

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.05 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997

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

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

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

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

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

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 Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

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

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

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

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

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

19 (4) whether a scheduling conference is unnecessary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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 09.17.080(a), 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.

1 * **Sec. 60.** AS 09.30.065, as amended by secs. ²²~~21~~ and ²³~~22~~ of this Act, has the effect of
2 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and
3 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
4 eliminating provisions relating to interest and by providing that a subsequent offer revokes
5 prior offers.

6 * **Sec. 61.** AS 09.30.070(c), added by sec. ²⁸~~24~~ of this Act, has the effect of amending
7 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
8 awarded for future economic or noneconomic damages.

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

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

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

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

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

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

FAX TRANSMITTAL

TO: Representative Therriault, 465-3884

Pages (including cover) 4

SECTIONAL ANALYSIS
OF
HOUSE BILL 58

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March 13, 1997

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SECTIONAL ANALYSIS OF CSSH H.B. 58**Alaska Academy of Trial Lawyers
Alaska Action Trust**

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

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

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

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

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

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

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

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

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

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

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

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

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

SCOMM

101A:7

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/27/97

Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) This section does not apply if

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

27 (A) prolonged exposure to hazardous waste;

28 (B) an intentional act or gross negligence;

29 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 Notice of Limited Liability

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

3 (List specific emergency room physicians)

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

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

12 (d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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).

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

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

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

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

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

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

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

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

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

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

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

19 (4) whether a scheduling conference is unnecessary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE PORTER

TO: CSSSHB 58(JUD)

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

A#1
adopted
3-14-97

AMENDMENT

BY REPRESENTATIVE PORTER

OFFERED IN THE HOUSE
TO: CSSH 58(JUD)

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

2 Insert "; or

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

4 Page 4, lines 11 - 30:

5 Delete all material.

6 Renumber the following bill sections accordingly.

7 Page 5, following line 8:

8 Insert new bill sections to read:

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

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

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

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

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

1 Insert "sec. 21"

2 Page 25, line 1:

3 Delete "secs. 21 and 22"

4 Insert "secs. 22 and 23"

5 Page 25, line 6:

6 Delete "sec. 24"

7 Insert "sec. 25"

*Deleted § 65.
Effective date.*

#3

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 3, line 11:

Delete "eight"

Insert "ten"

Page 3, line 4:

Delete "eight"

Insert "ten"

Enrolled

#1

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

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

2 Insert "; or

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

W. Davies

#5

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 4, delete lines 11 - 30

W/drawn

#6

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

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

2 Insert " or (e)"

3 Page 5, line 18:

4 Delete "In"

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

6 Page 5, following line 27:

7 Insert a new subsection to read:

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

Kelly: KAC
for the
A-3

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH B 58(JUD)

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



#6

AMENDMENT

OFFERED IN THE HOUSE
TO: CSSSHB 58(JUD)

BY REPRESENTATIVE DAVIES

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

W/d

#9

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

1 Page 6, lines 8 - 9:

2 Delete "four times the amount of compensatory damages awarded or \$600,000,
3 whichever is greater,"

4 Insert "three times the annual net profit reasonably attributable to the commercial
5 activity"

the result is for
Failed

#10

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 6, line 21:

Delete through page 7, line 4

Therrell
for
filed

#11

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (JUD)

Page 7, line 8:

Following "\$100,000"

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

Therault
yes.
Failed

#12

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

1 Page 9, line 28, following "action":

2 Insert "; in this paragraph, "other person responsible" does not include a person

3 protected from a civil action under AS 09.10.055"

HERBERT NO. 3-7 FAILED

~~It's~~ A policy decision
of people's initiative
of allocating fault to
whomever is responsible
v. trying to stick it
all to whomever
maintained it?

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.

CORRECTION

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



Central Microfilm Services
Department of Education & Early Development
State of Alaska

#12

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58(JUD)

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the court no
3-7 failed

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maintained it?

T=NO

#13 = Delete offer of judgment
Failed

#14 = w/ draws

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER



MEMBER
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March 13, 1997

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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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska State Legislature



Official Business

House Majority Leader

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

February 27, 1997

To: Representative Gene Therriault
Co-Chairman, House Finance Committee

Fm: Representative Brian Porter
House Majority Leader

Re: Hearing on CSHB 58: Tort Reform Bill [Schedule pending referral]

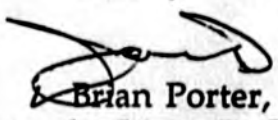
I am pleased to notify you that HB 58 passed the House Judiciary Committee this morning. The committee substitute of HB 58 will be ready in a day or two.

The bill will be read over and ready to be heard by Wednesday, so please schedule the hearing for any time after Wednesday.

For purposes of opening the finance committee's file, please find enclosed the following documents:

1. Sponsor Statement.
2. Sectional Analysis (Will be updated to reflect the four amendments which will appear in the committee substitute).
3. Fiscal Notes and supporting letters will be transmitted as soon as possible.

Thankyou for your assistance.


Brian Porter,
by James D. Sourant, legislative aide

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER



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

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

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

Tillinghast, a consulting actuarial firm reported in 1992 that only about 50% of damage awards 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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First Supplemental Sectional Summary

of

CS of SSHB 58 (FIN)

An Act Relating to Civil Actions

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

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

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

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

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

Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

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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 existing 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.

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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.

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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 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 its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

Section 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 consistency change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

Section 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



Official Business

House Majority Leader

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

February 27, 1997

To: Representative Gene Therriault
Co-Chairman, House Finance Committee

Fm: Representative Brian Porter
House Majority Leader

Re: Hearing on CSHB 58: Tort Reform Bill [Schedule pending referral]

Attached hereto please find the three fiscal notes, together with various letters of support and other supporting materials.

Thank you for your assistance.


Brian Porter,
by James D. Sourant, legislative aide

FISCAL NOTE

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

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Administration
 Title: "An Act relating to civil actions; amending Rules 49 and BRU: Risk Management
68....."

Sponsor: Representatives Porter, Cowdery
 Requestor: House Judiciary Component: Risk Management
 COMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

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

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

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

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

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

Phone: 465-5723

Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 2/20/97

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FISCAL NOTE

No. 2

Bill Version: CSSSHB 58(JUD)

(H) Publish Date: 2/27/97

**STATE OF ALASKA
1997 LEGISLATIVE SESSION**

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

Expenditures/Revenues

(Thousands of Dollars)

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

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

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

FUND SOURCE

(Thousands of Dollars)

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

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

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by: Joan M. Kasson
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

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

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FISCAL NOTE

No. 3Bill Version: CSSSHB 58 (JUD)(H) Publish Date: 2/27/97**STATE OF ALASKA****1997 LEGISLATIVE SESSION**

Revision Date: _____

Department: Commerce and Economic DevelopmentTitle: An Act relating to civil actions: relating to
independent counsel provided under an insurance policy.BRU: InsuranceSponsor: PorterComponent: Insurance

Requestor: _____

COMPONENT SERIAL NO. _____

324

Expenditures/Revenues

(Thousands of Dollars)

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

CAPITAL EXPENDITURES**CHANGE IN REVENUES****FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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

0.0**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation will have a slight fiscal impact which can be managed by the division. The division currently requires the information requested in Section 38 of the legislation but will have to implement regulations for new compilation and reporting requirements.

Prepared by: _____

Marianne K. Burke, Director

Division: _____

Insurance

Approved by Commissioner: _____

William L. Hensley

Agency: _____

Commerce and Economic Development

Phone: _____

465-2515

Date: _____

2-20-97

Date: _____

2-20-97

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