

SCOMM

101A:20

Alaska State Medical Association

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April 14, 1997

Honorable Brian Porter
Alaska State House of Representatives
State Capitol, Room 216
Juneau, Alaska 99801

Post-It® Fax Note	7871	Date	4/14/97	Refers to
To	Geoff Bullock	From	Jim Jordan	
Co/Dept		Co		
Phone #		Phone #	561-2662	
Fax #		Fax #	561-2063	

RE: Work Draft dated 4/14/97
For SC'S CSSSHB 58 ()

Dear Representative Porter:

We have received a copy of your work draft referenced above late this afternoon so consequently had not a great deal of time to study each section. However, the revised section pertaining to noneconomic damages is problematic.

Section 9 on p. 5 of your work draft provides for a two tiered system with two tiers internal to each of those tiers. It would seem that the internal tiers would cause more extensive litigation as arguments would ensue as to what a person's life expectancy would be. For example, would the injured or deceased person's life expectancy always be that of a normal person, without regard to his or her health status prior to the incident that caused the legal action (e.g., what if the person had terminal cancer prior to the auto accident that caused the injury or death at action?) An absolute cap similar to those in the version which passed out of Senate Finance this past Friday does not present such difficulties.

As the Alaska State Medical Association provided in its written testimony in both the House and Senate, the study done by the American Academy of Actuaries found that the most important factor in meaningful tort reform was an absolute cap on noneconomic damages. Additionally the same study also concluded:

"For the reform to be effective in reducing costs, the cap on noneconomic awards should be established on a per-medical-injury basis at a level low enough to have an impact (e.g., \$250,000)."

It would seem we should try to avoid increasing the transactional costs as this section would seem to do.

Sincerely,



by James J. Jordan
For: Alaska State Medical Association
cc: Board of Trustees

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1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
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FAX COVER SHEET

To: Attorney General Bruce M. Botelho
(907) 465-2075

From: Assistant Attorney General Gail T. Voigtlander

Date: April 13, 1997

No. of Pages: 8

Message: See attached signed version of resolutions agreement

SAVE

Proyer Holmes
Feldman
Self Agent / recovers

HB 58 PROPOSED RESOLUTION PACKAGE

Section	Topic	Comment
1	Purpose	Will need cleaning up after the final content of the bill is determined [See Sections 3, 5, 6, 7, and 9]
2	Bank Interest rate	OK
3	6 yr S/Limitations	OK
4	3 yr S/Limitations	OK
5	S/Repose	11 years Add "grossly negligent" to (a)(1) to keep parallel with exclusions in (b)(1)(B) Add minority/juvenile tolling exclusion to (c) Change "prolonged exposure to hazardous waste" to "exposure to hazardous substance" in (b)(1)(A) Insert "reckless act" in (b)(1)(B) Change "fraudulent misrepresentation" to "misrepresentation" in (b)(1)(C)
6	2 yr S/Limitations	OK
7	Juvenile Tolling	Delete; unnecessary if Section 8 is deleted

8	Juvenile Tolling	Statute of limitations on juvenile claims is 10 years from the date the parent or guardian reasonably knew or should have known of all of the elements of the juvenile's claim, including, but not limited to, the extent of the injury and damages sustained, or until the age of 18, whichever occurs first.
9	Non-economic Damages	Retain existing cap at \$500K for non-serious injuries. Modify language in Task-Force Bill, setting threshold for exceeding cap as "serious, permanent physical impairment or serious disfigurement" Impose new cap for serious injuries as the greater of: (a) \$1.5M, or (b) Three-times the total of special damages (defined as past and future economic losses, medical expenses, etc.), or (c) \$75K times the number of years of projected life expectancy
10	Punitive Damages Standard	Delete; restore Supreme Court standard for punitives.
11	Punitive Damages	Retain Task Force approach; provision in subsection (g)(2) applies only if average net income exceeds \$1M/per year Add allocation of punitives to State provision: - Recovery less than \$1M, 0% to State - Recovery of amounts over \$1M, but less than \$5M, 20% to State - Recovery of amounts over \$5M, but less than \$10M, 30% to State - Recovery of amounts over \$10M, 40% to State

All amounts to State, after payment of all costs and fees incurred in connection with securing the award

The schedule applies to the amount of punitive damages recovered by each individual litigant, not the aggregate of all amounts awarded to all litigants in a case

12 Taxes Delete

13 Periodic Pmts Delete

14 Periodic Pmts Delete

15 Periodic Pmts Delete

16 Collateral Benefits Delete

17 Allocation of fault New Proposal:

- (a) Fault can be allocated to a person or entity the court dismisses from the action for lack of jurisdiction.
- (b) Exceptions: "Non-party" fault can not be allocated to either the U.S. Government (or any agency, affiliate, representative, or instrumentality of the U.S. Government) or to any component part manufacturer in a products case.
- (c) Third-parties must be identified within 180 days from service of complaint.
- (d) Statute of limitations extended for 6 months from date of service of complaint to allow defendant time to name third-parties; plaintiff shall be entitled to judgment against any third-parties named and found liable in accordance

with their allocated portion of fault.

18	Allocation of fault	<u>See</u> Section 17 above
19	Allocation of fault	<u>See</u> section 17 above
20	Allocation of Fault To Intentional Tortfeasor	Limited to claims arising after the effective date of the act.
21	Expert witness	Delete; Substitute: Any physician testifying in a civil or criminal action or rendering any medical services within the State of Alaska, including performing Independent Medical Examinations, shall be subject to the provisions of AS 08.64.010 et seq.
22	O/J	Delete
23	O/J	Delete
24	Interest Rate	OK [check w/Mike Burns]
25	Interest on Future Damages	OK [confirm existing law]
26	Interest state	OK
27	Interest rate	OK
28	Arbitration	OK

29	Govt health care	OK
30	Med Adv Panel	OK
31	Med Adv Panel	OK
32	Med Adv Panel	OK
33	Health Care Prof Defined	OK
34	Prof Negligence Defined	OK [probably, but need to confirm effect]
35	Contingent Fee on Punitives	Delete
36	Electric Utilities	OK
37	Jackson/Powers	Increase insurance requirement to \$1M/\$2M
		Applies to all physicians, other than those expressly selected by the patient or serving at the patient's express request for a particular/specific physician.
38	Felony/alcohol	OK
39	Settlement Info	OK; but both Roger and Jeff believe that collection of data on attorneys fees is likely to be burdensome and unhelpful (since plaintiffs' fees can be discerned from the amounts of judgments, which already will be reported to the Judicial Council under other provisions of this section).
		Whatever information is collected, this section should

be narrowed and applied to personal injury and wrongful death cases.

If attorneys fee information is collected, change fees paid to fees charged/billed

40	Insurance info	OK
41	Independent Counsel	OK
42	Indep counsel	OK
43	Adjustment of Workers' Comp Lien	Delete
44	6 month notice	OK
45	Trial setting	OK
46	Meeting of parties	OK
47	Settlement Info	OK; but see Section 39 notes
48	Discovery in Med cases	OK
49	Sanctions	Increase to \$50,000
50	Material Misstatements	Delete
51	Settlement	

51	Settlement Info	OK; see section 39
52-62	Rule clean ups	OK (need to be checked)
63	ADR	OK
64-65	Applic/Severab	OK (check applicability of intentional tortfeasor issue -- see Section 20)
—	Exxon Valdez Non-Applicability	New language added Fri night in Senate Finance to attempt to preclude any effect on the Exxon Valdez verdict or federal admiralty cases
—	District Court Procedures	Incorporate compromise by which Task Force recommendations on changes in procedures are included, but jurisdictional limit stays the same.

Draft
April 13 @ 12:15AM

4/13/97
Recommended
Adoption
[Signature]