

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.09 SCOMM-101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997 ⁵⁷¹

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

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

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

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

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

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

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

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

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 F.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

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Alaska State Legislature



Official Business

House Majority Leader

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

To: Representative Pete Jott
Chairman, House Rules Committee

From: Representative Brian Porter
House Majority Leader

Re: Request for Floor Action on HB 58

Date: March 14, 1997

In accordance with your memorandum of instruction dated January 13, 1997, attached please find copies of the following documents:

1. Copies of all versions of HB 58.
2. A Sponsor Statement.
3. A Sectional Analysis.
4. Current Fiscal Notes.

Please schedule HB 58 for floor action this coming ^{mon.} ~~Tuesday~~ or ~~Wednesday~~.

Respectfully yours,

A handwritten signature in cursive script that reads "Brian Porter".

Brian Porter

FISCAL NOTE

Bill Version: CSSSHB 58 (JUD)(H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Effective Date: _____

Department Affected: AdministrationTitle: "An Act relating to civil actions: amending Rules 49 and BRU: Risk Management68Component: Risk ManagementSponsor: Representatives Porter, CowderyRequestor: House JudiciaryCOMPONENT SERIAL NO. 0071

EXPENDITURES/REVENUES:

(Thousands of Dollars)

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

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

(Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

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

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

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

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

Prepared by: J. Brad Thompson, DirectorPhone: 465-5723Division: Risk Management

Date: _____

Approved by Commissioner: Mark BoyerAgency: Department of AdministrationDate: 2/20/97

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FISCAL NOTE

No. 2

Bill Version: CSSSHB 58(JUD)

(H) Publish Date: 2/27/97

STATE OF ALASKA 1997 LEGISLATIVE SESSION

Revision Date: _____
Title: An Act relating to civil actions: . . . amending
. . . AK Rules of Civil Procedure, . . . AK Rules of Evidence . . .
Sponsor: Representative Porter
Requester: House Judiciary Committee

Dept. Affected: Department of Law
BRU: Civil Division
Component: General Legal Services

COMPONENT SERIAL NO. 2087

Expenditures/Revenues

(Thousands of Dollars)

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

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

FUND SOURCE

(Thousands of Dollars)

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

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

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

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

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FISCAL NOTE

No. 3

Bill Version: CSSSHB 58 (JUD)

(H) Publish Date: 2/27/97

STATE OF ALASKA

1997 LEGISLATIVE SESSION

Revision Date:

Title: An Act relating to civil actions: relating to independent counsel provided under an insurance policy.

Sponsor: Porter

Requestor:

Department: Commerce and Economic Development

BRU: Insurance

Component: Insurance

COMPONENT SERIAL NO.

324

Expenditures/Revenues

(Thousands of Dollars)

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

CAPITAL EXPENDITURES

CHANGE IN REVENUES

FUND SOURCE

(Thousands of Dollars)

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

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

0.0

POSITIONS

FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)

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

Prepared by:

Marianne K. Burke, Director

Division:

Insurance

Phone:

465-2515

Date:

2-20-97

Approved by Commissioner:

William L. Hensley

Date:

2-20-97

Agency:

Commerce and Economic Development

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Page 1 of 1

COMMITTEE COPY

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HB58

Revision Date: 02/18/97

Dept. Affected: Alaska Judicial Council

Title: Civil Actions & Attorneys Provided by Insurance Company

BRU: _____

Components: _____

Sponsor: Reps. Brian Porter and John Cowdery

Requestor: _____

COMPONENT SERIAL NO. 0771

EXPENDITURES/REVENUES

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	17.5	16.7	16.7	16.7	16.7	16.7
TRAVEL		1.3	1.3	1.3	1.3	1.3
CONTRACTUAL	9.0	1.2	1.2	1.2	1.2	1.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.5	19.2	19.2	19.2	19.2	19.2

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

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.5	19.2	19.2	19.2	19.2	19.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	26.5	19.2	19.2	19.2	19.2	19.2

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	1	1	1	1	1	1

Estimate of current year (FY 97) cost: \$ None

ANALYSIS: (See attached pages)

Prepared by: William T. Cotton, Executive Director
Agency: Alaska Judicial Council

Phone: 279-2526
Date: 2/19/97

Approved by: William T. Cotton, Executive Director
Agency: Alaska Judicial Council

Date: 2/19/97

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Analysis for Alaska Judicial Council
Fiscal Note on HB 58:
Civil Actions and Attorneys Provided by Insurance Company

The bill assigns two tasks to the Alaska Judicial Council: (1) review and report on alternative dispute resolution (ADR) programs in other states; and (2) collect, analyze and report on Alaska civil cases which are settled. The costs of the two functions are discussed separately.

1. Review of ADR Programs

The bill provides:

Section 09.42.010. Legislative Intent. It is the intent of this legislation to create a pilot alternative dispute resolution procedure within the existing civil litigation system in order to promote the timely, inexpensive and efficient resolution of civil disputes.

Sec. 09.42.020. Pilot program for alternative dispute resolution. The Alaska Judicial Council shall consult with the Alaska Dispute Settlement Association, review court sanctioned alternative dispute resolution programs in other states and in the federal court system, and make recommendations to assist the legislature and the Alaska Court System in the establishment of a pilot program for alternative dispute resolution within the Alaska Court System. The Alaska Judicial Council shall submit a written report to the legislature and to the Alaska Supreme Court within six months after the effective date of this legislation. The report shall include specific types of programs; specific types of cases within each program which are amenable to alternative dispute resolution; the cost to the parties and to the Alaska Court System under these programs; and the qualifications of the neutrals who will provide dispute resolution services under the programs, including nonlawyers.

Sec. 09.42.030. Definitions. In this chapter,
(a) "alternative dispute resolution" is limited to arbitration, mediation and early neutral evaluation.

The Council would hire a contract attorney to complete much of the review of ADR programs. The attorney would be paid \$35 per hour for 200 hours for a total of \$7,000. The contract attorney would work with Council staff to complete the project. Other costs would include a temporary secretary, long distance telephone, and costs for various books and other literature.

ADR Costs Summarized

Personnel

Temporary Secretary	
50 hours @ \$16.38/ hour	\$ 841

Contractual

Contract Attorney (200 hours @\$35/hour)	\$7,000
Telephone	\$ 500
Books	\$ 300

TOTAL	\$8,641
--------------	----------------

2. Review of Settlement Data

The bill provides in relevant part:

Sec. 42. AS 09.68 is amended by adding a new section to read:

Sec. 09.68.130. Collection of settlement information.

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

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

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

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

The Council estimates that 8,000 settlement forms would be filed per year. The data would be entered into a Microsoft Access database (estimating four minutes per form). A data entry employee also would review approximately 500 case files per year to check the accuracy of the settlement data and put the settlements in context (estimated 20 minutes per case). Finally, the data employee would spend about 300 hours cleaning the data and working with Judicial Council staff to conduct the preliminary analysis.

Council staff would complete the analysis and issue a fairly brief annual report based on the settlement forms. A more extensive report would be prepared in the third year based on data both from the settlement forms and the case data. The time of existing Council staff is not included in the fiscal note.

Other costs include short trips to Fairbanks and Juneau to collect case data, a temporary secretary for forty hours, and a small amount for printing and postage.

Settlement Data Review Annual Costs Summarized

Personnel

One Part-time Data Entry/Analysis Employee
 8,000 forms @ 4 minutes each =533 hours
 5,000 case files @ 20 minutes each =167 hours
 Data cleaning and Prelim Analysis =300 hours

Total Hours: 1,000 @ \$16.00 per hour = **\$16,000.00**

Temporary Secretary
 40 hours @ \$16.83 per hour = **\$ 673.20**

Travel

One 5 day trip to Fairbanks **\$ 700.00**
One 3 day trip to Juneau **\$ 600.00**

Contractual

Postage and Printing **\$ 1,200.00**

TOTAL **\$19,173.20**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSIONBILL NO. CSSSHB 58 (JUD)Revision Date: 03/11/97Dept. Affected: Alaska Court SystemTitle: Tort ReformBRU: Trial Courts

Component: _____

Sponsor: Rep. PorterRequestor: House JudiciaryCOMPONENT SERIAL NO. 788

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	5.7	5.7	5.7	5.7	5.7	5.7
TRAVEL						
CONTRACTUAL	13.7	13.7	13.7	13.7	13.7	13.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.4	19.4	19.4	19.4	19.4	19.4

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

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

Fund Source

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	18.4	18.4	18.4	18.4	18.4	18.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	18.4	18.4	18.4	18.4	18.4	18.4

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time	1.0	1.0	1.0	1.0	1.0	1.0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff CounselAgency: Alaska Court SystemPhone: 264-8228Date: 03/11/97Approved by: Stephanie J. Cole, Acting Administrative DirectorAgency: Alaska Court SystemDate: 03/11/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

CSSSHB 58 (JUD) proposes numerous changes to that portion of the civil justice system which deals with personal injury and property damage. These changes are primarily intended to redistribute costs and risks associated with personal injury and property damage.

The Alaska Court System provides the primary forum in this state for the resolution of tort claims. The fiscal impact of the majority of these changes will be neutral or is impossible to reasonably predict. However, several of the proposed changes will have the effect of increasing the costs to the state of administering the tort system.

At the present time, a defendant has no right to pay a civil judgment for future damages periodically; such damages must be paid as a lump sum unless the plaintiff requests periodic payments. Plaintiffs rarely exercise this option because they generally do not perceive periodic payments as being in their economic best interest. Thus, as a practical matter, the court system does not now hold hearings on this issue. Sections 11, 12, 13, and 14 of CSSSHB 58 (JUD) give a defendant the option of making periodic payments to a successful plaintiff for judgments in excess of \$100,000. The judgment must set the amounts of the payments, including any increases for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments will be made. Setting the appropriate amount, number, and inflation factor of these payments will require taking and evaluating conflicting testimony from experts and others representing each party, if the parties disagree. Such disagreements are inevitable. The payment hearing will be held before a judge and will not require the expenditure of jury costs. However, additional costs will inevitably arise when a percentage of plaintiffs return to court in later years because the defendant has stopped making periodic payments for some reason. This fiscal note estimates that approximately ten percent of superior court tort judgments are for future damages in an amount in excess of \$100,000.

While California has been cited as a state in which mandatory periodic payments do not result in additional court time, this reputed result was not achieved for at least five to six years following passage of the legislation; during this period, substantial court time was expended on the issue of periodic payments, and the question of the constitutionality of such payments was appealed to the California Supreme Court on two separate occasions before it was finally upheld.

Section 15 of CSSSHB 58 (JUD) repeals and reenacts AS 09.17.070, relating to collateral benefits. This amendment essentially provides that the amount which a defendant owes to a plaintiff will be reduced by whatever insurance benefits or other benefits the plaintiff has already received as compensation. Implementation will require extra trial time, in order for the jury to hear testimony regarding the types of coverage which might be involved, the amounts paid, and determining which payments may be offset. The current statute relating to collateral benefits is substantially less complex. Moreover, at the present time only the judge hears the testimony, and then only if the jury has returned a verdict for the plaintiff. The proposed system is thus less efficient and results in longer trials and more jury costs.

Section 23 of CSSSHB 58 (JUD) modifies the amount at which prejudgment interest is accrued by changing it from a fixed rate to a floating rate. This complicates the process of calculating interest owed, something which is done by the court system. Such calculations are performed thousands of times per year, so even small increases in time spent per case can have a major impact on clerical staff.

Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

This fiscal note reflects costs to automate this process and thus keep clerical time increases to a minimum.

Section 28 of CSSSHB 58 (JUD) increases the number of medical malpractice three-person expert advisory panels which will be paid for each year by the court system, by requiring the appointment of such panels in cases involving claims against government doctors. The number of additional panels appointed each year should be relatively low, and this note does not include costs for payments to the panel members.

CSSSHB 58 (JUD) can be expected to save some judicial costs by reducing the motion practice currently engaged in on issues which were not clearly resolved the last time tort laws were amended. The amount of savings is speculative, and this note assumes that it is offset by the longer trials and increased appeals that will result until the supreme court resolves issues created by the procedural and substantive changes made by CSSSHB 58 (JUD). In this regard, note that several of the pro-tort reform attorneys who testified in favor of HB 292 during the 18th Legislature conceded that that bill would result in increased litigation for a period of years, until all the legal issues were resolved by appeals to the supreme court. One of these attorneys estimated the period of increased litigation at five to seven years.

This fiscal note makes the following assumptions:

In superior court in FY 96, there were 1005 tort cases filed. Approximately 42 tort trials were held, with approximately 50 percent returning a verdict for plaintiff; there were approximately 53 tort cases decided by summary judgment, with all returning a verdict for the defendant; and there were approximately 42 default judgments entered, with all entered for the plaintiff. Determining periodic payments will average one day of court time without a jury. Determining collateral benefits will average one-half day of court time, including jury time. Time spent is discounted by two-thirds in default cases.

In district court in FY 96, there were 515 tort cases filed (other than small claims). Approximately 21 tort trials were held; approximately 26 tort cases were decided by summary judgment; and approximately 21 default judgments were entered. Because of the lower dollar value of cases, not as much time will be invested by litigants in determining collateral benefits; it is assumed that one-half as much court time will be used. District court jury costs are also less, because half as many jurors are used.

Alaska Court System
Fiscal Analysis
CSSSHB 58 (JUD)

Personal Services
Position

<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
\$3,706	\$2,025	<u>\$5,731</u>

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

Contractual Services

Jury Fees

8,663

Superior Court-

42 - 1/2 day length collateral benefit hearings with 13 jurors at \$12.50 a half day (from trials)

6,825

District Court-

21 - 1/2 day length collateral benefit hearings with 7 jurors at \$12.50 a half day (from trials)

1,838

Programming

(one-time cost)

Modification of Statewide Court Information Processing System to provide automatic updating of prejudgment interest rates. This expenditure will reduce personnel costs for entering interest rate information.

5,000

Total Contractual Services

13,663

Estimated Total Cost

\$19,394

11:25 Am

3.18.97

~~Geo~~
KARMA

#43 : 12-20

#44 : 12-19

#45 - #51 Not offered

#52 12-20

#53-55 Not offered

#56 12-20

#57 - #61 Not offered

#62 10-19

★ #68 - Adopted

#71 11-20

#73 11-20

#76 12-19

CORRECTION

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



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

11:20 AM

3.18.97

~~Geo~~
KARMA

(#43) : 12-20

(#44) : 12-19

(#45) & (#51) Not offered

(#52) 12-20

(#53-55) Not offered

(#56) 12-20

(#57) & (#61) Not offered

(#62) 10-19

★ (#68) — Adopted

(#71) 11-20

(#73) 11-20

(#76) 12-19

#80: 10-20

Berkowitz re ^{the} Pennick issue:
"There won't be any ~~other~~ air
lent insurance avail in the just
because of tort reform."

3rd Reading,
Final passage

Me: Get Judy ready to charge
"outrageous" for punitive.

Me: Read Berkowitz's
comment on record, for
and others.

2:10
11:35
about



TWENTIETH ALASKA LEGISLATURE

First Session

HOUSE CALENDAR

Sixty-fourth Legislative Day

Monday - March 17, 1997 - 11:00 a.m.

Official Business

Invocation: Judy Minor

Christian Science Practitioner

REVISED

SECOND READING OF HOUSE BILLS

HB 13

"An Act relating to marine safety training and education programs."

STA RPT 7DP

P. 418

FISCAL NOTE (REV)

P. 418

ZERO FISCAL NOTE (LABOR)

P. 418

FIN RPT CS(FIN) 3DP 4NR

P. 554

ZERO FISCAL NOTE (H.FIN/REV)

P. 555

ZERO FISCAL NOTE (LABOR) 2/21/97

P. 555

SSHB 58

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

JUD RPT CS(JUD) 5DP 2DNP

P. 0503

3 ZERO FNS (ADM, LAW, DCED)

P. 0503

FINANCE COMMITTEE REPORT CS(FIN) TODAY

SECOND READING OF SENATE RESOLUTIONS

SJR 13

Relating to RS 2477 rights-of-way.

RES REFERRAL WAIVED Y23 N10 A7

P. 614

LEGISLATIVE CITATIONS

Honoring - Specialist Carl Wetzel, Fort Wainwright Soldier of the Year

By Representatives Vezey, Phillips, Berkowitz, Brice, Bunde, Cowdery, Davies, Davis, Elton, Foster, Green, Grussendorf, Ivan, James, Joule, Kelly, Kemplen, Kohring, Kott, Mulder, Nicholia, Ogan, Porter, Rokeberg, Ryan, Therriault

Honoring - Jay A. Rabinowitz

By Senator Wilken; Representatives Brice, Phillips, Austerman, Barnes, Berkowitz, Bunde, Cowdery, Croft, Davies, Davis, Elton, Foster, Grussendorf, Hanley, Ivan, James, Joule, Kelly, Kemplen, Kohring, Kott, Kubina, Martin, Mulder, Nicholia, Ogan, Porter, Rokeberg, Ryan, Therriault, Vezey

Honoring - Rick Mackey, 1997 Yukon Quest Winner

By Senator Lincoln; Representatives Nicholia, Phillips, Austerman, Berkowitz, Brice, Bunde, Cowdery, Croft, Davies, Davis, Elton, Foster, Green, Grussendorf, Hanley, Hodgins, Ivan, James, Joule, Kelly, Kemplen, Kohring, Kott, Kubina, Martin, Masek, Mulder, Ogan, Porter, Rokeberg, Ryan, Therriault, Vezey

Amend #1

19-13 Kelly, Barnes: Yes

① What state resolution judges to have income tax into act.

② Hanna Notes → Brunswick

③ This is all about CFC's. The more the recovery, the more the city get.

18-13

Amend #2

Delete none son & eggs

Another man, Kelly, Barnes = Yes.

① Q. Simpson Argmt.

Need to amend northern rule to limit # of Amends & amount of time to debate

~~START NOT RUL~~

Amend #3

13-19

Davis & Barnes: Yes

Amend #4

No OBT'N by BRIAN

Amend #5

w/ Drew

#6 Amendment: Appportionment of Fault.

11-21

#7 Amendment Sunset of minor rates not ϕ .

- Amended ~~#7A~~ to move it 10 years
to year 2007.

- Me: Need to tighten language...

- Amend ~~#7B~~ re CPT Amendment.
20-12 (Sanders yes)

13-19

#8 Amendment

14-18
Failed

OG/AN/KS

NY ATTYS ~~Personality~~

#9 Amend

Remove Caps on punitive -

11-21

#10 Amended w/drawn

#11 Amended 11-21

#12 Amended 11-21

#13 Amended 11-21

#14 Amended 11-21

#15 Amended 11-21

* #16 Amended - NO OBJECTION

#17 Amended 11-21

#18 Amended : 11-21

#19 Amended : 10-22 Bruce

#20 Amended 11-21

~~#21~~ ~~#22~~ Amend - withdrawn

#23 Amend 10-20

#24 Amend - withdrawn

#25 Amend 11-18

#26 Amend 10-20

⊗ #27 Amend - No objection

~~#28~~ Amend 10-19

#29 Amend → withdrawn

#30

#31 - 8-21

(32) 11-19

(33) withdrawn

(34) 10-20

(35) 10-20

(36) 8-20

(37) withdrawn

(38) (39) not appeared

(40) 9-19

(41) 8-21

(42) No

(43)

AMENDMENT #1 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH 58 (FIN)

Page 6:

Delete lines 14 through 28

§12. Deletes reduction in
judgments for income taxes
which would have been
paid on future damages

New

AMENDMENT # 2 ✓

L-1

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

CROFT

Page 5, lines 1-19:

delete all material

renumber the following bill sections accordingly

*Delete § 9. Noneconomic
damages.*

13-19
AMENDMENT # 3 ✓ L-4

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERKOWITZ

Page 5, line 13:

B

following "(1)",

delete "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"

insert "suffers disfigurement or severe physical impairment"

AMENDMENT #4 ✓

L-6

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

CROFT

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

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

AMENDMENT #5 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 5, line 9:

Following "\$300,000"

Insert "plus \$100,000 for each minor child"

Page 5, line 11:

Following "\$500,000"

Insert "plus \$100,000 for each minor child"

§9. NONECONOMIC DAMAGES.
Same as one DAVIES put in
AT FINANCE

W. Davies

Neen

AMENDMENT

#6 ✓

58-15

BY REPRESENTATIVE

CROFT

OFFERED IN HOUSE JUDICIARY
TO: CSSSHB 58 (FIN)

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

Renumber following bill sections accordingly.

Page 20, lines 15 through 24:
Delete all material.

Renumber following bill sections accordingly.

Page 24, lines 17 through 21:
Delete all material.

Renumber following bill sections accordingly.

*Apportionment
of Damages*

AMENDMENT #7 ✓

BY REPRESENTATIVE

BERKOWITZ

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 25, line 19 following "Act.":

Insert "Sec. 65. This Act sunsets if, on July 1, 2000, the director of the Division of Insurance certifies to the lieutenant governor and the revisor of statutes that the liability insurance rates filed with the Division of Insurance have not been reduced by at least 10 percent from those filed on January 1, 1997. In this section, "liability insurance" means insurance described under AS 21.12.070(a)(2).

Renumber the following bill section accordingly.

SAME AS
CROSS 58-19New

AMENDMENT #8



OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 7, line 1:

Following "\$100,000"

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

§13, SAME AS WHAT
DAVIES put in AT FINANCE

New

AMENDMENT #9 ✓**BY REPRESENTATIVE****OFFERED IN HOUSE JUDICIARY
TO: CSSSHB 58 (FIN)****PERKOWITZ****Page 5, line 26 through page 6, line 13:****Delete entire section.****Renumber following bill sections accordingly.**

*Takes out our cap
on punitives.*

new

AMENDMENT #10 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 6, lines 1-2:

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

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

SAME AS ONE DAVIES
put ON AT FINANCE.

W/drawn

New

AMENDMENT #11 ✓

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

CROFT

Page 5, line 27 through page 6, line 13:

Delete all material.

Insert new subsections to read:

"(b) Except as provided in (c) of this section, the court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of three times the amount of compensatory damages or \$300,000.

(c) The court shall require deposit into the general fund of 50 percent of that portion of the punitive damages award that is equal to or less than the greater of four times the amount of compensatory damages awarded or \$600,000, if

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

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

(d) If a court or jury awards punitive damages under (a) of this section, the court shall requires that 100 percent of the punitive damages award that exceeds the maximum amounts described under (b) or (c) of this section, as applicable, be deposited into the general fund or the Alaska permanent fund under AS 37.13.010. The party paying the punitive damages shall elect which fund shall receive the money required to be paid under this subsection.

(e) The provisions of this section do not grant the state the right to file or join a civil action to recover punitive damages."

Page 15, line 30, following "damages":

Delete "due the state under AS 09.17.020(d)"

Insert "required to be deposited under AS 09.17.020"

Page 24, line 4, following "fund":

Insert "or the Alaska permanent fund"

AMENDMENT #12

L-33

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

MARKOWITZ

Page 5, line 23:

following "evidence"

delete "of malice or conscious acts showing deliberate disregard of another person's rights by the person from whom the punitive damages are sought",

insert "of outrageous conduct"

AMENDMENT #13 ✓

BY REPRESENTATIVE

CROFT

OFFERED IN HOUSE JUDICIARY

TO: CSSSHB 58 (FIN)

Page 6, following line 9:

Insert new subsection to read:

"(d) Limits under this section only apply when the person defending a claim is a small business.

(e) Limits under this section do not apply when the claimant is a small business.

(f) In subsections (d) and (e) "small business" means a business with fewer than 10 employees."

Renumber the following subsection accordingly.

Trues to apply our 2nd TIER
(higher) punitive to businesses
with 10 or more employees!

New

New Amendment #14

✓
L-11

OFFERED IN THE HOUSE
TO CSSSHB (FIN) 58

BY REPRESENTATIVE NICHOLIA

Page 3, line 31:

After "commerce;"

Insert:

"or"

Page 3, after line 31:

Add a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in an elementary or secondary school."

AMENDMENT #114 ✓

L-11

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

NICHOLIA

Page 3, line 31:

delete " ", insert "; or"

Page 3, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in an elementary or secondary school."

SAME AS BEROWITZ L-11.

AMENDMENT

#15 ✓

L-28

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERKOWITZ

Page 4, following line 9:

insert a new subsection to read,

"(d) the limitations imposed by this section and AS 09.10.080 are tolled for claims described under AS 09.10.080 until the claimant reaches the age of 18."

Save AS Berkowitz L-28

AMENDMENT #16 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSSHB 58 (FIN)

Page 9, line 21, following "action"

Insert ": in this paragraph. "other persons responsible" does not include a person protected from a civil action under AS 09.10.055"

This is the one ~~DAVIES~~
you were hoping
would not come.

New

AMENDMENT #17 ✓

L-31

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

BERKOWITZ

Page 4, line 29:

following "person's"

delete "sixth", insert "tenth"

SAME AS
BERKOWITZ C-31

AMENDMENT #18

L-19

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

CROFT

Page 16, line 10 through page 17, line 12:

delete all material

renumber the following bill sections accordingly

SAME AS
BECKWITH L-19

AMENDMENT #19 ✓

REPRESENTATIVE
KUBANA

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

1 Page 5, line 27, following "(c)":

2 Insert "or (d)"

3 Page 5, line 31:

4 Delete "The"

5 Insert "Except as provided under (d) of this section, the"

6 Page 6, following line 9:

7 Insert a new subsection to read:

8 "(d) The limits or punitive damages imposed under (b) and (c) of this section
9 do not apply to punitive damages awarded as a result of an act or omission involving
10 natural resources."

ie. Oil Co.,

11 Reletter the following subsection accordingly.

12 Page 15, line 30:

13 Delete "AS 09.17.020(d)"

14 Insert "AS 09.17.020(e)"

consistency changes

15 Page 24, line 2:

16 Delete "AS 09.17.020(d)"

17 Insert "AS 09.17.020(e)"

new

✓
AMENDMENT #20 REPRESENTATIVE
CROFT

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 9, line 21, following "action":
- 2 Insert "; in this paragraph, "other person responsible" does not include a person
- 3 who cannot be identified or located"

If the used
car dealer in Seattle (CROFT's
example at Judiciary) cannot be
located, the defendants to the
third party action get stuck
with the used car dealer's
share of fault.
Violates the voter's initiative.

Entirely
New

AMENDMENT

#21

58-11

BY REPRESENTATIVE

KEMPLER

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 7, line 1 following "exceed":

Delete "100,000"

Insert "250,000"

w/draw

AMENDMENT #22

58-9

BY REPRESENTATIVE *WILL KEMPLER*

OFFERED IN HOUSE
TO: CSSSHB 58 (FIN)

Page 6, line 30 following "of" to line 31:

Delete "a party"

Insert "both parties"

Page 24, line 10, following "by":

Delete "a party"

Insert "both parties"

W. Kempler

AMENDMENT

23 ✓

L-12

OFFERED IN THE HOUSE

BY REPRESENTATIVE KEMPLER

TO: CSSH(B)(FIN) 58

Page 3, line 31:

delete ".", insert "; or"

Page 3, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in a church, synagogue, or other house of worship."

AMENDMENT #24

L-15

OFFERED IN THE HOUSE

BY REPRESENTATIVE KEMPLER

TO: CSSSHB(FIN) 58

Page 3, line 31:

delete ".", insert "; or"

Page 3, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in any home for the elderly, convalescent center, or nursing home."

W/ham

AMENDMENT

25

58-10

BY REPRESENTATIVE Kookesh

OFFERED IN THE HOUSE
TO: CSSSHB 58 (FIN)

Page 6, line 29 through page 8, line 8:

Delete all material.

Renumber following bill sections accordingly.

Page 24, lines 8 - 16:

Delete all material.

Renumber following bill sections accordingly.

*Periodic
Rmt*

AMENDMENT #26 ✓

BY REPRESENTATIVE Kookesh

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 5, lines 27 through page 6, line 9:

Delete all material

Insert a new subsection to read:

"(b) The amount of punitive damages awarded by a court or jury under (a) of this section shall be based on the individual facts and evidence presented to the court and shall be sufficient to deter wrongdoing and to protect the public interest."

Renumber following subsection accordingly.

New

AMENDMENT #27 ✓

L-5 ✓

OFFERED IN THE HOUSE

BY REPRESENTATIVE
KOOKESH

TO: CSSH(B)(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) is blind ~~in one or both eyes.~~"

totally

AMENDMENT #27 ✓

L-5

OFFERED IN THE HOUSE

BY REPRESENTATIVE
KOOKESH

TO: CSSSHB(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

Page 5, after line 17:

insert a new subsection to read,

"(3) is blind in one or both eyes."

AMENDMENT #28 ✓

L-7

OFFERED IN THE HOUSE

BY REPRESENTATIVE
KOOKESH

TO: CSSH(B)(FIN) 58

Page 5, line 17:

delete ".", insert "; or"

paraplegic, etc.

Page 5, after line 17:

insert a new subsection to read

OR lost functional use of
"(3) has lost both arms or both legs or an arm and a leg."

AMENDMENT #29. ✓

L-2

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSSH(B) 58

Page 5, after line 19:

insert a new subsection to read,

"(e) On July 1 of each year, the amounts specified under (b) and (c) of this section shall be changed to reflect inflation, if any. The Alaska Department of Labor shall adopt a regulation on or before June 30 of each year announcing the change in dollar amounts required by this subsection. In this subsection, "inflation" means the change in the consumer price index for the United States city average, all urban consumers, all items indices, compiled by the Bureau of Labor Statistics, United States Department of Labor."

A handwritten signature, appearing to be "W. Davis", is enclosed within a hand-drawn oval. The signature is written in a cursive, flowing style.

AMENDMENT

#30 ✓

L-3

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B)(FIN) 58

BERKOWITZ

Page 5, line 9:

following "exceed",

delete "\$300,000", insert "\$500,000"

Page 5, line 11:

following "section",

delete "may not exceed \$500,000", insert "are not limited"

AMENDMENT

#31 ✓

L-17

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSSHB(FIN) 58

Page 10, lines 25-26:

delete all material

Page 10, line 27:

preceding "trained" delete "(2)"

Page 10, line 28:

following "issue" delete "; and", insert "."

Page 10, line 29 through page 11, line 1:

delete all material

AMENDMENT #32 ✓

5-11

BY REPRESENTATIVE KEMPLER

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 7, line 1 following "exceed":

Delete "100,000"

Insert "250,000"

SB-12

O-LS0056L.4
Ford
3/17/97

AMENDMENT #33 ✓

OFFERED IN THE HOUSE

REPRESENTATIVE CROFT

TO: CSSH B 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 7, line 1, following "future":
- 2 Insert "economic or noneconomic"
- 3 Page 7, line 25, following "future":
- 4 Insert "economic or noneconomic"

W/D
~~Failed 3/19~~

AMENDMENT

#34 ✓

58-13

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE :

TO: CSSSHB 58 (FIN)

Page 8, line 9 through page 9, line 8:

C/B.

Delete entire section.

Renumber the following bill sections accordingly.

AMENDMENT: #35 ✓

58-14

BY REPRESENTATIVE CROFT

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 8, line 12, following "claimant":

Delete ", or that with reasonable probability will be received in the future by
the claimant,"

AMENDMENT # 37 ✓

BY REPRESENTATIVE DAVIES

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 6, line 23, following "damages":

Delete "; and

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

Page 24, lines 5 through 7:

Delete entire section.

Renumber the following bill sections accordingly.

A handwritten signature in cursive script, likely of Representative Davies, is written diagonally across the lower half of the page.

AMENDMENT: #362

OFFERED IN THE HOUSE

REP. CROFT

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 1, line 3:
- 2 Delete "Rule"
- 3 Insert "Rules 411 and"

- 4 Page 11, following line 1:
- 5 Insert a new bill section to read:
- 6 "** Sec. 22. AS 09.25 is amended by adding a new section to read:
- 7 Sec. 09.25.035. Evidence of liability insurance. A claimant in an action for
- 8 personal injury or death may introduce evidence that a person defending a claim is
- 9 insured by a policy of liability insurance. In this section, "liability insurance" means
- 10 a policy of insurance described under AS 21.12.070(a)(2)."

- 11 Renumber the following bill sections accordingly.

- 12 Page 24, following line 24:
- 13 Insert a new bill section to read:
- 14 "** Sec. 62. AS 09.25.035, enacted in sec. 22 of this Act, has the effect of amending Rule
- 15 411, Alaska Rules of Evidence, by providing that evidence of liability insurance may be
- 16 introduced by a claimant in a civil action for personal injury or death."

- 17 Renumber the following bill sections accordingly.

- 18 Page 24, line 25:
- 19 Delete "secs. 22 and 23"
- 20 Insert "secs. 23 and 24"

✓ #30, p. 2

0-LS0056L3

- 1 Page 24, line 30:
- 2 Delete "sec. 25"
- 3 Insert "sec. 26"

AMENDMENT #38. ✓

Rep. Croft

OFFERED IN THE HOUSE

TO: CSSSHB 58(FIN) ("L" Version, Dated 3/14/97)

- 1 Page 9, line 21, following "action":
- 2 Insert "in this paragraph, "other person responsible" does not include a person
- 3 who cannot be identified or located"

Not offered

58-21

0-LS0056L.6
Ford
3/17/97

AMENDMENT

#39 ✓

Rep. Kubina

OFFERED IN THE HOUSE

TO: CSSH B 58(FIN) ("L" Version, Dated 3/14/97)

1 Page 5, line 27, following "(c)":

2 Insert "or (d)"

3 Page 5, line 31:

4 Delete "The"

5 Insert "Except as provided under (d) of this section, the"

6 Page 6, following line 9:

7 Insert a new subsection to read:

8 "(d) The limits or punitive damages imposed under (b) and (c) of this section
9 do not apply to punitive damages awarded as a result of an act or omission involving
10 natural resources."

11 Reletter the following subsection accordingly.

12 Page 15, line 30:

13 Delete "AS 09.17.020(d)"

14 Insert "AS 09.17.020(e)"

15 Page 24, line 2:

16 Delete "AS 09.17.020(d)"

17 Insert "AS 09.17.020(e)"

NO

AMENDMENT #40 ✓

58-9

BY REPRESENTATIVE **KEMPLER**

OFFERED IN HOUSE

TO: CSSSHB 58 (FIN)

Page 6, line 30 following "of" to line 31:

Delete "a party"

Insert "both parties"

Page 24, line 10, following "by":

Delete "a party"

Insert "both parties"

AMENDMENT #41 ✓

L-36

OFFERED IN THE HOUSE

BY REPRESENTATIVE BERKOWITZ

TO: CSSH(B)(FIN) 58

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

delete all material

New
AMENDMENT # 42

✓
L-8

OFFERED IN THE HOUSE

BY REPRESENTATIVE Elton

TO: CSSSHB(FIN) 58

Page 3, line 10:

following "of",

delete "**eight**", insert "**ten**"

Page 3, line 12:

following "within",

delete "**eight**", insert "**ten**"

AMENDMENT

#42 ✓

L-8

OFFERED IN THE HOUSE

BY REPRESENTATIVE

ELTON

TO: CSSH(B)(FIN) 58

Page 3, line 10:

following "within",

delete "eight", insert "ten"

Page 3, line 12:

following "within",

delete "eight", insert "ten"

AMENDMENT - #43

L-9

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSH(B) 58

BERKOWITZ

Page 3, line 25:

following "to",

insert "a"

following "hazardous",

delete "waste", insert "substance"

AMENDMENT #44 ✓

L-10

OFFERED IN THE HOUSE

BY REPRESENTATIVE ELTON

TO: CSSSHB(FIN) 58

Page 3, line 25:

following "(A)",

delete "prolonged"

AMENDMENT #45 ✓

L-12

OFFERED IN THE HOUSE

BY REPRESENTATIVE **KEMPLER**

TO: CSSSHB(FIN) 58

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in a church, synagogue, or other house of worship."

AMENDMENT

#46 ✓

L-13

OFFERED IN THE HOUSE

BY REPRESENTATIVE

TO: CSSSHB(FIN) 58

ELTON

Page 3, line 31:

delete ".", insert "; or"

Page 5, after line 31:

insert a new subsection to read,

"(F) the collapse, structural failure, or unsafe condition in any hospital or medical facility."