

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.15 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997

SENATE FINANCE
COMMITTEE

Amendment Number: 13

Bill Number: _____

Amendment: _____ Date: _____

Sponsor: _____

Logged In By: _____

By Adams

CS for SS HB 58(FIN) am

Page 8, Line 11, through page 9, line 10:
Delete entire section.

Renumber following sections accordingly.

SENATE FINANCE
COMMITTEE

LA-6

Amendment Number: 14

Bill Number: _____

Amendment
Sponsor: _____ Date: _____

Logged In By: _____

By Adams

CS for SS HB 58(FIN) am

On page 10, delete lines 28 and 29.

On page 10, line 30 delete (2).

On page 10, line 31, following the word "issue" delete "; and" insert "."

On page 11, delete lines 1-4.

SENATE FINANCE
COMMITTEE

Amendment Number: 15

Bill Number: _____

Arne ~~Sponson~~ _____ Date: _____

Logged In By: _____

LA-1

CS for SS HB 58(FIN) am

By Adams

On page 9, line 11 through page 10, line 14:
Delete all material.

Re-number sections accordingly.

On page 20, lines 18-27:
Delete all material.

Re-number sections accordingly.

On page 24, lines 20-24:
Delete all material.

Re-number sections accordingly.

On page 11, line 6

AMENDMENT 16

AS. 09.30.065 is amended to read:

After " Section .09.30.065. Offers of Judgment " Insert:

By: Adams
SENATE FINANCE
COMMITTEE

Amendment Number: _____

Bill Number: _____

Sponsor: _____ Date: _____

Logged In By: _____

a. Prior to Commencement of an Action: Upon receipt of a written offer of final settlement, prior to filing a complaint, in the form of an Offer of Judgment, pursuant to Alaska Civil Rule 68, an insurance company shall make payment of all monetary amounts, if any, due the offeror within 90 days of receipt of the written offer. If the judgment entered on the claim to which the payment was made under this section is at least 10% greater than the insurance company payment, the insurance company shall pay all actual costs and the reasonable actual attorneys incurred by the offeror from the date the offer was made through judgment or the termination of the action. This section in addition to any other remedy held by an insured or offeror specified in statute or common law.

b. After Commencement of an Action:

SENATE FINANCE
COMMITTEE

Amendment Number: 17

Bill Number: _____

Amendment Sponsor: _____ Date: _____

Logged In By: _____

CS for SS HB 58(FIN) am

By Adams

On page 11, line 16:

following "is" delete "at least five, less", insert "not more"

On page 11, line 17: following the word "offer":
delete "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,"

Insert: "the interest awarded under AS 09.30.070 and accrued up to the date judgment is entered shall be adjusted"

Delete all material contained on page 11, lines 23 through page 12 line 18.

And insert on page 11, line 23:

" (1) if the offeree is the party making the claim, the interest rate shall be adjusted as follows:

A) if the offer was served no later than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure 26(a)(1), the interest rate shall be reduced by five percent;

B) if the offer was served more than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure 26(a)(1), but more than 90 days before the trial began, the interest rate shall be reduced by three percent;

C) if the offer was served 90 days or less but more than 10 days before the trial began, the interest rate shall be reduced by two percent [REDUCED BY FIVE PERCENT A YEAR]

(2) if the offeree is the party defending against the claim, the interest rate shall be adjusted as follows:

A) if the offer was served no later than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure 26(a)(1), the interest rate shall be increased by five percent;

B) if the offer was served more than 30 days after both parties made the disclosures required by Alaska Rule of Civil Procedure

26(a)(1). but more than 90 days before the trial began, the interest rate shall be increased by three percent:

C) if the offer was served 90 days or less but more than 10 days before the trial began, the interest rate shall be increased by two percent [REDUCED BY FIVE PERCENT A YEAR]

Renumber sections accordingly.

AMENDMENT #

SENATE FINANCE
COMMITTEE
Amendment Number: 18
Bill Number: _____
Sponsor: _____ Date: _____
Logged In By: _____

OFFERED BY SENATOR ADAMS

Page 25, delete lines 5 thru 20, replace with the following & renumber accordingly

A.S. 09 is amended to add a new chapter to read:

CHAPTER 42. ALTERNATIVE DISPUTE RESOLUTION.

Sec. 09.42.010. PURPOSE. The legislature finds that providing a formalized program of alternative dispute resolution procedures within the existing civil litigation system can promote the timely and efficient resolution of many civil disputes. To that end, the legislature enacts AS 09.42.010 - 09.42.050 to provide for an initial pilot program of alternative dispute resolution of certain civil cases.

Sec. 09.42.020. PILOT PROGRAM FOR ALTERNATIVE DISPUTE RESOLUTION. (a) The supreme court shall provide for a pilot program of no less than five years' duration for the submission of civil cases filed in the superior court, third judicial district, to alternative dispute resolution procedures. The program shall operate in accordance with the provisions of AS 09.42.010 - 09.42.050.

(b) The following types of cases shall not be included in the pilot program:

- (1) divorce and dissolution;
- (2) child custody and visitation;
- (3) other children's matters;
- (4) probate;
- (5) cases where no answer is filed.

Sec. 09.42.030. STRUCTURE OF PILOT PROGRAM.

(a) The program established under AS 09.42.020 shall provide criteria for the screening of covered cases to determine if they are appropriate for referral to alternative dispute resolution. The criteria shall be constructed so that at least 50 percent of the covered cases filed in a calendar year are referred.

(b) The program shall provide for a list of qualified persons to whom cases may be referred and a schedule of the fees charged by these individuals. The court shall establish minimum qualifications for those persons. Under the program, parties shall be permitted by mutual agreement to choose a person from the panel or to choose a person not on the panel to conduct the alternative dispute resolution procedure. In the event that the parties cannot agree, the person to conduct the procedure shall be appointed from the panel by the trial court.

(c) The program shall provide that the parties to an alternative dispute resolution procedure shall share the costs of the procedure equally. A party found indigent under guidelines established by the supreme court shall be eligible to have that

party's share of the costs borne at public expense. The costs borne at public expense on behalf of an indigent party shall constitute a lien on any recovery by that party to be paid first out of the recovery.

(d) The program shall provide procedures and rules promoting the timely referral to and conclusion of the alternative dispute resolution procedure. The time from the filing of defendant's answer to the conclusion of the alternative dispute resolution procedure shall not exceed 100 days unless permitted by the trial court in exceptional cases and for good cause shown. Unless a longer period is agreed to by mutual consent of the parties, the alternative dispute resolution session shall be limited to no more than 12 hours.

(e) A person appointed to conduct an alternative dispute resolution procedure under the program established pursuant to AS 09.42.010 - 09.42.050 shall have judicial immunity to the same extent as a judge and shall abide by applicable rules of confidentiality established by the supreme court.

Sec. 09.42.040. EVALUATION OF PILOT PROGRAM. (a) The Alaska Judicial Council shall evaluate the efficacy of the program established pursuant to AS 09.42.010 - 09.42.050 annually. The evaluation shall address factors such as the speed with which cases are resolved, the satisfaction of the litigants, the expenditure of court resources, and the expenditure of litigant resources.

(b) The council shall work with the court system to create a system for efficient collection of information needed to evaluate the program. The council shall report the results of its evaluation to the legislature each year by March 31.

Sec. 09.42.050. DEFINITION. As used in AS 09.42.010 - 09.42.050, "alternative dispute resolution procedure" includes mediation and early neutral evaluation.

- * Sec. 33. AS 09.42, as enacted by sec. 11 of this Act, has the effect of amending Alaska Rule of Civil Procedure 100 by making the mediation process mandatory for certain civil cases in the superior court, third judicial district, and by expanding the scope of the rule to include other forms of alternative dispute resolution in addition to mediation.

0-LS0056LA.40

Ford

4/4/97

Rep. Porter

AMENDMENT

OFFERED IN THE SENATE

TO: CSSSHB 58(FIN) am

1 Page ²1, following line ²⁶7:

2 Insert a new paragraph to read:

3 ~~"(1) ensure that this Act does not apply to or in any way have an effect on~~
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Renumber the following paragraphs accordingly.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 31, 1997

SUBJECT: Exxon Valdez litigation - (CSSSHB 58(FIN) am)

TO: Senator Jerry Mackie
Attn: Dave

FROM: Michael F. Ford *M.F.*
Legislative Counsel

You have asked if the provisions in the above referenced bill would apply to In Re Exxon Valdez, A89-0095.Civ (D. Alaska), the civil litigation brought in federal court resulting from the Exxon Valdez oil spill. As explained in this memo, the provisions of the bill should not apply to this lawsuit.

Assuming that CSSSHB 58(FIN) am becomes law, under Sec. 64 the provisions of the Act will not apply to civil actions already filed or accrued, such as the In Re Exxon Valdez litigation. In addition to the bill itself, under AS 01.10.090 a statute is not retroactive unless expressly declared to be retroactive. Finally, there are constitutional due process problems if the bill were applied to existing civil actions. See 2 Sutherland Statutory Construction, Sec. 41.03 (4th Ed).

If you have further questions please contact me.

MFF:glc
97-216.glc

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR MACKIE

TO: CSSH B 58(FIN) am

1 Page 1, following line 7:

2 Insert a new paragraph to read:

3 "(1) ensure that this Act does not apply to or in any way have an effect on
4 existing litigation or a civil cause of action that accrues before the effective date of this Act;
5 it is the specific intent of the legislature that this Act not apply to or in any way have an
6 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

7 Renumber the following paragraphs accordingly.

AMENDMENT #1

OFFERED IN THE SENATE

TO: SCS CSSSHB 58()(Draft 0-LS0056/Z, Dated 4/14/97)

- 1 Page 4, line 4:
2 Delete "fraudulent"
- 3 Page 4, line 15:
4 Delete "the minor or"
- 5 Page 8, line 29, following "responsible person":
6 Insert ", the person is not a person protected from a civil action under
7 AS 09.10.055,"
- 8 Page 8, line 31, through page 9, line 1:
9 Delete "is not a person protected from a civil action under AS 09.10.055 and"
- 10 Page 10, lines 14 - 16:
11 Delete all material and insert:
12 "(b) The provisions of (a) of this section do not apply if the state has not
13 recognized a board that ~~could certify~~ ^{has certified} the witness in the particular field or matter at
14 issue."
- 15 Page 18, line 10:
16 Delete "defending"
17 Insert "or owed by all"
- 18 Page 25, line 31:
19 Delete "a pilot"

1

Insert "an"

~~Adopted~~
4-1-14

0-LS0056Z.3
Ford
4/15/97

#2

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056Z, Dated 4/14/97)

- 1 Page 23, line 2:
- 2 Delete "cases"
- 3 Insert "a civil action for personal injury or property damage"
- 4 Page 23, line 31, following "action":
- 5 Insert "involving personal injury or property damage"
- 6 Page 24, line 10, following "However":
- 7 Insert "in a civil action for personal injury or property damage."
- 8 Page 24, line 17:
- 9 Delete "Unless"
- 10 Insert "In a civil action for personal injury or property damage, unless"

Adopted

Chris Christiansen

*pg 24 { 545
546*

*Take out "exceptional cases" in
2 places. Only "for good cause
shown"*

AMENDMENT

#3

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056Z, Dated 4/14/97)

1 Page 8, line 28:

2 Delete "to each claimant"

3 Page 9, line 4:

4 Delete "or"

5 Insert "and"

Adopted

DUNCANS

AMENDMENT NO. -- "STANDARD FOR TIER 2 PUNITIVE DAMAGES"

OFFERED IN SENATE RULES COMMITTEE

BY:

TO: SCS CSSSHB 58() (Version Z)

HS

Page 7, line 21:

Delete "(1)"

Page 7, line 22:

Delete "; and"

Insert "."

Page 7, lines 23 - 27:

Delete all material

This would allow
the higher punitive cap
just for being in
"a commercial
activity motivated
by financial gain"
Alone.

AMENDMENT NO. -- "PUNITIVE DAMAGES IN EMPLOYMENT CASES"

OFFERED IN SENATE RULES COMMITTEE

BY:

#6

TO: SCS CSSSHB 58() (Version Z)

Page 8, line 1:

Following "(1)":

Delete "\$50,000"

Insert "\$200,000"

Following "less than":

Delete "15"

Insert "100"

This deletes the punitive cap in ~~unlawful~~ employment practices cases for small businesses with fewer than 15 employees, and subjects them to the same \$200,000 cap as employer with 100 employees.

Page 8, lines 2 - 3:

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

AMENDMENT NO. _____ - "NONECONOMIC DAMAGES CAP"

OFFERED IN SENATE RULES COMMITTEE

BY:

TO: SCS CSSH 58() (Version Z)

#7

Page 5, line 24:

Delete "injured"

- ?

Page 5, lines 25 - 31:

Delete all material and insert:

"damages are awarded for severe permanent physical impairment or severe disfigurement."

> This
opens the door to the higher cap
on noneconomic damages ~~and~~ for
"severe permanent physical
impairment or severe disfigurement,
and completely deletes our
(1) - (4) list of injuries for which
the higher cap applies."

AMENDMENT NO. _____ - "INSURANCE COVERAGE FOR
EMERGENCY ROOM DOCTORS"

OFFERED IN SENATE RULES COMMITTEE

BY:

TO: SCS CSSSHB 58() (Version Z)

(#8)

Page 16, line 8:

Delete "\$500,000"

Insert "\$1,000,000"

Delete "\$1,500,000"

Insert "\$2,000,000"

Requires Emergency
Room Physicians to
carry \$1m/\$2m liability
insurance. ~~Physicians~~
It would cause
loss of medical services
in outlying areas of the
state.

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: CSSSHB 58(FIN) am

1 Page 6, lines 18 - 30:

2 Delete "jury,

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

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

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

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

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

9 (E) [(5)] punitive damages; and10 (2) the amount of damages awarded shall be reduced by the
11 amount of federal and state income tax that would have been paid on damages
12 contained in the verdict under tax rates in effect on the date of the injury or
13 death; this paragraph does not apply to an award of damages if the damages are
14 taxable under federal or state law"15 Insert "jury, the verdict shall be itemized between economic loss and noneconomic
16 loss, if any, as follows:

17 (1) past economic loss;

18 (2) past noneconomic loss;

19 (3) future economic loss;

20 (4) future noneconomic loss; and

21 (5) punitive damages"

22 Page 24, lines 8 - 10:

23 Delete all material.

periodic payments

0-LS0056LA.3
Ford -
3/21/97

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR PARNELL

TO: CSSSHB 58(FIN) am

- 1 Page 7, lines 1 - 2:
- 2 Delete "a [AN INJURED]"
- 3 Insert "an injured"

- 4 Page 24, line 13:
- 5 Delete "a"
- 6 Insert "an injured"

1 Renumber the following bill sections accordingly.

AMENDMENT

**OFFERED IN THE SENATE
TO: CSSSHB 58(FIN) am**

BY SENATOR PARNELL

p. 5, lns. 25-27 Delete all material

**p.5, lns. 25-27 Insert "convincing evidence of outrageous conduct, including acts
done with malice or bad motives, or reckless indifference to the
interest of another person."**

1 and decrees for the payment of money, including prejudgment interest, is three
2 percent above the interest rate set by the United States Bureau of the Public Debt
3 for five-year treasury notes in effect on the day on which the judgment or decree
4 is entered [10.5 PERCENT A YEAR], except that a judgment or decree founded on
5 a contract in writing, providing for the payment of interest until paid at a specified rate
6 not exceeding the legal rate of interest for that type of contract, bears interest at the
7 rate specified in the contract if the interest rate is set out in the judgment or decree.

8 * Sec. 15. AS 09.55 is amended by adding a new section to read:

9 Sec. 09.55.551. EXPERT WITNESS QUALIFICATION. (a) Except as
10 provided under (b) of this section, an action based upon professional negligence, a
11 person may not testify as an expert witness on the issue of the appropriate standard of
12 care unless the witness is a professional who is licensed in this state or is licensed in
13 another state or country and

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

16 (2) is certified by a board recognized by the state as having
17 acknowledged expertise and training directly related to the particular field or matter
18 at issue.

19 (b) The provisions of (a) of this section do not apply to a person who is
20 testifying on the appropriate standard of care in a profession that is not licensed in this
21 state, or another state or country, and who the court determines is qualified as an
22 expert witness.

23 * Sec. 16. AS 09.55.560 is amended by adding a new paragraph to read:

24 (4) "professional negligence" means a negligent act or omission in
25 rendering professional services.

26 * Sec. 17. AS 09.55 is amended by adding a new section to read:

27 **ARTICLE 8. MANDATORY ARBITRATION.**

28 Sec. 09.55.700. MANDATORY ARBITRATION. (a) A person who files a
29 civil action for personal injury, death, or property damage shall also submit the claim
30 to the court for arbitration unless the action is excluded under (b) of this section. The
31 costs of arbitration shall be paid in equal shares by the parties.

HB0158H

-9-

SCS CSHB 158(RLS) am S(ct rls fld S)

New Text Underlined [DELETED TEXT BRACKETED]

Post-It* Fax Note	7671	Date	4.7	# of pages	1
To	Geoff Bullock	From	Jim S		
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	586-5048	Fax #			

PROPOSED AMENDMENTS

Section 1.

Page 2, following line 26:

Insert a new paragraph to read:

"(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska);"

Section 2. Okay.

Section 3. Okay.

Section 4. Okay.

Section 5: (Statute of Repose)

Page 3, lines 10 and 11:

~~delete:~~

~~"Notwithstanding the disability of minority described under AS 09.10.140(a),"~~

10 yrs not 8

Section 6. Okay.

Section 7. Okay.

Section 8: (Birth Injuries)

Keep Long

Replace lines 28-31 with a new paragraph to read:

"(c) notwithstanding the disability of minority, a person may not bring an action for an injury which occurred during birth unless the action is commenced by the time the person reaches 8 years of age."

Section 9: (Noneconomic Damages)

Page 5, line 9:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$5,000.00 or"

Page 5, line 11:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$7,000.00 or"

Page 5, line 14:

following the word "loss" add:

"of use"

Section 10. (Punitive Damages)

add Parnell language.

Section 11. (Punitive Damage Limit--Discuss)

Section 12.(Income Taxes) Out.

Section 13. (Periodic Payments)

Page 7, line 3:

replace "100,000" with "500,000"

Section 14. Okay.

Section 15. Okay.

Section 16. (Collateral Benefits) Out.

Section 17. (Apportionment of Fault)

Alternative 1:

Page 9, line 23 following the word "action" insert:

"so long as any such other responsible person is identified^{to the 11} within 120 days of service of the complaint"

Alternative 2:

Page 9, line 23 after the word "employer" insert:

"unless the person was identified as a potentially responsible person and the parties had a sufficient opportunity to join that person but chose not to."

Section 18. Okay.

Section 19. Okay.

Section 20. Okay.

Section 21. (Expert Witnesses) Add last year's language.

Section 22: (Offer of Judgment)

Page 11, line 16 change "5" percent to "10" percent

Page 11, line 25 change "100" to "75"

Page 11, line 30 change "75" to "50"

Page 12, line 2 change "50" to "30"

Section 23: (Offer of Judgment)

Page 12, lines 16-18 delete.

Section 24: Okay.

Section 25: (Prejudgment Interest)

Page 12, line 28 change "subsection" to "subsections"

OK.

Page 12, after line 30 insert:

"(d) prejudgment interest may not be awarded for more than two years before the commencement of an action."

Sections 26-37: Okay.

Section 38: (Damages from Commission of Felony)

Page 18, line 13 insert after the word "if":

"the defendant by clear and convincing evidence proves the violation of AS 28.35.030 and that the conduct substantially contributed to the personal injury or death."

Section 39-48. Okay.

Section 49. (Rule 95)

Page 23, line 11:

Change "10,000" to "50,000".

Section 50-54. Okay.

Section 55. (Income Tax) Delete.

Section 56-58. Okay.

Section 59. (Allocation of Fault) Needs to be changed depending upon which alternative is adopted.

Section 60-65. Okay.

Additional thoughts:

1. I am concerned that the exception we are trying to carve out in the statute of repose for birth injuries may not pass constitutional muster.

2. With respect to Charles Cole's proposals, I would recommend not changing the jurisdictional limits of the district court. As I explained to Jim, in Southeastern Alaska for example, we have five superior court judges, but only two district court judges. If we were to increase the jurisdictional limit of district court, we would greatly overburden the existing system. You can easily give Charlie part of what he is asking for by simply adopting the procedural changes which I have set forth as follows:

District Court Civil Rule 1(a)(1) is amended to read:

(1) The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable. However, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Rule 26(a) and to the taking by each party of the deposition of one or more opposing parties and of one additional person who is not a party.

District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum.

3. Discuss the offer of judgment provision when multiple parties are involved.
4. Discuss prejudgment interest issues.
5. Discuss punitive damage issues.
6. Discuss participation at Friday night session.
7. Discuss task force makeup as an issue.

to: Mike Ford 2029 FK
Fu: Tim Bourant 3727

AMENDMENT

OFFERED IN THE SENATE RULES COMMITTEE

1. Page 4, line 4:
delete "fraudulent" after "fraud or"
2. Page 4, line 15:
delete " the minor or" after "of reasonable care by"
3. Page 8, lines 29-31 and page 9, lines 1-5:
This should read as follows:

"responsible person, the person is not a person protected from a civil action under AS 09.10.055 and the parties had a sufficient opportunity to join that person in the action but chose not to. "Sufficient opportunity to join" means the person is:

- (A) within the jurisdiction of the court;
- (B) not precluded from being joined by law or court rule; or
- (C) reasonably locatable [UNDER AS 09.16.040].

4. Page 10, line 14:
insert after "of this section do not apply": "if a board does not exist that ~~could certify the~~ witness in the particular field or matter at issue."

Delete: "to a person who is testifying on the appropriate standard of care in a profession that is not licensed in this state, and who the court determines is qualified as an expert witness."

5. Page 18, line 10:
delete "defending" after "fees paid by"

insert after "fees paid by": "or owed by all"
6. Page 18, line 10:
delete "defending" after "fees paid by"

insert after "fees paid by": "or owed by all"

- ~~7. Page 23, line 2:
insert after "In cases involving": "personal injury or property damage"~~

Need
before
5 pm

Per Mike L.

she state was not
recognized a board
that certified
the

8. Page 22, line 31:

insert after "to a civil action" : "involving personal injuries or ~~death~~"

*property
damage*

9. Page 25, line 31:

delete "a pilot" after "legislation to create

10. "

insert "an" after "legislation to create"

AMENDMENT

OFFERED IN THE SENATE

TO: SCS CSSSHB 58() (Draft 0-LS0056Z, Dated 4/14/97)

1 Page 23, line 2:

2 Delete "cases"

3 Insert "a civil action for personal injury, [death] or property damage"

4 Page 24, line 10, following "However,":

5 Insert "in a civil action for personal injury [death] or property damage,"

6 Page 24, line 17:

7 Delete "Unless"

8 Insert "In a civil action for personal injury, [death] or property damage, unless"

*add sum for
pg 23 En. 31*

CONFIDENTIALTort Reform / Areas of Substantial Agreement (4/10/97 meeting)No objection

§ 1 intent
 § 2 banking interest rate
 § 3 and § 4: S/L
 § 6 S/L

§ 20

Substantial Agreement

§ 12: reductn by taxes (??)
 § 16: collateral benefits (??)
 § 20: fault includes intentional
 (same as Task Force) (??)
 § 21: Expert Witnesses (??)

§ 25: no prejudgmentt interest
 for future economic, non-economic
 and punitive damages
 § 26: change in interest rate
 also applies in judgments against
 the State
 § 27: prejudmmt interest in
 condemnation cases
 § 28: corrective
 § 29: expert advis. panel includes
 governmental entities
 § 30 - 32: re. expert advs. panel
 § 33 - 34: health care providers
 and definitions of professional
 negligence and services
 § 36: civ. liab. of electric utility

§ 38: dmgs from felony (???)

§ 39: settlement data
 § 40: insurance data

§ 41 - 42: independent counsel
 insurance cases

§ 43 - 44: ???

§ 45 - 48: civil procedures
 § 51 - 65: procedure and rules changes
 and effective dates

No Agreement to Date

§ 5 - Statute of Repose
 § 7, 8 - untolling of minority statute
 § 9 - noneconomic damages
 § 10, 11 - punitive damages
 § 13 - 15: periodic payments

CONFIDENTIAL

- § 17 - 19: allocation of fault
- § 22 - 23: offers of judgment
(GV and JF to make recmdtn)
- § 24: prejudgment interest
(Jim S. checking on what the difference
is between the two different indexes)
- § 35: contingent fee agreements
- § 37: emergency rm physicians (non-employee)
- § 49 -50: sanctions for attys and parties

**Add On Issue: District Court jurisdiction and streamlined
procedures**

PROPOSED AMENDMENTS

Section 1.

Page 2, following line 26:

Insert a new paragraph to read:

"(11) ensure that this Act does not apply to or in any way have an effect on existing litigation or a civil cause of action that accrues before the effective date of this Act; it is the specific intent of the legislature that this Act not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska)."

Section 2. Okay.

Section 3. Okay.

Section 4. Okay.

Section 5: (Statute of Repose)

Page 3, lines 10 and 11:

delete:

"Notwithstanding the disability of minority described under AS 09.10.140(a),"

Section 6. Okay.

Section 7. Okay.

Section 8: (Birth Injuries)

Replace lines 28-31 with a new paragraph to read:

"(c) notwithstanding the disability of minority, a person may not bring an action for an injury which occurred during birth unless the action is commenced by the time the person reaches 8 years of age."

Section 9: (Noneconomic Damages)

Page 5, line 9:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$5,000.00 or"

Page 5, line 11:

Insert after the word "exceed":

"the greater of the remaining life expectancy of the person in years
times \$7,000.00 or"

Page 5, line 14:

following the word "loss" add: — ?

"of use"

✓ Section 10. (Punitive Damages)

add Parnell language.

Section 11. (Punitive Damage Limit--Discuss)

Section 12. (Income Taxes) Out.

✓ Section 13. (Periodic Payments)

Page 7, line 3:

replace "100,000" with "500,000"

Section 14. Okay.

Section 15. Okay.

Section 16. (Collateral Benefits) Out.

① Better to raise caps.
① Need language to
punish people who
don't test or
test to state
financially
throw away?

Section 17. (Apportionment of Fault)

Alternative 1:

Page 9, line 23 following the word "action" insert:

"so long as any such other responsible person is identified within 120 days of service of the complaint"

Alternative 2:

Page 9, line 23 after the word "employer" insert:

"unless the person was identified as a potentially responsible person and the parties had a sufficient opportunity to join that person but chose not to."

Section 18. Okay.

Section 19. Okay.

Section 20. Okay.

Section 21. (Expert Witnesses) Add last year's language.

Section 22: (Offer of Judgment)

Page 11, line 16 change "5" percent to "10" percent

Page 11, line 25 change "100" to "75"

Page 11, line 30 change "75" to "50"

Page 12, line 2 change "50" to "30"

Section 23: (Offer of Judgment)

Page 12, lines 16-18 delete.

Section 24: Okay.

Section 25: (Prejudgment Interest)

Page 12, line 28 change "subsection" to "subsections"

Page 12, after line 30 insert:

"(d) prejudgment interest may not be awarded for more than two years before the commencement of an action."

Sections 26-37:

Okay.

? See it.

Section 38: (Damages from Commission of Felony)

Page 18, line 13 insert after the word "if":

"the defendant by clear and convincing evidence proves the violation of AS 28.35.030 and that the conduct substantially contributed to the personal injury or death."

Section 39-48.

Okay.

? CFKS. — See line 16.
From

Section 49. (Rule 95)

Page 23, line 11:

Change "10,000" to "50,000".

Section 50-54.

Okay.

Section 55. (Income Tax) Delete.

Section 56-58.

Okay.

Section 59. (Allocation of Fault) Needs to be changed depending upon which alternative is adopted.

Section 60-65.

Okay.

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)

Attorney fees & costs paid
incurred by Δ.

not needed
if a real
s/depose.

Additional thoughts:

✓ I am concerned that the exception we are trying to carve out in the statute of repose for birth injuries may not pass constitutional muster.

② With respect to Charles Cole's proposals, I would recommend not changing the jurisdictional limits of the district court. As I explained to Jim, in Southeastern Alaska for example, we have five superior court judges, but only two district court judges. If we were to increase the jurisdictional limit of district court, we would greatly overburden the existing system. You can easily give Charlie part of what he is asking for by simply adopting the procedural changes which I have set forth as follows:

District Court Civil Rule 1(a)(1) is amended to read:

(1) The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable. However, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Rule 26(a) and to the taking by each party of the deposition of one or more opposing parties and of one additional person who is not a party.

District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum. *what shall the memorandum include a certificate that each party has exchanged the information decided in Rule 26(a) of the*

3. Discuss the offer of judgment provision when multiple parties are involved.
4. Discuss prejudgment interest issues.
5. Discuss punitive damage issues.
6. Discuss participation at Friday night session. *BRAN*
7. Discuss task force makeup as an issue.

go to Rule 26(a) within 20 days of filing suit to make a record.
and may state after the court satisfies itself that the information in Rule 26(a)

MEMORANDUM

TO: Jim S.
Rep. Brian Porter

FROM: Geoff Bullock
ASMA Lobbyist

DATE: April 9, 1997

RE: HB 58 Language

Here is the language we would like to see added to HB 58:

Page 17, Line 5;

after ... "least \$500,000 for each incident"

insert "and \$1,500,000 for all incidents in a year"

If you have any questions please don't hesitate to contact me. Also, if you have the language yet for the statute of repose section (dealing with OB's) please fax it to me at 586-5048. ASMA is very anxious to look at this.

Thanks.

LAW OFFICES OF
 CHARLES E. COLE
 406 CUSHMAN STREET
 FAIRBANKS, ALASKA 99701

DATE

4

MEMORANDUM TO:

Brian Porter

My position on amendments
 to District Court jurisdiction
 and procedure is:

1. Adopt the annexed § 27.
2. Adopt the annexed § 28,
 but omit the last sentence
 if necessary § 19
3. Use your judgment on § 19
 the jurisdiction limits / 56 cent

FOR
 Mrs
 Lester
 Finck

0-GH0020.A

part

(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 AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.150;
- (5) estate, guardianship, and trust cases filed under AS 13;
- (6) small claims under AS 22.15.040.

* Sec. 19. AS 22.15.030(a) is amended to read:

(a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

- (1) for the recovery of money or damages when the amount claimed exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];
- (2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$100,000 [\$50,000];
- (3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$100,000 [\$50,000];
- (4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;
- (5) for establishing the fact of death or cause and manner of death of any person in the manner prescribed in AS 09.55.020 - 09.55.069;
- (6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.100 when the value of the arrears and damage to the property does not exceed \$100,000 [\$50,000];
- (7) for the foreclosure of a lien when the amount in controversy does

1 not exceed \$100,000 [\$50,000]:

2 (8) for the recovery of money or damages in motor vehicle tort cases
3 when the amount claimed exclusive of costs, interest, and attorney fees does not
4 exceed \$100,000 [\$50,000];

5 (9) over civil actions for taking utility service and for damages to or
6 interference with a utility line filed under AS 42.20.030;

7 (10) over cases involving protective orders for domestic violence under
8 AS 18.66.100 - 18.66.180.

9 * Sec. 20. AS 21.06 is amended by adding a new section to read:

10 Sec. 21.06.057. Insurance report. (a) The director shall require reporting of
11 and shall compile information necessary to evaluate

12 (1) the impact of the measures enacted in this Act on the availability
13 and cost of insurance in the state; and

14 (2) the financial health and profitability of insurers doing business in
15 the state.

16 (b) Information described in (a) of this section shall be provided by all insurers
17 doing business in this state in the format specified by the director and shall include
18 factual information stating premiums, claims, expenses, and an allocation of investment
19 profits or losses by line of business within in this state. Information shall be compiled
20 by the division in a way that protects the identity of individual insureds.

21 (c) The director shall adopt regulations to implement and interpret this section,
22 including requiring insurers doing business in the state to provide information
23 necessary for the division of insurance to carry out its responsibilities under (a) and
24 (b) of this section.

25 (d) Beginning June 1, 1999, the information compiled under (a) of this section
26 shall be reported to the governor and the legislature annually.

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

30 Sec. 21. Alaska Rule of Civil Procedure 16.1(c) is amended to read:

31 (c) Motion to Set Trial and Certificate. Unless otherwise ordered by the

O-CH0020.A

award shall be increased by 50 percent;

(B) if the offer was served more than 30 days after both parties made the disclosures required by Rule 26(a)(1), but more than 90 days before the trial began, the attorney's fees award shall be increased by 30 percent;

(C) if the offer was served 90 days or less but more than 10 days before the trial began, the attorney's fees award shall be increased by 20 percent.

(d) When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made 90 days or less but more than 10 days before trial begins, if it is served not less than 10 days before the commencement of hearings to determine the amount or extent of liability.

* Sec. 25. Alaska Rule of Civil Procedure 72.1(g) is amended to read:

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

* Sec. 26. Alaska Rule of Civil Procedure 95(b) is amended to read:

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

* Sec. 27. District Court Civil Rule 1(a)(1) is amended to read:

(1) The procedure in civil actions and proceedings before district judges and magistrates shall be governed by the rules governing the procedure in the superior court to the extent that such rules are applicable. However, unless otherwise agreed by all parties or permitted by order of the court in exceptional cases and for good cause shown, discovery shall be limited to the disclosures required under Rule 26(a) and to the taking by each party of the deposition of one or more opposing

HB0068a

-17-

HB 60

~~NEW TEXT UNDERLINED (DELETED TEXT BRACKETED)~~

0-GH0020.A

~~parties and of one additional person who is not a party.~~

* Sec. 28. District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum. [The court shall set the trial to commence on a date no less than 30 and no more than 90 days after the filing of the memorandum to set the case for trial, unless a continuance is granted by the court pursuant to Civil Rule 40(e).] **omit if necessary**

~~Sec. 29. Alaska Rule of Appellate Procedure 9.1 is amended by adding a subsection to read:~~

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

* Sec. 30. Alaska Rule of Civil Procedure 16.1(k)(4) is repealed.

* Sec. 31. AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 6 of this Act, have the effect of amending

(1) Alaska Rule of Civil Procedure 49 by requiring the jury to conduct a separate proceeding for the determination of a punitive damages award after it has determined that punitive damages are allowed in a case; and

(2) Alaska Rule of Civil Procedure 26(b) and (d) by affecting the scope, limits, timing, and sequence of discovery allowed in a case.

HB 60

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HB0060a

~~NEW TEXT UNDERLINED (DELETED TEXT BRACKETED)~~

To: Jeff

Fm: Jim

Re: Tort reform language

1. Adopt HB 60 sections 27 and 28, except section 28 should read:

Section 28. District Court Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. **The memorandum shall contain a certification that each party has exchanged the information described in Civil Rule 26(a) and may state their separate positions if they do not agree concerning information or estimates to be provided in the memorandum.** ~~After the court satisfies itself that the information described in Civil Rule 26(a) has been exchanged, the court shall set the trial date to commence on a date no less than 30 nor more than 90 days after the filing of the memorandum to set the case for trial, unless a continuance is granted by the court pursuant to Civil Rule 40(e).~~

after a
reasonable
time.

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LAW OFFICES OF
CHARLES E. COLE
 406 CUSHMAN STREET
 FAIRBANKS, ALASKA 99701

TELEPHONE 452-1124

DATE

4

MEMORANDUM TO:

Brian Porter

My position on amendments
 to District Court jurisdiction
 and procedure is:

1. Adopt the annexes } 27.
2. Adopt the annexes } 28,
 but omit the last sentence
 if necessary § 19
3. Use your judgment on ^{§ 19}
 the jurisdiction limits / 56.00

Is this OK?
 If leave at
 4:50 PM?

0-GH0020.A

part:

(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 AS 47.12;
- (4) domestic violence protective orders under AS 18.66.100 - 18.66.150;
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(a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

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(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$100,000 [\$50,000];

(4) to give judgment without action upon the confession of the defendant for any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

(5) for establishing the fact of death or cause and manner of death of any person in the manner prescribed in AS 09.55.020 - 09.55.069;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage to the property does not exceed \$100,000 [\$50,000];

(7) for the foreclosure of a lien when the amount in controversy does

1 not exceed \$100,000 [\$50,000];

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3 when the amount claimed exclusive of costs, interest, and attorney fees does not
4 exceed \$100,000 [\$50,000];

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6 interference with a utility line filed under AS 42.20.030;

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8 AS 18.66.100 - 18.66.180.

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10 Sec. 21.06.057. Insurance report. (a) The director shall require reporting of
11 and shall compile information necessary to evaluate

12 (1) the impact of the measures enacted in this Act on the availability
13 and cost of insurance in the state; and

14 (2) the financial health and profitability of insurers doing business in
15 the state.

16 (b) Information described in (a) of this section shall be provided by all insurers
17 doing business in this state in the format specified by the director and shall include
18 factual information stating premiums, claims, expenses, and an allocation of investment
19 profits or losses by line of business within in this state. Information shall be compiled
20 by the division in a way that protects the identity of individual insureds.

21 (c) The director shall adopt regulations to implement and interpret this section,
22 including requiring insurers doing business in the state to provide information
23 necessary for the division of insurance to carry out its responsibilities under (a) and
24 (b) of this section.

25 (d) Beginning June 1, 1999, the information compiled under (a) of this section
26 shall be reported to the governor and the legislature annually.

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

30 Sec. 21. Alaska Rule of Civil Procedure 16.1(c) is amended to read:

31 (c) Motion to Set Trial and Certificate. Unless otherwise ordered by the

0-GHD020.A

1 award shall be increased by 50 percent;

2 (B) if the offer was served more than 30 days after both parties
3 made the disclosures required by Rule 26(a)(1), but more than 90 days before
4 the trial began, the attorney's fees award shall be increased by 30 percent;

5 (C) if the offer was served 90 days or less but more than 10
6 days before the trial began, the attorney's fees award shall be increased by 20
7 percent.

8 (d) When the liability of one party to another has been determined by verdict
9 or order or judgment, but the amount or extent of the liability remains to be
10 determined by further proceedings, the party adjudged liable may make an offer of
11 judgment, which shall have the same effect as an offer made 90 days or less but more
12 than 10 days before trial begins, if it is served not less than 10 days before the
13 commencement of hearings to determine the amount or extent of liability.

14 * Sec. 25. Alaska Rule of Civil Procedure 72.1(g) is amended to read:

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

19 * Sec. 26. Alaska Rule of Civil Procedure 95(b) is amended to read:

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

25 * Sec. 27. District Court Civil Rule 1(a)(1) is amended to read:

26 (1) The procedure in civil actions and proceedings before district judges
27 and magistrates shall be governed by the rules governing the procedure in the superior
28 court to the extent that such rules are applicable. However, unless otherwise agreed
29 by all parties or permitted by order of the court in exceptional cases and for good
30 cause shown, discovery shall be limited to the disclosures required under Rule
31 26(a) and to the taking by each party of the deposition of one or more opposing

HB0060a

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HB 60

~~THEY TALKED TOGETHER~~ (DELETED TEXT BRACKETED)

parties and of one additional person who is not a party.

* Sec. 28. District Court Civil Rule 4 is amended by adding a new subsection to read:

(b) Unless otherwise permitted by order of the court in exceptional cases and for good cause shown, all parties shall file a memorandum to set the case for trial, as set forth in Civil Rule 40(b), no later than 180 days after service of the complaint on all parties to the case. The parties shall submit a joint memorandum to set the case for trial, which may state their separate positions if they do not agree concerning the information or estimates to be provided in the memorandum. The court shall set the trial to commence on a date no less than 30 and no more than 90 days after the filing of the memorandum to set the case for trial, unless a continuance is granted by the court pursuant to Civil Rule 40(e). **Unit 4 necessary**

to read:

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

* Sec. 30. Alaska Rule of Civil Procedure 16.1(k)(4) is repealed.

* Sec. 31. AS 09.17.020(a)(c), (d), and (e), as repealed and reenacted by sec. 6 of this Act, have the effect of amending

(1) Alaska Rule of Civil Procedure 49 by requiring the jury to conduct a separate proceeding for the determination of a punitive damages award after it has determined that punitive damages are allowed in a case; and

(2) Alaska Rule of Civil Procedure 26(b) and (d) by affecting the scope, limits, timing, and sequence of discovery allowed in a case.

HB 60

-18-

HB0060a

~~REPEALED TEXT BRACKETED~~

SCOMM

101A:14

To: Senator Tim Kelly

Fm: Representative Brian Porter,
by Jim Sourant

April 13, 1997

Re: Side by side analysis of HB 58: Senate Finance version v. Senate Rules version.

The Senate Finance Committee version will be referred to as the "Finance version", and the Senate Rules Committee version will be called "Rules version".

Section 1. **Legislative intent.** The Finance version is as stated. The Rules version moves the bill's nonapplicability to the Exxon Valdez case language from the beginning of the intent section to the end of the intent section.

Sections 2-4. Identical and noncontroversial.

Section 5. **Statute of Repose.** A statute of repose prevents causes of action from being brought a certain number of years after the conduct has occurred, since it is almost impossible to defend against claims when so many years have gone by that documents have been destroyed, witnesses have moved, and memories have faded. The Finance version makes it a ~~tough~~ 8 years, while the Rules version gives a significant concession by allowing 10 years.

The Rules version adds a new exclusion to the operation of the statute of repose: "if the facts that would give notice of a potential cause of action are not discoverable in the exercise of reasonable care by the minor or the minor's parent or guardian". This should quell fears that the bill is unfair to minors.

Sections 6-7. Identical and noncontroversial.

Section 8. **Minority statute of limitations.** Both versions make a change to the tolling provisions of the minority statute of limitations. The Finance version only tolls it for injuries or death occurring during a child's first six years of

15 years now
NOT
tough!

life. The Rules version tolls it only for injuries (not death) occurring during a child's first eight years of life, thereby giving an extra two years to bring an action for birth injuries. It makes no sense to toll the statute of limitations in the case of death.

(a) - GB = TF

Section 9. Noneconomic damages. Both versions put a finite cap on noneconomic damages. The Finance version caps noneconomic damages at \$300,000 per occurrence, and, in the case of severe injuries, \$500,000 per occurrence. The Rules version raises the cap for noneconomic damages to \$500,000 per occurrence, and, for severe injuries, \$1,500,000 per occurrence.

In addition to the substantial increase in amounts available for noneconomic damages, the Rules version also allows potentially higher caps where the injured person is very young, and has a longer life expectancy. For the lower cap, the Rules version allows the greater of \$10,000 multiplied times the life expectancy of the injured person in years or \$500,000. For the upper cap, the Rules version allows the greater of \$30,000 multiplied by the life expectancy of the injured person in years or \$1,500,000.

The Rules version has also broadened the higher cap to include claims for "loss of, or loss of functional use of, one or more limbs", as well as for total deafness.

Section 10/11. Punitive damages. Both versions include reckless conduct as a basis for punitive damages, using about the same language found in Senator Sean Parnell's amendment. Both versions provide that 50% of punitive damage recoveries go to the State.

The Finance version puts its caps provisions in Section 11. There, caps for punitives, including punitives for unlawful employment practices, is set at the greater of three times compensatory damages or \$300,000. Where there has been "Ford pinto" type of conduct, the caps are raised to the greater of four times compensatory damages or \$600,000.

The Rules version punitive caps appear in Section 11. The language is mostly taken from the Governor's Task Force recommendation and HB 60, but slightly modified. Here the punitives damage caps are set significantly higher than in the Finance version. It is the greater of three times compensatory damages or \$500,000. The same "Ford pinto" language found in the Finance version is used here, but the caps are raised very substantially to the greater of four times compensatory damages or \$3,000,000.

The Rules version has added new caps on punitive damages in the area of unlawful employment practice. The caps vary on a sliding scale from a low of \$50,000 if the employer has less than 15 employees, to a high of \$500,000 if the employer has 500 or more employees in this state.

Sections 12, 13, 14, 15, and 16 of the Finance version have been deleted in the Rules version. Reducing judgments by the amount of **income taxes** that would have been paid; **periodic payments**; and **collateral benefits** have been

deleted from the Rules version. This is a substantial concession to the trial lawyers.

Sections 17-19 of the Finance version, dealing with the **allocation of fault** and damages, appears in sections 11-13 of the Rules version. Under both versions of this bill, fault cannot be allocated against a person against whom the statute of repose has run. In order to allocate fault under the Rules version, a defendant must join a third person, unless the third person is unavailable. A third person is unavailable if (a) not subject to the jurisdiction of the court, (b) cannot be joined because of statute or rule, or (c) is not reasonably locatable. The rationale is that if a third person is identified as a potentially responsible party, and is available to be joined, but a choice is made not to join that third person, the party which fails to join that person should not be able to allocate fault to the "empty chair" he or she has created by not joining the third person.

Section 20 of the Finance version and Section 14 of the Rules version are identical and noncontroversial.

Section 21 of the Finance version and Section 15 of the Rules version deal with **expert witness qualifications** in professional malpractice cases. They are basically the same, except that the Rules version excludes the requirements where the profession is not licensed in this state.

Section 22 of the Finance version and Section 16 of the Rules version deal with **offers of judgment**. They are almost identical, except that in the Rules version the percentage of attorney fees awarded, depending upon how early the offer was made, was reduced. What was 100% is now 75%; what was 75% is now 50%; and what was 50% is now 30%. The Rules version also provided that where there are multiple defendants, the plus or minus 5% figure to determine if the sanctions kick in was expanded to plus or minus 10%.

Section 23 of the Finance version and Section 17 of the Rules version are also offer of judgment provisions which are identical except for the subsection (c) of the Finance version. That subsection is duplicative of existing rules, and was stricken as surplusage.

Sections 24-27 of the Finance version and Sections 18-21 of the Rules version are identical and noncontroversial.

Section 28 of the Finance version was deleted, since it was only put there because we earlier repealed collateral benefits in medical arbitrations. We have now put back the medical collateral benefits because of the deletion of the other collateral benefits section. Forget this. Consistency change.

Sections 29-34 of the Finance version and Sections 22-27 of the Rules version are identical and noncontroversial.

Section 35 of the Finance version and Section 28 of the Rules version are identical, but controversial to the tort lawyers, since it makes clear that the **half of punitive damages which go to the state** pass free and clear of contingent attorney fees.

Section 36 of the Finance version and Section 29 of the Rules version are identical and so far uncontroversial. It codifies the common law and prevents strict liability being used as a basis of liability against electric utility companies..

Section 37 of the Finance version and Section 30 of the Rules version are similar, in dealing with **emergency room physicians**, except that the Rules version expands the insurance to \$500,000 for each incident and \$1,500,000 for all incidents in a year.

The Rules version does not have the enhanced notice (four foot by two foot sign) requirements of the Finance version.

The Rules version broadens which physicians may use the emergency room without triggering liability on the part of the hospital. It defines "emergency room physician" as a physician who does not have an ongoing physician-patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.

Section 38 of Finance version and Section 31 of the Rules version deal with barring the **tort claims of one who was committing a felony, or while operating a motor vehicle, aircraft or boat while under the influence of alcohol or drugs**. The Rules version responded to criticisms by tightening up the language to show that there is clear and convincing evidence that the improper activity substantially caused the plaintiff's own injuries. It allows a driver who had two glasses of wine with dinner to sue someone who crossed over the line in a head on collision case.

Section 39 of Finance version and Section 32 of the Rules version relate to **collection of settlement information**. The Rules version, at the initial suggestion of Jeff Feldman and Botelho last week, was expanded to include data from all covered cases, whether settled, tried, disposed of by summary judgment, etc. It requires information from both sides, and not just from plaintiffs. It is an excellent way to get the facts for future legislative actions.

*efficiency
of system
recovery by
R.*

Sections 40-46 of the Finance version and Sections 33-39 of the Rules version are identical and relatively uncontroversial.

Section 40 of the Rules version is new. It expedites **Superior Court cases** by requiring that in cases involving less than \$100,000 the parties take only two depositions, and then try the case quickly.

Sections 47-48 of the Finance version and Sections 41-42 of the Rules version are identical and uncontroversial.

Section 49 of the Finance version and Section 43 of the Rules version are similar in assessing **finances against lawyers**. The Rules version raised the amount from \$10,000 to **\$50,000**.

Sections 50-62 of the Finance version are consistent with the Rules version, and are mostly technical/consistency stuff.

Sections 44, 47-54 of the Rules version are consistent with the Finance version, and are mostly technical/consistency stuff.

Sections 45-46 of the Rules version are new, and incorporate what Charlie Cole and the Task Force wanted: **District Court cases limited to two depositions and then an expedited trial date.**

Section 63 of the Finance version and Section 55 of the Rules version both relate to **Alternative Dispute Resolution**. The Rules version improves it. The Rules version goes further and requires the Alaska Judicial Council to confer with the Alaska Supreme Court and actually present an ADR plan, to be operational by July 1, 1998, complete with proposed rules and statutes, by the time the legislature convenes next year. It is also directed to do so within the existing \$19,400 fiscal note.

0-LS0056X

Ford

4/14/97

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY****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, 26, 41, 49,
3 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and
4 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of
5 Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (11) ensure that this Act does not apply to or in any way have an effect on
31 existing litigation or a civil cause of action that accrues before the effective date of this Act;

1 it is the specific intent of the legislature that this Act not apply to or in any way have an
2 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
3 now or in the future.

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

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

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

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

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

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

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

18 **Sec. 09.10.055. Statute of repose of 10 years.** (a) Notwithstanding the
19 disability of minority described under AS 09.10.140(a), a person may not bring an
20 action for personal injury, death, or property damage unless commenced within 10
21 years of the earlier of the date of

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

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

31 (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;

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

(5) the facts that would give notice of a potential cause of action of a
minor are not discoverable in the exercise of reasonable care by the minor or the
minor's parent or guardian.

(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 of a person who was under the age of eight years at the time of the injury, the time period before the person's eighth 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, including a loss of consortium claim, arising out of a single injury or death may not exceed \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater.

(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 \$1,500,000 or the person's life expectancy in years multiplied by \$30,000, whichever is greater, when the injured person, as a result of the injury,

(1) has lost, or has lost the functional use of, one or more limbs;

(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 repealed and reenacted to read:

Sec. 09.17.020. Punitive damages. (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine, concurrently with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed, a separate proceeding under (c) of this section shall be conducted before the same fact finder to determine the amount of punitive damages to be awarded.

(b) The fact finder may make an award of punitive damages only if the plaintiff proves by clear and convincing evidence that the defendant's conduct

(1) was outrageous, including acts done with malice or bad motives;

or

(2) evidenced reckless indifference to the interest of another person.

(c) At the separate proceeding to determine the amount of punitive damages to be awarded, the fact finder may consider

(1) the likelihood at the time of the conduct that serious harm would arise from the defendant's conduct;

(2) the degree of the defendant's awareness of the likelihood described in (1) of this subsection;

(3) the amount of financial gain the defendant gained or expected to gain as a result of the defendant's conduct;

(4) the duration of the conduct and any intentional concealment of the conduct;

(5) the attitude and conduct of the defendant upon discovery of the conduct;

(6) the financial condition of the defendant; and

(7) the total deterrence of other damages and punishment imposed on the defendant as a result of the conduct, including compensatory and punitive damages awards to persons in situations similar to those of the plaintiff and the severity of the criminal penalties to which the defendant has been or may be subjected.

1 (d) At the conclusion of the separate proceeding under (c) of this section, the
2 fact finder shall determine the amount of punitive damages to be awarded, and the
3 court shall enter judgment for that amount.

4 (e) Unless that evidence is relevant to another issue in the case, discovery of
5 evidence that is relevant to the amount of punitive damages to be determined under
6 (c)(3) or (6) of this section may not be conducted until after the fact finder has
7 determined that an award of punitive damages is allowed under (a) and (b) of this
8 section. The court may issue orders as necessary, including directing the parties to
9 have the information relevant to the amount of punitive damages to be determined
10 under (c)(3) or (6) of this section available for production immediately at the close of
11 the initial trial in order to minimize the delay between the initial trial and the separate
12 proceeding to determine the amount of punitive damages.

13 (f) Except as provided in (g) and (h) of this section, an award of punitive
14 damages may not exceed the greater of

15 (1) three times the amount of compensatory damages awarded to the
16 plaintiff in the action; or

17 (2) the sum of \$500,000.

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

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

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

28 (h) Notwithstanding any other provision of law, in an action against an
29 employer to recover damages for an unlawful employment practice prohibited by
30 AS 18.80.220, the amount of punitive damages awarded by the court or jury may not
31 exceed

- 1 (1) \$50,000 if the employer has less than 15 employees in this state;
2 (2) \$100,000 if the employer has 15 or more but less than 100
3 employees in this state;
4 (3) \$300,000 if the employer has 100 or more but less than 200
5 employees in this state;
6 (4) \$400,000 if the employer has 200 or more but less than 500
7 employees in this state; and
8 (5) \$500,000 if the employer has 500 or more employees in this state.

9 (i) Subsection (h) of this section may not be construed to allow an award of
10 punitive damages against the state or a person immune under another provision of law.
11 In (h) of this section, "employees" means persons employed in each of 20 or more
12 calendar weeks in the current or preceding calendar year.

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

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

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

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

25 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
26 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
27 [AND] person who has been released from liability, or other person responsible for
28 the damages to each claimant unless the person was identified as a potentially
29 responsible person and the parties had a sufficient opportunity to join that person
30 in the action but chose not to; in this paragraph, "sufficient opportunity to join"
31 means the person is not a person protected from a civil action under AS 09.10.055

and is

(A) within the jurisdiction of the court;

(B) not precluded from being joined by law or court rule;

or

(C) reasonably locatable [UNDER AS 09.16.040].

* Sec. 12. 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. 13. 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. 14. 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

1 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
2 Legal requirements of causal relation apply both to fault as the basis for liability and
3 to contributory fault.

4 * Sec. 15. AS 09.20 is amended by adding a new section to read:

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

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

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

12 (3) certified by a board recognized by the state as having acknowledged
13 expertise and training directly related to the particular field or matter at issue.

14 (b) The provisions of (a) of this section do not apply to a person who is
15 testifying on the appropriate standard of care in a profession that is not licensed in this
16 state, and who the court determines is qualified as an expert witness.

17 * Sec. 16. AS 09.30.065 is amended to read:

18 Sec. 09.30.065. Offers of judgment. At any time more than 10 days before
19 the trial begins, either the party making a claim or the party defending against a claim
20 may serve upon the adverse party an offer to allow judgment to be entered in complete
21 satisfaction of the claim for the money or property or to the effect specified in the
22 offer, with costs then accrued. If within 10 days after the service of the offer the
23 adverse party serves written notice that the offer is accepted, either party may then file
24 the offer and notice of acceptance together with proof of service, and the clerk shall
25 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
26 evidence of that offer is not admissible except in a proceeding to determine the form
27 of judgment after verdict. If the judgment finally entered on the claim as to which an
28 offer has been made under this section is at least five percent less [NOT MORE]
29 favorable to the offeree than the offer, or if there are multiple defendants at least
30 10 percent less favorable to the offeree than the offer, the offeree, whether the
31 party making the claim or defending against the claim, shall pay all costs as

1 allowed under the Alaska Rules of Civil Procedure and shall pay reasonable
2 actual attorney fees incurred by the offeror from the date the offer was made.
3 [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE
4 DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

5 (1) if the offer was served no later than 60 days after both parties
6 made the disclosures required by the Alaska Rules of Civil Procedure the offeree
7 shall pay 75 percent of the offeror's reasonable actual attorney fees [OFFEREE
8 IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE
9 REDUCED BY FIVE PERCENT A YEAR];

10 (2) if the offer was served more than 60 days after both parties
11 made the disclosures required by the Alaska Rules of Civil Procedure but more
12 than 90 days before the trial began, the offeree shall pay 50 percent of the
13 offeror's reasonable actual attorney fees;

14 (3) if the offer was served 90 days or less but more than 10 days
15 before the trial began, the offeree shall pay 30 percent of the offeror's reasonable
16 actual attorney fees [OFFEREE IS THE PARTY DEFENDING AGAINST THE
17 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
18 YEAR].

19 * Sec. 17. AS 09.30.065 is amended by adding a new subsection to read:

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

29 * Sec. 18. AS 09.30.070(a) is amended to read:

30 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
31 and decrees for the payment of money, including prejudgment interest, is three

percentage points above the 12th Federal Reserve District discount rate in effect on January 2 of the year in which the judgment or decree is entered [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 19. AS 09.30.070 is amended by adding a new subsection to read:

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

* Sec. 20. AS 09.50.280 is amended to read:

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

* Sec. 21. AS 09.55.440(a) is amended to read:

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

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

(a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider, including a person providing services on behalf of a governmental entity, when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert

1 advisory panel unless the court decides that an expert advisory opinion is not necessary
2 for a decision in the case. When the action is filed, the court shall, by order,
3 determine the professions or specialties to be represented on the expert advisory panel,
4 giving the parties the opportunity to object or make suggestions.

5 * Sec. 23. AS 09.55.536(c) is amended to read:

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

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

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

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

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

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

23 (6) What specifically caused the medical injury?

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

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

28 * Sec. 24. AS 09.55.536(f) is amended to read:

29 (f) Discovery may not be undertaken in a case until the report of the expert
30 advisory panel is received or 60 days after selection of the panel, whichever occurs
31 first. However, the court may relax this prohibition upon a showing of good cause by

any party. If the panel has not completed its report within the 30-day period prescribed in (c) of this section, the court may, upon application, grant the panel [IT] an additional 30 days.

* Sec. 25. AS 09.55.536 is amended by adding a new subsection to read:

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

* Sec. 26. 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. 27. 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. 28. AS 09.60 is amended by adding a new section to read:

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

7 * **Sec. 29.** AS 09.65 is amended by adding a new section to read:

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

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

16 * **Sec. 30.** AS 09.65 is amended by adding a new section to read:

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

30 **Notice of Limited Liability**

31 The following emergency room physicians are independent

1 contractors and are not employees of the hospital:

2 (List specific emergency room physicians)

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

5 (c) A hospital is not immune from liability under (a) of this section for an act
6 or omission of an emergency room physician who is an independent contractor unless
7 the emergency room physician has liability insurance coverage in the amount of at
8 least \$500,000 for each incident and \$1,500,000 for all incidents in a year, and the
9 coverage is in effect and applicable to those health care services offered by the
10 emergency room physician that the hospital is required to provide by law or by
11 accreditation requirements.

12 (d) In this section,

13 (1) "emergency room physician" means a physician who does not have
14 an ongoing physician-patient relationship with the emergency room patient and who
15 provides emergency health care services in a hospital emergency room;

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

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

21 * Sec. 31. AS 09.65.210 is repealed and reenacted to read:

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

27 (1) engaged in the commission of a felony, the person has been
28 convicted of the felony, including conviction based on a guilty plea or plea of nolo
29 contendere, and the party defending against the claim proves by clear and convincing
30 evidence that the felony substantially contributed to the personal injury or death;

31 (2) engaged in conduct that would constitute the commission of an

1 unclassified felony, a class A, or a class B felony for which the person was not
2 convicted and the party defending against the claim proves by clear and convincing
3 evidence

4 (A) the felonious conduct; and

5 (B) that the felonious conduct substantially contributed to the
6 personal injury or death;

7 (3) fleeing after the commission, by that person, of conduct that would
8 constitute an unclassified felony, a class A felony, or a class B felony or being
9 apprehended for conduct that would constitute an unclassified felony, a class A felony,
10 or a class B felony if the party defending against the claim proves by clear and
11 convincing evidence

12 (A) the felonious conduct; and

13 (B) that the conduct during the flight or apprehension
14 substantially contributed to the injury or death;

15 (4) operating a vehicle, aircraft, or watercraft while under the influence
16 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
17 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
18 the party defending against the claim proves by clear and convincing evidence that the
19 conduct substantially contributed to the personal injury or death; or

20 (5) engaged in conduct that would constitute a violation of
21 AS 28.35.030 for which the person was not convicted if the party defending against
22 the claim proves by clear and convincing evidence

23 (A) the violation of AS 28.35.030; and

24 (B) that the conduct substantially contributed to the personal
25 injury or death.

26 * Sec. 32. AS 09.68 is amended by adding a new section to read:

27 **Sec. 09.68.130. Collection of settlement information.** (a) Except as
28 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate
29 information relating to the compromise or other resolution of all civil litigation. The
30 information shall be collected on a form developed by the council for that purpose and
31 must include

- 1 (1) the case name and file number;
2 (2) a general description of the claims being settled;
3 (3) if the case is resolved by way of settlement,
4 (A) the gross dollar amount of the settlement;
5 (B) to whom the settlement was paid;
6 (C) the dollar amount of advanced costs and attorney fees that
7 were deducted from the gross dollar amount of the settlement before
8 disbursement to the claimant;
9 (D) the net amount actually disbursed to the claimant;
10 (E) the total costs and attorney fees paid by defending parties;
11 and
12 (F) any nonmonetary terms, including whether the attorney fees
13 incurred by the claimant were based on a contingent fee agreement or upon an
14 hourly rate; if a contingent fee was paid, the percentage of the total settlement
15 represented by the fee must be included; or, if an hourly rate, the hourly rate
16 paid;
17 (4) if the case is resolved by dismissal, summary judgment, trial, or
18 otherwise,
19 (A) the gross dollar amount of the judgment;
20 (B) the amount of attorney fees awarded and to which party;
21 (C) the amount of costs awarded and to which party;
22 (D) the net amount, after deduction of (B) and (C) of this
23 paragraph, for which the prevailing party has judgment;
24 (E) the dollar amount of advanced costs and attorney fees that
25 were deducted from the gross dollar amount of the judgment before distribution
26 to the claimant;
27 (F) the total costs and attorney fees paid by defending parties;
28 and
29 (G) any nonmonetary terms, including whether the attorney fees
30 incurred by the claimant were based on a contingent fee agreement or upon an
31 hourly rate; if a contingent fee was paid, the percentage of the total settlement

represented by the fee must be included; or, if an hourly rate, the hourly rate paid.

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

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

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

* **Sec. 33.** AS 21.06 is amended by adding a new section to read:

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

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

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

(d) Beginning June 1, 2000, the information compiled under (a) of this section

1 shall be reported annually to the governor and the judiciary committees of both houses
2 of the legislature.

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

6 * Sec. 34. AS 21.89.100(d) is amended to read:

7 (d) If the insured selects independent counsel at the insurer's expense, the
8 insurer may require that the independent counsel have at least four years of experience
9 in civil litigation, including defense experience in the general subject area at issue in
10 the civil action, and malpractice insurance. Unless otherwise provided in the insurance
11 policy, the obligation of the insurer to pay the fee charged by the independent counsel
12 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary
13 course of business in the defense of a similar civil action in the community in which
14 the claim arose or is being defended. In providing independent counsel, the insurer
15 is not responsible for the fees and costs of defending an allegation for which
16 coverage is properly denied and shall be responsible only for the fees and costs
17 to defend those allegations for which the insurer either reserves its position as to
18 coverage or accepts coverage. The independent counsel shall keep detailed
19 records allocating fees and costs accordingly. A dispute between the insurer and
20 insured regarding attorney fees that is not resolved by the insurance policy or this
21 section shall be resolved by arbitration under AS 09.43.

22 * Sec. 35. AS 21.89.100 is amended by adding a new subsection to read:

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

28 * Sec. 36. AS 23.30.015(g) is amended to read:

29 (g) If the employee or the employee's representative recovers damages from
30 the third person, the employee or representative shall promptly pay to the employer the
31 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]

1 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
2 and expenses. Any excess recovery by the employee or representative shall be
3 credited against any amount payable by the employer thereafter. If the employer is
4 allocated a percentage of fault under AS 09.17.080, the amount due the employer
5 under this subsection shall be reduced by an amount equal to the employer's
6 equitable share of damages assessed under AS 09.17.080(c).

7 * Sec. 37. AS 44.77.015(a) is amended to read:

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

15 * Sec. 38. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

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

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

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

5 * Sec. 39. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

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

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

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

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

25 (4) whether a scheduling conference is unnecessary;

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

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

31 * Sec. 40. Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new

subsection to read:

(g) **Limited Discovery; Expedited Calendaring.** In cases involving less than \$100,000 in claims the parties shall limit discovery to that allowed under Rule 1(a)(1), District Court Rules, and shall avail themselves of the expedited calendaring procedures allowed under Rule 4, District Court Rules.

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

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

* **Sec. 42.** Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

* **Sec. 43.** Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

(b) In addition to its authority under (a) of this rule and its power to punish for contempt, a court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing by the court, if requested, impose a fine not to exceed \$50,000.00 [\$1,000.00] against any attorney who practices before it for failure to comply with these rules or any rules promulgated by the supreme court.

* **Sec. 44.** Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new subsection to read:

(c) If the trier of fact determines that a party to a civil action has intentionally

1 made a false statement of a material fact in connection with the prosecution or defense
2 of a civil action, the court shall enter judgment against the party making the false
3 statement on the issue to which the false statement relates. If the civil action involves
4 multiple claims and the false statement does not apply to all claims, the judgment
5 required under this subsection shall apply only to those claims to which the false
6 statement relates.

7 * Sec. 45. Rule 1(a)(1), District Court Rules of Civil Procedure, is amended to read:

8 (1) The procedure in civil actions and proceedings before district judges
9 and magistrates shall be governed by the rules governing the procedure in the superior
10 court to the extent that such rules are applicable. However, unless otherwise agreed
11 by all parties or permitted by order of the court in exceptional cases and for good
12 cause shown, discovery shall be limited to the disclosures required under Civil
13 Rule 26(a) and to the taking by each party of the deposition of one or more
14 opposing parties and of one additional person who is not a party.

15 * Sec. 46. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
16 subsection to read:

17 (b) Unless otherwise permitted by order of the court in exceptional cases and
18 for good cause shown, all parties shall file a memorandum to set the case for trial, as
19 set out in Civil Rule 40(b), no later than 180 days after service of the complaint on all
20 parties to the case. The memorandum shall contain a certification that each party has
21 exchanged the information described in Rule 26(a), Alaska Rules of Civil Procedure,
22 and may state their separate positions if they do not agree concerning information or
23 estimates to be provided in the memorandum. After the court satisfies itself that the
24 information described in Rule 26(a), Alaska Rules of Civil Procedure, has been
25 disclosed, the court shall set the case for trial as soon as practicable, but no sooner
26 than 30 days after the court makes the determination regarding disclosure.

27 * Sec. 47. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new
28 subsection to read:

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

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

8 * Sec. 48. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

9 * Sec. 49. AS 09.17.020(e), as enacted in sec. 10 of this Act, has the effect of amending
10 Rule 26, Alaska Rules of Civil Procedure, by limiting discovery in certain actions.

11 * Sec. 50. AS 09.17.020(j), as enacted by sec. 10 of this Act, has the effect of amending
12 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain
13 percentage of an award of punitive damages be deposited into the general fund.

14 * Sec. 51. AS 09.17.080(a), as amended by sec. 11 of this Act, has the effect of amending
15 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
16 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
17 among the claimants, defendants, third-party defendants, persons who have been released from
18 liability, or other person who is potentially responsible for the damages.

19 * Sec. 52. AS 09.20.185, enacted by sec. 15 of this Act, has the effect of amending
20 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
21 testifying as an expert witness.

22 * Sec. 53. AS 09.30.065, as amended by secs. 16 and 17 of this Act, has the effect of
23 amending Rules 68 and 82, Alaska Rules of Civil Procedure, by requiring the offeree to pay
24 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, by
25 eliminating provisions relating to interest and by changing provisions related to attorney fee
26 awards.

27 * Sec. 54. AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending
28 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be
29 awarded for future economic or noneconomic damages or punitive damages.

30 * Sec. 55. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this
31 legislation to create a pilot alternative dispute resolution procedure within the existing civil