judgment entered shall be limited to the issue which was intentionally misrepresented.

*Sec. 47. Alaska Rule of Appellate Procedure 511 is amended by adding a new subsection to read:

(e) **Settlement Information**. If a dismissal under (a) or (b) of this rule is the result of compromise or other settlement between the parties, the parties shall submit to the Alaska Judicial Council the information required under AS 09.68.130. A dismissal by agreement under (a) of this rule must be accompanied by a certification signed by the attorneys of record for all parties that the information required under AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the appellant or petitioner made under (b) of this rule must be accompanied by such a certification signed by the appellant's or petitioner's attorney of record. The requirements of this subsection do not apply to the types of cases listed in AS 09.68.130(c).

* Sec. 48. AS 09.55.548 is repealed.

* Sec. 49. AS 09.17.080(a), as amended by sec. 14 of this Act, has the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer

the special interrogatory listed in AS 09.17.080(a)(2), regarding the percentages of fault to be allocated among the parties.

* Sec. 50. AS 09.30.065, as amended by sec. 17 of this Act, has the effect of amending Alaska Rule of Civil Procedure 68 by providing that if a judgment is not more favorable to the offeree than the offer, the offeree shall pay costs as allowed under the Alaska Rules of Civil Procedure and reasonable attorney fees incurred by the offeror, and by deleting interest adjustments.

* Sec. 51. AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest may not be awarded for future economic or noneconomic damages.

* Sec. 52. AS 09.55.551, enacted by sec. 21 of this Act, has the effect of amending Alaska Rule of Evidence 702 by requiring certain qualifications from a person testifying as an expert medical witness.

* Sec. 53. AS 09.55.553(b), enacted by sec. 21 of this Act, has the effect of amending Alaska Rule of Evidence 702 by prohibiting certain testimony by a medical expert.

* Sec. 54. AS 09.68.125, as enacted in sec. 26 of this Act, has the effect of amending Alaska Rule of Civil Procedure 95, by requiring imposition of sanctions for certain failures to sign pleadings, motions, or other papers.

* Sec. 55. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application of a provision of this Act to any person or circumstance is held invalid, the remainder of this Act and the application to other persons shall not be affected.

* Sec. 56. APPLICABILITY. This Act applies to all causes of action accruing on or after the effective date of this Act.

* Sec. 57. This Act takes effect July 1, 1997.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

(c) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*** Sec. 20.** AS 0[illegible]20 is amended by adding a new section to read:

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

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

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

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

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

Sec. 09.30.065. Offers of judgment. At any time more than 10 days before the trial begins, either the party making a claim or the party defending against a claim may serve upon the adverse party an offer to allow judgment to be entered in complete satisfaction of the claim for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service, and the clerk shall enter judgment. An offer not accepted within 10 days is considered withdrawn, and evidence of that offer is not admissible except in a proceeding to determine the form of judgment after verdict. If the judgment finally entered on the claim as to which an offer has been made under this section is **at least five percent, less** [NOT MORE] favorable to the offeree than the offer, **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.** [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notice of Limited Liability

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

(List specific emergency room physicians)

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

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

(d) In this section,

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

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

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

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

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

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

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

(A) substantially contributed to the personal injury or death; and

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

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

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

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

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

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

* **Sec. 38.** 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 the settlement 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) That the issues in the case have actually been joined;

(2) That all parties have completed discovery or have a reasonable opportunity to do so within the next 60 days;

(3) That the procedure for listing witnesses and exhibits and providing exhibit copies, as set forth in [PARAGRAPH] (d) of this rule has been completed;

(4) Whether trial by jury has been timely demanded;

(5) The estimated number of days for the trial, including estimates for each party's case and for jury selection;

(6) The names, addresses and telephone numbers of all attorneys and pro se parties who are responsible for the conduct of the litigation;

(7) Which, if any, statute or rule entitles the case to preference on the trial calendar;

(8) That the parties have complied with [PARAGRAPH] (k) of this rule.

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

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

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

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

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

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

(4) whether a scheduling conference is unnecessary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*** Sec. 58.** AS 09.17.0 ı), as amended by sec. 16 of this Act, has the effect of amending Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated among the claimants, defendants, third-party defendants, persons who have been released from liability, or other person who is responsible for the damages.

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

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

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

*** Sec. 62.** ALTERNATIVE DISPUTE RESOLUTION. (a) 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.

(b) 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 Act. The report must include specific types of programs, specific types of cases within each program that 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 neutral parties, including nonlawyers, who will provide dispute resolution services under the program.

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

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

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

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