

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.08 SCOMM-101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997 570



Fall
1996

ISSUE BRIEF

AMERICAN ACADEMY OF ACTUARIES

Medical Malpractice Tort Reform: Lessons from the States

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

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

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

Findings

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

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

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

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

Members of the Work Group on Medical Malpractice Reform: James D. Hurley, ACAS, MAAA; William E. Burns, ACAS, MAAA; Linda A. Dembiec, FCAS, MAAA; Aileen C. Lytle, FCAS, MAAA; and Edward M. Wrobel Jr., FCAS, MAAA.



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

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

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

California

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

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

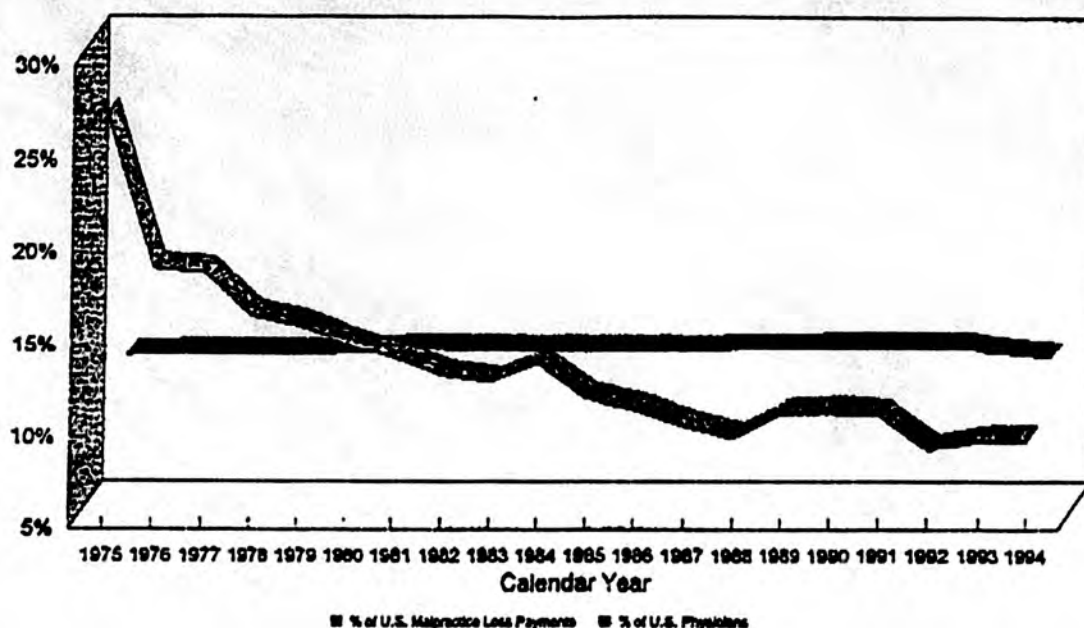
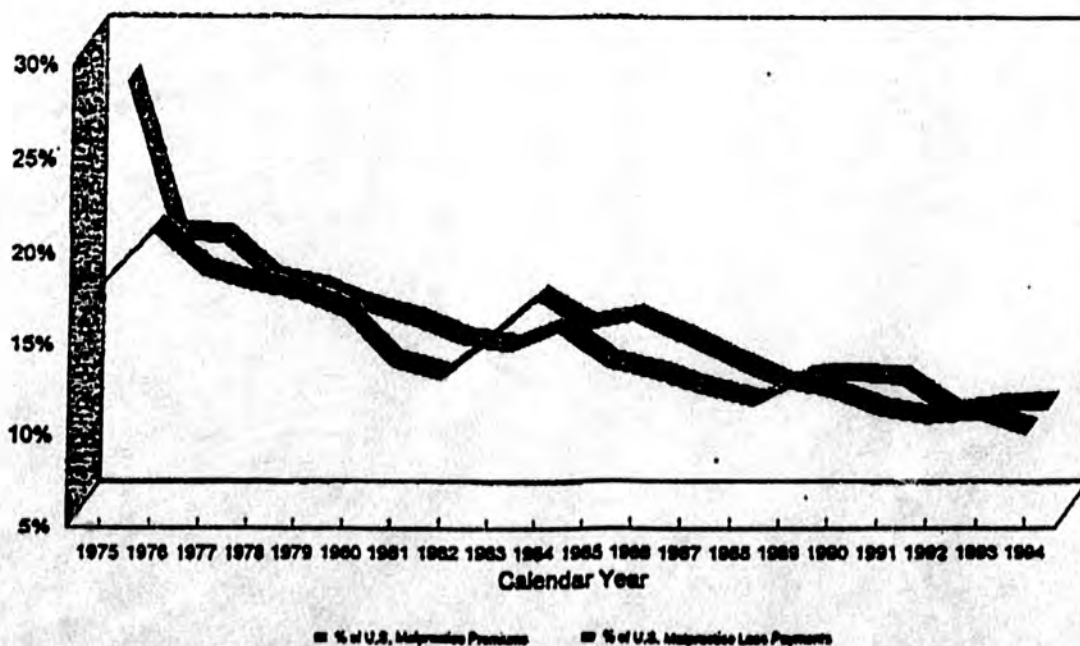


Exhibit 2
Malpractice Premiums and Malpractice Loss Payments in California as a Percentage of the U.S. Total,



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

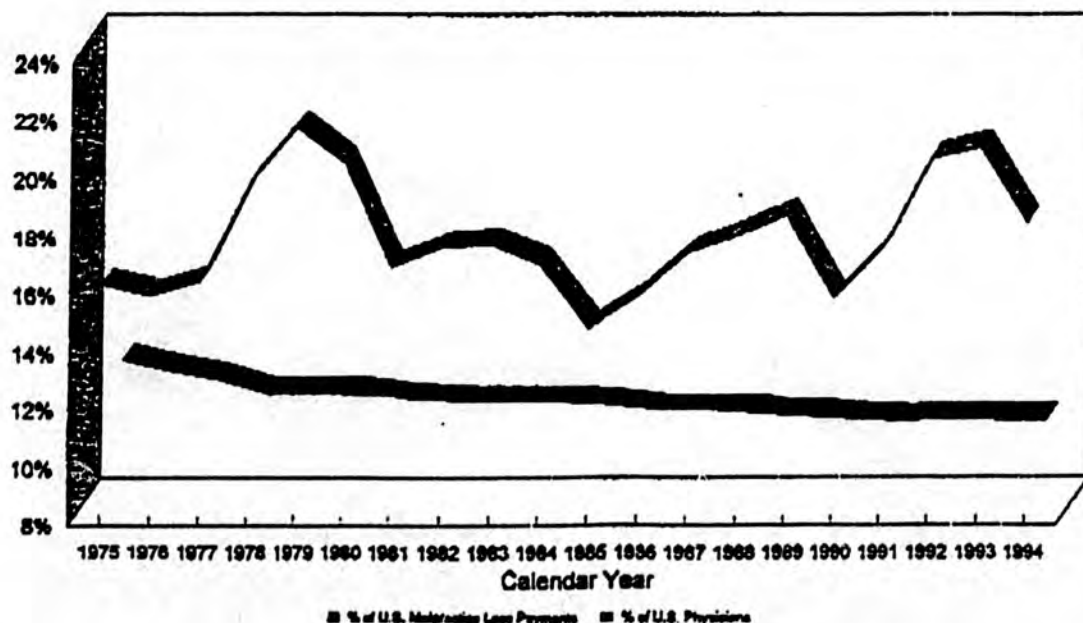
Many opponents of tort reform argue that insurance premiums do not drop after medical malpractice reform. Indeed, costs and premiums normally rise with inflation, and tort reform may only slow the increases. However, the California data show that premiums declined as losses declined. Exhibit 2 compares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

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

New York

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

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

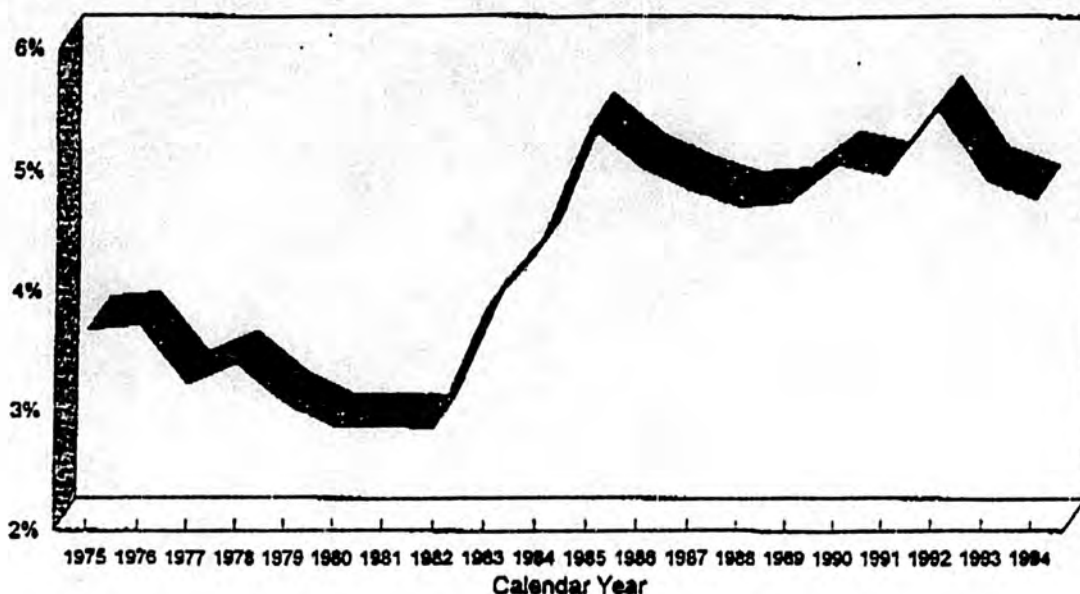


Ohio

The final example is Ohio, with data presented in Exhibit 4. The data show a gradual decline in costs following tort reform in 1975. The Ohio cap on damages came under court challenge in 1982, result-

ing in sharp increases that reached a peak in 1985 when the cap was finally overturned. Since 1985, costs in Ohio have remained high, with no signs of decreasing. Again, the data appear to support a tort reform package and the specific benefit of a cap on noneconomic damages.

Exhibit 4
Malpractice Loss Payments in Ohio as a Percentage of the U.S. Total, 1975-94



Conclusions

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

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

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

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

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

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-0650
Telephone: (907) 343-4545

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL ATTORNEY

March 12, 1997

The Honorable Gene Therrault
STATE CAPITAL, Room 511
Juneau, Alaska 99801-1182

Re: SSHB58 - Tort Reform Legislation

Dear Representative Therrault:

The Municipality of Anchorage is self insured for tort claims. As such, every dollar spent on the defense and resolution of tort claims is paid directly by the taxpayers. Despite earlier tort reform, the Municipality of Anchorage continues to be faced with frivolous lawsuits and in a climate of a back logged court system and increasing defense costs. In particular, there has been a significant increase in frivolous lawsuits against the Anchorage Police Department and individual officers. When the officers are pulled away from their important duties of investigating, fighting, and prosecuting crime to defend against these lawsuits, the safety of the people of this city and state is jeopardized.

For these reasons, the Municipality of Anchorage supports SSHB58, tort reform legislation, which would encourage the efficiency of the Alaska civil justice system by discouraging frivolous litigation while at the same time protecting injured Alaskans' rights to just compensation for injuries and damages caused by the negligent acts of others.

Anchorage supports the comprehensive changes set forth in SSHB58. In particular, those portions of the legislation that the Municipality would like to see implemented are as follows:

1. Section 7. AS 09.10.070(a) which would amend the statute of limitations for lawsuits arising out of damage to personal property to two years instead of the current six years. It is difficult if not impossible to defend against stale claims when memories have faded, personnel have changed, witnesses are gone, and evidence is lost. The Anchorage Police Department, in particular, has been faced with having to defend such claims due to the large amount of property handled by it in the course of a criminal investigation. The current six year statute actually encourages a delay in the bringing of such an action since the current prejudgment interest at 10.5% could potentially result in a windfall to the claimant.

The Honorable Gene Therrault

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2. **Section 8. AS 09.10.070 Non-economic damages.** The changes proposed to this section are fair and would result in reasonable compensation to Alaskans who are injured by the negligent acts of others. The current law results in excessive damage claims that are typically unsupported by facts.
3. **Section 9. AS 09.17020 Punitive damages.** The Alaska Supreme Court has ruled that municipalities are exempt from liability for punitive damages. In an effort to circumvent this law, plaintiffs' attorneys attempt to avoid Anchorage's immunity for punitive damages by suing employees individually and alleging punitive damages against them. There has been a significant increase in such claims in recent years. A legislative change which would streamline litigation by preventing meritless punitive damage claims is strongly supported by Anchorage.
4. **Section 18. AS 09.17.080(c)** Anchorage supports changes to the current law that would allow any person responsible for damages to be assessed a percentage of fault regardless of whether the person is named in a lawsuit. Anchorage has often found itself in a position of acting as a third-party plaintiff to bring the appropriate parties into a lawsuit for a fair determination of fault. This is expensive and time consuming and the proposed legislation would obviate this need and would reduce the costs of defending litigation while at the same time ensuring a just result.
5. **Section 36. AS 09.65.210** Anchorage strongly supports repeal and reenactment of AS 09.65.210 to eliminate potential recovery of damages for personal injury or death if the injury or death occurred while the person was engaged in the commission of a felony. Further, since alcohol and other controlled substances have become an increasing problem in Alaska and across the country, Anchorage encourages the passage of both sections AS 09.65.210(4) and (5) which would reduce or eliminate the need to defend against claims brought by impaired persons who have substantially contributed or caused their own injuries.

Finally, Anchorage supports changes to the law that it would allow an offset for collateral benefits received by a party to avoid a double recovery, the proposed changes to prejudgment interest to avoid the windfall that currently exists regarding prejudgment interest, and more "teeth" in the present offer of judgment law to encourage early and prompt resolution of claims.

The Honorable Gene Therrault

March 12, 1997

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On behalf of the Municipality of Anchorage, the Law Department and the Risk Management Department encourage the passage of SSHB58. I would happy to discuss with you more detail how the proposed changes would impact litigation in this State, and in particular, would impact litigation faced by Anchorage on a day to day basis. Thank you for your attention to these matters.

Very truly yours,



Stephanie Galbraith Moore
Assistant Municipal Attorney

cc: Mary K. Hughes, Municipal Attorney
Harry Sjoberg, Risk Manager



Resource Development Council for Alaska, Inc.

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March 10, 1997

Representative Gene Therriault, co-Chair
Representative Mark Hanley, co-Chair
House Finance Committee
State Capitol
Juneau, AK 99801

Dear Representatives Therriault and Hanley:

RE: Support for CSHB 58, Tort Reform legislation.

The Resource Development Council supports CSHB 58 and urges its passage. RDC has long supported liability reform efforts which will improve Alaska's business climate for natural resource development.

RDC is a statewide, membership-funded, non-profit, pro-development organization working on behalf of Alaska's basic industries, including oil and gas, mining, timber, fishing and tourism. RDC's membership, numbering in the thousands, includes the aforementioned industries, as well as the sectors which support those industries, such as construction, labor and other technical service providers, individuals, Native corporations, and a wide variety of Alaska communities.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.


Becky L. Gay
Executive Director



STRUCTURED
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March 10, 1997

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

Re: HB58

Via Fax: 1-907-465-3884

Dear Representative Therriault:

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

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

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

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

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

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

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

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

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

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

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

Very Truly


Al Tamagni Sr.
Settlement Consultant

encl/ratings



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ADVANTAGES TO THE CLAIMANT/PLAINTIFF:

1. Income — tax-free guaranteed payments;*
2. Avoids risk of mismanagement — insurance industry statistics show that about 25 to 30% of all accident victims ~~completely dissipate their judgments or settlements~~ within two months of recovery, and 90% of them spend it all ~~within five years~~;**
3. Avoids expense and worry with regard to financial loss — provides a secure, low-risk source of money;
4. Convenience of regular payments designed to meet the individual plaintiff's needs;
5. Claimant can receive more money over time than a lump sum settlement;
6. Competitive with other rates of return — see Internal Rate of Return illustration which shows before tax rate-of-return required to match the benefits offered by a structure;
7. Helps avert risk, expense and delay of going to trial;
8. Transfers the risk of outliving one's income to a life insurance company;
9. Benefits may be made higher if injury decreased life expectancy.

ADVANTAGES TO THE DEFENDANT/INSURER:

1. Earlier settlements — including assistance by structured settlement brokers with negotiations and settlement documents;
2. Reduced litigation costs;
3. May assign future liability;
4. Avoids risk and expense of a jury trial;
5. Can make low policy limits more attractive by making payments over time.

* Check with your own tax advisor for confirmation

** The Rutter Group, Ltd. from Flahavan, Rea, Kelly & Tener, "California Practice Guide: Personal Injury" (TRG 1992) Ch. 4



COMP-PARE

1995 Life Insurance Company Rating Definitions

A. M. BEST RATINGS EXPLANATIONS

A++ and A+ (Superior)

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

A and A- (Excellent)

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

B++ and B+ (Very Good)

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

B and B- (Adequate)

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

C++ and C+ (Fair)

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

C and C- (Marginal)

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

D (Very Vulnerable)

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

vulnerable to unfavorable changes in underwriting or economic conditions.

E (Under State Supervision)

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

F (In Liquidation)

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

NA-1 (Limited Data Filing)

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

NA-2 (Less than Minimum Size)

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

NA-3 (Insufficient Operating Experience)

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

NA-4 (Rating Procedure Inapplicable)

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

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

NA-5 (Significant Change)

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

NA-6 (Reinsured by Unrated Reinsurer)

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

NA-7 (Below Minimum Standards)

Replaced by the Best's Rating of D.

NA-8 (Incomplete Financial Information)

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

NA-9 (Company Request)

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

NA-10 (Under State Supervision)

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

NA-11 (Rating Suspended)

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

STANDARD & POOR'S CLAIMS-PAYING ABILITY RATING DEFINITIONS

AAA

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

AA

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

A

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

BBB

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

BB

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

B

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

CCC

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

R (Regulatory Action)

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

"Quantitative" Ratings

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

**MOODY'S CLAIMS-PAYING
RATINGS DEFINITIONS**

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

Aaa

Highest quality.

Aa

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

A

Upper medium grade; adequate security.

Baa

Medium grade; neither highly protected nor poorly secured.

Ba

Judged to have speculative elements.

B

Lack characteristics of the desirable investment.

Caa

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

Ca

Speculative in a high degree; often in default.

C

Lowest rated class.

**DUFF & PHELPS CLAIMS-PAYING
ABILITY RATINGS DEFINITIONS**

AAA

Highest claims paying ability. Risk factors are negligible.

AA+, AA, AA-

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

A+, A, A-

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

BBB+, BBB, BBB-

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

BB+, BB, BB-

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

B+, B, B-

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

CCC

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

OFFICERS
President
Chuck Sullivan
Parker Drilling Company

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General Manager



THE ALLIANCE

4220 'B' Street, Suite 200 • Anchorage, Alaska 99503-5911

Phone (907) 563-2226 • Fax (907) 561-8870

Transmittal by Fax

March 11, 1997

Representative Gene Theriault
Finance Co-Chairman
Alaska State Legislature
Room 511
Juneau, AK 99801

Dear Representative Theriault:

The Alaska Support Industry Alliance is a non-profit trade association representing a broad-based membership doing business within the oil, gas and mining industries. Our mission is to foster and promote the safe and environmentally sound development of natural resources, and to enhance and stimulate the business climate for our 300+ members. Comprised of oilfield service companies, transportation, wholesale and retail sales, professional services, and private citizens, The Alliance is one of the most effective and dominant voices for business in Alaska.

As a state, we are competing for investment dollars on a global basis. We must continue to send the message to potential investors that Alaska is "Open for Business". We can do this by stabilizing the economic climate through fiscal restraint and by stabilizing the legal climate through comprehensive tort reform.

The cost of litigation and liability insurance has a dramatic impact on businesses -- both small and large. The ever-increasing product liability, personal injury suits, and unpredictability of damage awards have caused costs to soar. Tort reform legislation will help control these expenditures while assuring appropriate compensation for persons injured through the fault of others.

Alaska Support Industry Alliance
...for responsible development of Alaska's Oil, Gas & Mineral Resources

**The Alliance
Support Letter/HB #58
Page 2**

Government officials must continue to search for ways to reduce the cost of doing business in Alaska, including a comprehensive review of liability laws affecting the economics of business. We believe House Bill #58, sponsored by Representative Brian Porter, addresses this critical problem with a fair and equitable solution. The Alliance strongly supports HB #58, and ask the House Finance Committee to pass this legislation out of committee, and on to the House floor.

Sincerely,

A handwritten signature in cursive script, reading "Karen Cowart".

**Karen Cowart
General Manager**

cc: Representative Brian Porter

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TESTIMONY IN SUPPORT OF HOUSE BILL 58

PRESENTED BY KAREN COWART, GENERAL MANAGER

MARCH 13, 1997

THANK YOU MR. CHAIRMAN AND COMMITTEE MEMBERS FOR PROVIDING THIS OPPORTUNITY TO SPEAK IN SUPPORT OF HOUSE BILL # 58. MY NAME IS KAREN COWART. I AM THE GENERAL MANAGER OF THE ALASKA SUPPORT INDUSTRY ALLIANCE. THE ALLIANCE IS A NON-PROFIT TRADE ASSOCIATION REPRESENTING A BROAD-BASED MEMBERSHIP ENGAGED IN BUSINESS WITHIN THE OIL, GAS AND MINING INDUSTRIES. OUR MISSION IS TO FOSTER AND PROMOTE THE SAFE AND ENVIRONMENTALLY SOUND DEVELOPMENT OF NATURAL RESOURCES, AND TO ENHANCE AND STIMULATE THE BUSINESS CLIMATE FOR OUR 300+ MEMBERS. WE ARE COMPRISED OF OILFIELD SERVICE COMPANIES, TRANSPORTATION, WHOLESALE AND RETAIL SALES, PROFESSIONAL SERVICES, AND PRIVATE CITIZENS.

OUR 1997 LEGISLATIVE PRIORITIES CONTAIN ONLY THREE ISSUES:

- CONTINUE TO CLOSE ALASKA'S FISCAL GAP;
- SUPPORT LEGISLATION THAT PROMOTES SOUND DEVELOPMENT OF OIL AND GAS; AND
- SUPPORT THE PASSAGE OF COMPREHENSIVE TORT REFORM

FOR REVIEW, I HAVE ATTACHED A COPY OF OUR LEGISLATIVE PRIORITIES PAMPHLET.

WE ARE COMPETING IN TODAY'S MARKET ON A GLOBAL BASIS. IF ALASKA AND OUR INDEPENDENT BUSINESSES ARE TO MEET THE DEMANDS OF THIS GLOBAL ECONOMY, WE BELIEVE WE MUST STABILIZE OUR ECONOMY THROUGH FISCAL RESTRAINT, A BALANCED BUDGET AND A HEALTHY ENVIRONMENT FOR BUSINESS. COMPREHENSIVE TORT REFORM LEGISLATION IS A CRITICAL COMPONENT NECESSARY FOR OUR FUTURE.

THE COST OF LITIGATION AND LIABILITY INSURANCE HAS A DRAMATIC IMPACT ON BUSINESS- BOTH LARGE AND SMALL. THE EVER-INCREASING PRODUCT LIABILITY, PERSONAL INJURY SUITS , AND UNPREDICTABILITY OF DAMAGE AWARDS HAS CAUSED COSTS TO SOAR.

OVER THE YEARS THE TORT LITIGATION SYSTEM HAS BEEN INCREASINGLY CRITICIZED BY MANY PUBLIC AND PRIVATE SECTORS. EFFORTS TO INSTITUTE CHANGE TO REDUCE OPPORTUNITIES FOR ABUSE, HOWEVER, HAVE BEEN HINDERED FEARING A CHANGE IN THE SYSTEM WOULD NOT ALLOW JUST COMPENSATION FOR INJURY.

THE ALLIANCE BELIEVES TORT REFORM SHOULD:

- LIMIT NON ECONOMIC DAMAGES.
- PROHIBIT PUNITIVE DAMAGES UNLESS MALICE OR CONSCIOUS ACTS SHOWING DELIBERATE DISREGARD FOR ANOTHER PERSON CAN BE SHOWN.
- LIMIT PUNITIVE DAMAGES.
- ALLOW JURIES TO BE INFORMED ABOUT AWARDS ALREADY COLLECTED BY CLAIMANTS FOR THE SAME INJURIES.
- ALLOW COURTS TO DECIDE EACH PARTY'S SHARE OF DAMAGES.
- PROVIDE MONETARY SANCTIONS AGAINST ANY ATTORNEY IN CIVIL CASES FOR FILING FRIVOLOUS, UNNECESSARY, AND/OR LEGALLY DEFICIENT PLEADINGS.
- BAR DAMAGE SUITS IF INJURIES WERE RECEIVED WHILE COMMITTING A FELONY.

- **ESTABLISH GUIDELINES FOR THE QUALIFICATION OF EXPERT WITNESSES.**

WE BELIEVE THE ABILITY TO RECOVER COSTS AND DAMAGES, TO BE MADE WHOLE, SHOULD BE PROTECTED. PUNITIVE DAMAGES SHOULD BE CAPPED BY A MULTIPLE OF ACTUAL DAMAGES, AND ASSESSED WHEN WILLFUL NEGLECT OR MALICIOUS INTENT IS PROVEN. IF THE INTENT OF PUNITIVE DAMAGES IS TO PUNISH RATHER THAN REWARD, IT WOULD FOLLOW THAT A PORTION OF THE PUNITIVE DAMAGES COULD BE ALLOCATED TO THE STATE.

WE AGREE WITH THE GOVERNOR THAT ALASKA NEEDS TO SEND THE GLOBAL MESSAGE THAT WE'RE "OPEN FOR BUSINESS". THE ALLIANCE BELIEVES COMPREHENSIVE TORT REFORM IS A POSITIVE STEP TOWARD IMPROVING OUR BUSINESS ENVIRONMENT IN ALASKA.

THE ALASKA SUPPORT INDUSTRY ALLIANCE STRONGLY SUPPORTS HOUSE BILL #58.

Continue to Close Alaska's Fiscal Gap

Alliance members believe the health of Alaska's economy will be better served by closing the state's fiscal gap and balancing the budget. Well defined fiscal restraint will provide a stable environment that allows businesses to plan for the future with confidence. It will encourage and promote business development and economic investment.

Our Legislature and Administration have made solving the state budget gap a priority. They have rallied to the concerns of the people of Alaska. Fiscal responsibility is a priority! They realize their obligation to provide a stable economy in Alaska. State revenues depend on substantial private investments that will aid in closing our fiscal gap without the threat of imposing new taxes or fees. Such investments in our natural resources will fuel the economy and provide Alaskans with jobs.

The Alliance supports this commitment to close the fiscal gap and balance the budget. We believe this action is necessary to insure continued growth in the days of declining oil revenues.

A successful fiscal plan will require the state to develop and execute its budget without depleting its cash reserves. The Alliance will oppose any efforts to fill the fiscal gap by imposing new taxes or fees without the prior implementation of substantial spending reductions.

The Alliance supports the aggressive implementation of a balanced budget. We believe that this issue should be the first order of business and the highest legislative priority for Alaska!



Develop Legislation to Encourage Oil and Gas Exploration, Development, and Production

Since Alaska must compete for petroleum and mineral investment dollars with other states and nations, our leaders must continue to devise attractive and innovative programs that will encourage environmentally safe exploration, development, production, and sales of Alaska's oil, gas, and mineral resources.

The state must realize that oil and gas development presents unique economic opportunities that can continue to be a viable source of revenue to the state. Continuing to explore incentive programs, regulatory review, and the permitting process are integral to the encouragement of investment in Alaska.

The Alliance believes new innovative oil and gas exploration development programs will benefit Alaska and industry by increasing state revenues and creating jobs for Alaskans.

Develop Comprehensive Tort Reform Legislation

Government officials must continue to search for ways to reduce the cost of doing business in Alaska, including a comprehensive review of liability laws affecting the economics of business.

The cost of litigation and liability insurance has a dramatic impact on businesses-large and small. The ever-increasing product liability, personal injury suits, and unpredictability of damage awards has caused costs to soar. Tort reform legislation will help control these expenditures while assuring appropriate compensation for persons injured through the fault of others.

The Alliance believes tort reform should:

- * Limit noneconomic damages.
- * Prohibit punitive damages unless malice or conscious acts showing deliberate disregard for another person can be shown.
- * Limit punitive damages.
- * Allow juries to be informed about awards already collected by claimants for same injuries.
- * Allow courts to decide each party's share of obligation.
- * Provide monetary sanctions against any attorney in civil cases for filing frivolous, unnecessary, and/or legally deficient pleadings.
- * Bar damage suits if injuries were received while committing a felony.
- * Establish guidelines for the use of expert witnesses.

The Alliance believes comprehensive tort reform is a positive step toward improving the business environment in Alaska.



March 11, 1997

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

Subject: House Bill 58 / USAA Policyholders

Dear Chairman Therriault:

As you may know, USAA is a worldwide insurance and diversified services company meeting the needs of members of the armed forces and their families. USAA members insure one another and our membership consists primarily of present and former military officers and their families. In the state of Alaska, USAA has approximately 12,000 automobile insurance policyholders (insureds) and, in addition, has nearly 5,000 homeowner insureds there. Most of the homeowner insureds will also be automobile insureds. The information I am providing is merely designed to inform you of USAA's method of serving its insureds and to show how those insureds can be better served by the adoption of House Bill 58. Additionally, I would recommend you seek similar input from other insurers.

As a reciprocal insurer, USAA pays dividends to its members which are based, in part, on the loss experience in their state for the previous year. Since 1980, with the exception of 1992, when no dividends were paid because of losses due to natural catastrophes, USAA's Alaska safe driver insureds have received a 10% dividend each year in recognition of their safe driving. In addition to the safe driver dividend, a special dividend has been paid to USAA insureds. In 1995 the dividend was 15% and in 1996 it was 8%. In 1996, our Alaska insureds received a 6% payout from their individual Subscriber Savings Account (SSA). It should be noted that only members of the United Services Automobile Association are holders of SSA's. Persons, such as former dependents and spouses, insured by the subsidiary USAA Casualty and Indemnity (CIC) did not receive the SSA distribution.

As a true reciprocal, USAA members insure each other and they are the owners of the Association. Since 1969, USAA has employed the SSA to represent a measure of a members ownership in the Association. A member's SSA balance grows based on both the members participation (number of policies and premiums in effect) and the Association's performance. The SSA serves an important role in the Association's financial structure by providing the flexibility to retain sufficient funds to cover large, unexpected losses and the

The Honorable Gene Theriault

March 11, 1997

Page Two

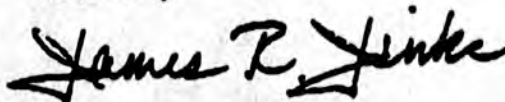
financial resources necessary to grow. The SSA is one of the unique aspects of USAA as a reciprocal inter-insurance exchange. The amount in each member's SSA is returned to the member upon leaving the association.

SSA funds are held on account by the Association on behalf of the members. The funds comprise a portion of USAA's surplus and are available for use by the Association should the need arise. The amount of retained surplus is important to insurance regulators and rating agencies. Each year, the Board of Directors determines the appropriate level of surplus needed to provide adequate assurance that all financial obligations can be met. SSA funds not needed by the Association are paid to the members. SSA payments are the combination of a percentage of the members SSA balance from previous years and a percentage of the premium paid in the previous year. Worldwide, SSA payments since 1969 have varied from an annual average of 34.67% (high) to none. In 1996, the average was nearly 11%.

Obviously, insurance companies will vary widely in their business practices and products. For example, stock insurance companies will disburse any profits to the shareholders. Reciprocal and mutual insurers such as USAA and State Farm will share their profits in the form of policyholder dividends. No matter what type of ownership an insurer may have, however, there are a number of statutory and regulatory changes which can affect insurance premiums. Among the proposed statutory changes in House Bill 58 that will have a significant impact on USAA's loss experience in Alaska and, in turn, a substantial effect on insurance premiums, are those which impose reasonable limits on punitive and non-economic damages, and those which reform the collateral benefits rules in order to prevent double recovery.

Tort reform can have a major effect on insurance premiums, both directly and in the form of increased dividends and higher SSA distributions. In Alaska, USAA policy holders will be directly benefited by adoption of House Bill 58. As this bill moves forward, I would be pleased to assist you in any way possible.

Sincerely



James R. Jinks, AVP
Senior Legislative Counsel

JRJ:djn

cc: Representative Brian Porter

SCOMM

101A:10

3.18.97

Tort Reform Bill
passed

1:29 PM

22-12

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

BY THE HOUSE FINANCE COMMITTEE

Amended: 3/18/97

Offered: 3/17/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) is totally blind.

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

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

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

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

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

1 is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (a) In an action for damages due to personal injury or death based upon
 25 the provision of professional services by a health care provider, **including a person**
 26 **providing services on behalf of a governmental entity**, when the parties have not
 27 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
 28 20 days after filing of answer to a summons and complaint a three-person expert
 29 advisory panel unless the court decides that an expert advisory opinion is not necessary
 30 for a decision in the case. When the action is filed, the court shall, by order,
 31 determine the professions or specialties to be represented on the expert advisory panel,

1 giving the parties the opportunity to object or make suggestions.

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

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

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

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

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

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

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

20 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Notice of Limited Liability**

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

30 (List specific emergency room physicians)

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

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

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

(d) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 * **Sec. 39.** AS 09.68 is amended by adding a new section to read:

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

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

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

30 (1) divorce and dissolution;

31 (2) adoption, custody, support, visitation, and emancipation of children;

1 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
2 cases under 47.12;

3 (4) domestic violence protective orders under AS 18.66.100 -
4 18.66.180;

5 (5) estate, guardianship, and trust cases filed under AS 13;

6 (6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (4) whether a scheduling conference is unnecessary;

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

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

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

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

1 AS 09.68.130(c).

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

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

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

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

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

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

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

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

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

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

4 * Sec. 53. AS 09.55.548 is repealed.

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

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

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

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

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

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

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

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

1 prior offers.

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

5 * **Sec. 63. ALTERNATIVE DISPUTE RESOLUTION.** (a) It is the intent of this
6 legislation to create a pilot alternative dispute resolution procedure within the existing civil
7 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
8 disputes.

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

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

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

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

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY THE HOUSE FINANCE COMMITTEE****Offered:****Referred:****Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde****A BILL****FOR AN ACT ENTITLED**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) This section does not apply if

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

(A) prolonged exposure to hazardous waste;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) The amount of punitive damages awarded by a court or jury under (a) of

1 this section may not exceed four times the amount of compensatory damages awarded
2 or \$600,000, whichever amount is greater, if

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (d) In an action to recover damages, the court shall, at the request of a [AN
31 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor

1 for future damages that exceed \$100,000 be paid to the maximum extent feasible by
 2 periodic payments rather than by a lump-sum payment. If a portion of the judgment
 3 awarded is owed to an attorney under a contingent fee agreement, that portion
 4 of the judgment shall be reduced to present value, if necessary, and paid in a
 5 lump sum, and the remaining portion of the judgment shall be paid as provided
 6 under this subsection.

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

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

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

25 (f) A judgment ordering payment of future damages for personal injury or
 26 death by periodic payment shall specify the recipient, the dollar amount of the
 27 payments, including any increases in future payments for anticipated inflation, the
 28 interval between payments, and the number of payments or the period of time over
 29 which payments shall be made. Payments may be modified only in the event of the
 30 death of the judgment creditor, in which case payments may not be reduced or
 31 terminated, but shall be paid to persons to whom the judgment creditor owed a duty

1 of support, as provided by law, immediately before death. In the event the judgment
 2 creditor owed no duty of support to dependents at the time of the judgment creditor's
 3 death, the money remaining shall be distributed in accordance with a will of the
 4 deceased judgment creditor accepted into probate or under the intestate laws of the
 5 state if the deceased had no will. In this subsection, "inflation" means the change
 6 in the consumer price index for United States city average, all urban consumers,
 7 all items indices, compiled by the Bureau of Labor Statistics, United States
 8 Department of Labor.

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

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

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

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

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

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

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

23 (b) A person defending a claim may introduce into evidence at trial an amount
 24 paid or payable as a benefit to the claimant as a result of the personal injury or death
 25 under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,
 26 sickness, disability, accident, or income-disability insurance; insurance that provides
 27 health benefits or income-disability coverage; and a contract or agreement of a group,
 28 organization, partnership, or corporation, or other collateral source, to provide, pay for,
 29 or reimburse the cost of medical, hospital, dental, or other health care services,
 30 disability, or lost wages. However, evidence of a collateral source described under
 31 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person

defending a claim elects to introduce evidence described in this subsection, the claimant may introduce evidence of the amount that the claimant has paid or contributed to secure the claimant's right to the collateral benefit, including the cost to the claimant resulting from depleted or exhausted coverage.

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

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

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

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

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

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each person [PARTY] at fault, and the extent of the causal relation between the conduct and the damages claimed. [THE TRIER OF FACT MAY DETERMINE THAT TWO OR MORE PERSONS ARE TO BE TREATED AS A SINGLE PARTY IF THEIR CONDUCT WAS A CAUSE OF THE DAMAGES CLAIMED AND THE SEPARATE ACT OR OMISSION OF EACH PERSON CANNOT BE DISTINGUISHED.]

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

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

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

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

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

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

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

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

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

1 in the particular field or matter at issue.

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

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

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

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

29 (3) if the offer was served 90 days or less but more than 10 days
30 before the trial began, the offeree shall pay 50 percent of the offeror's reasonable
31 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE

1 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
2 YEAR].

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

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

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

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

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

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

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

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

29 **Sec. 09.50.280. Judgment for plaintiff; punitive damages.** If judgment is
30 rendered for the plaintiff, it shall be for the legal amount found due from the state with
31 [LEGAL] interest as provided under AS 09.30.070 [FROM THE DATE IT BECAME

1 DUE] and without punitive damages.

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

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

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

14 (k) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
15 apply to arbitrations under this section if they do not conflict with the provisions of
16 this section; arbitrations under this section shall be conducted in accordance with
17 procedures established by any rules of court which may be adopted and according to
18 provisions of AS 09.55.540 - 09.55.547, 09.55.554 - 09.55.560 [AS 09.55.540 -
19 09.55.548 AND AS 09.55.554 - 09.55.560], and AS 09.65.090.

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

21 (a) In an action for damages due to personal injury or death based upon
22 the provision of professional services by a health care provider, including a person
23 providing services on behalf of a governmental entity, when the parties have not
24 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
25 20 days after filing of answer to a summons and complaint a three-person expert
26 advisory panel unless the court decides that an expert advisory opinion is not necessary
27 for a decision in the case. When the action is filed, the court shall, by order,
28 determine the professions or specialties to be represented on the expert advisory panel,
29 giving the parties the opportunity to object or make suggestions.

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

31 (c) Not more than 30 days after selection of the panel, the panel [IT] shall

1 make a written report to the parties and to the court, answering the following questions
 2 and other questions submitted to the panel by the court in sufficient detail to explain
 3 the case and the reasons for the panel's answers:

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

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

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

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

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

17 (6) What specifically caused the medical injury?

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

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

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

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

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

30 (i) This section applies regardless of whether a party in the action or the health
 31 care provider whose professional services are the subject of the action is a

governmental entity or in the public or private sector.

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

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

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

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

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

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

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

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

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

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

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

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

24 **Notice of Limited Liability**

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

27 (List specific emergency room physicians)

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

30 (c) A hospital is not immune from liability under (a) of this section for an act
31 or omission of an emergency room physician who is an independent contractor unless

1 the emergency room physician has liability insurance coverage in the amount of at
2 least \$500,000 for each incident and the coverage is in effect and applicable to those
3 health care services offered by the emergency room physician that the hospital is
4 required to provide by law or by accreditation requirements.

5 (d) In this section,

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

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

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

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

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

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

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

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

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

28 (3) fleeing after the commission, by that person, of conduct that would
29 constitute an unclassified felony, a class A felony, or a class B felony or being
30 apprehended for conduct that would constitute an unclassified felony, a class A felony,
31 or a class B felony if the conduct

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

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

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

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

13 * Sec. 39. AS 09.68 is amended by adding a new section to read:

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

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

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

- 27 (1) divorce and dissolution;
28 (2) adoption, custody, support, visitation, and emancipation of children;
29 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
30 cases under 47.12;
31 (4) domestic violence protective orders under AS 18.66.100 -

1 18.66.180;

2 (5) estate, guardianship, and trust cases filed under AS 13;

3 (6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

25 (d) If the insured selects independent counsel at the insurer's expense, the
26 insurer may require that the independent counsel have at least four years of experience
27 in civil litigation, including defense experience in the general subject area at issue in
28 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
29 policy, the obligation of the insurer to pay the fee charged by the independent counsel
30 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
31 course of business in the defense of a similar civil action in the community in which

the claim arose or is being defended. In providing independent counsel, the insurer is not responsible for the fees and costs of defending an allegation for which coverage is properly denied and shall be responsible only for the fees and costs to defend those allegations for which the insurer either reserves its position as to coverage or accepts coverage. The independent counsel shall keep detailed records allocating fees and costs accordingly. A dispute between the insurer and insured regarding attorney fees that is not resolved by the insurance policy or this section shall be resolved by arbitration under AS 09.43.

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

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

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

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

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

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

1 AS 09.10.053 [AS 09.10.050], AS 09.50.250 - 09.50.300, or AS 37.25.010.

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

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

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

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

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

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

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

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

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

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

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

24 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
25 soon as practicable after the exchange of initial disclosures required under Rule
26 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
27 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
28 their claims and defenses and the possibilities for a prompt settlement of the case and
29 to develop a proposed discovery plan. The attorneys of record and all unrepresented
30 parties that have appeared in the case are jointly responsible for arranging and being
31 present or represented at the meeting, for attempting in good faith to agree on the

1 proposed discovery plan, and for submitting to the court within 10 days after the
2 meeting a written report outlining the proposed discovery plan. The proposed
3 discovery plan shall indicate the parties' views and proposals concerning

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

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

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

12 (4) whether a scheduling conference is unnecessary;

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

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

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

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

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

31 (g) **Discovery.** Except by leave of court, no discovery may be conducted until

1 the report of the Panel has been filed or until 60 [80] days after selection of the Panel
2 [HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever is first
3 to occur, unless discovery is further stayed for good cause by order of the court.

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

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

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

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

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

21 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
22 result of compromise or other settlement between the parties, the parties shall submit
23 to the Alaska Judicial Council the information required under AS 09.68.130. A
24 dismissal by agreement under (a) of this rule must be accompanied by a certification
25 signed by the attorneys of record for all parties that the information required under
26 AS 09.68.130 has been submitted to the Alaska Judicial Council. A dismissal by the
27 appellant or petitioner made under (b) of this rule must be accompanied by a
28 certification signed by the appellant's or petitioner's attorney of record. The
29 requirements of this subsection do not apply to the types of cases listed in
30 AS 09.68.130(c).

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

1 * Sec. 53. AS 09.55.548 is repealed.

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

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

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

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

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

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

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

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

30 * Sec. 62. AS 09.30.070(c), added by sec. 25 of this Act, has the effect of amending
31 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be

1 awarded for future economic or noneconomic damages.

2 * Sec. 63. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
3 legislation to create a pilot alternative dispute resolution procedure within the existing civil
4 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
5 disputes.

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

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

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

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

Alaska State Legislature

House of Representatives

Official Business



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

House Majority Leader

March 15, 1997

Sectional Summary
of
CS of SSHB 58 (FIN)

An Act Relating to Civil Actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and

various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

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

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

Section 17. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). 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 18. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

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

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

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

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

witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

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

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

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

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

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

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

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

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

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

Section 26. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 23 interest rate to judgments against the State of Alaska.

Section 27. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 23.

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

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

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

Section 31. 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 32. 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 33. 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 34. Definitions; professional negligence and professional services. This section adds new subsections to define professional negligence and professional services in the health care area.

Section 35. 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 36. Civil liability of electric utility. This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

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

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

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

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

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

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

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

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

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

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

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved 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 42. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer