

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.16 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997 578

1 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
2 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
3 alternative dispute resolution procedure not later than July 1, 1998.

4 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
5 Association, review court sanctioned alternative dispute resolution programs in other states and
6 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
7 System regarding the establishment of a program for alternative dispute resolution within the
8 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
9 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
10 or rule change and report must include specific types of programs, specific types of cases
11 within each program that are amenable to alternative dispute resolution, the cost to the parties
12 and to the Alaska Court System under these programs, and the qualifications of the neutral
13 parties, including nonlawyers, who will provide dispute resolution services under the program.
14 The work required under this section shall be completed for the amount of money appearing
15 on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

18 * Sec. 56. APPLICABILITY. This Act applies to all causes of action accruing on or after
19 the effective date of this Act.

20 * Sec. 57. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
21 application of a provision of this Act to any person or circumstance is held invalid, the
22 remainder of this Act and the application to other persons shall not be affected.

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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

1 and is

2 (A) within the jurisdiction of the court;

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

4 or

5 (C) reasonably locatable [UNDER AS 09.16.040].

6 * Sec. 12. AS 09.17.080(b) is amended to read:

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

14 * Sec. 13. AS 09.17.080(c) is amended to read:

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

26 * Sec. 14. AS 09.17.900 is amended to read:

27 Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions
28 that are in any measure negligent, [OR] reckless, or intentional toward the person or
29 property of the actor or others, or that subject a person to strict tort liability. The term
30 also includes breach of warranty, unreasonable assumption of risk not constituting an
31 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, ~~or another 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

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.

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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

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

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

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

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

9 (1) divorce and dissolution;

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

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

13 (4) domestic violence protective orders under AS 18.66.100 -
14 18.66.180;

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

16 (6) small claims under AS 22.15.040.

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

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

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

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

31 (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

1 subsection to read:

2 (g) **Limited Discovery; Expedited Calendaring.** In cases involving less than
3 \$100,000 in claims the parties shall limit discovery to that allowed under Rule 1(a)(1),
4 District Court Rules, and shall avail themselves of the expedited calendaring
5 procedures allowed under Rule 4, District Court Rules.

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

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

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

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

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

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

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

31 (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

1 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
2 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
3 alternative dispute resolution procedure not later than July 1, 1998.

4 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
5 Association, review court sanctioned alternative dispute resolution programs in other states and
6 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
7 System regarding the establishment of a program for alternative dispute resolution within the
8 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
9 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
10 or rule change and report must include specific types of programs, specific types of cases
11 within each program that are amenable to alternative dispute resolution, the cost to the parties
12 and to the Alaska Court System under these programs, and the qualifications of the neutral
13 parties, including nonlawyers, who will provide dispute resolution services under the program.
14 The work required under this section shall be completed for the amount of money appearing
15 on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

18 * Sec. 56. APPLICABILITY. This Act applies to all causes of action accruing on or after
19 the effective date of this Act.

20 * Sec. 57. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
21 application of a provision of this Act to any person or circumstance is held invalid, the
22 remainder of this Act and the application to other persons shall not be affected.

0-LS0056\R

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 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.
~~resulting from injury to the spine or spinal cord;~~

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

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

or

1 (4) is totally blind.

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

4 * Sec. 10. AS 09.17.020 is repealed and reenacted to read:

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

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

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

14 or

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

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

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

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

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

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

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

28 (6) the financial condition of the defendant; and

29 (7) the total deterrence of other damages and punishment imposed on
30 the defendant as a result of the conduct, including compensatory and punitive damages
31 awards to persons in situations similar to those of the plaintiff and the severity of the

1 criminal penalties to which the defendant has been or may be subjected.

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

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

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

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

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

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

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

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

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

1 exceed

2 (1) \$50,000 if the employer has less than 15 employees in this state;

3 (2) \$100,000 if the employer has 15 or more but less than 100
4 employees in this state;

5 (3) \$300,000 if the employer has 100 or more but less than 200
6 employees in this state;

7 (4) \$400,000 if the employer has 200 or more but less than 500
8 employees in this state; and

9 (5) \$500,000 if the employer has 500 or more employees in this state.

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

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

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

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

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

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

1 means the person is not a person protected from a civil action under AS 09.10.055
2 and is

3 (A) within the jurisdiction of the court;

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

5 or

6 (C) reasonably locatable [UNDER AS 09.16.040].

7 * Sec. 12. AS 09.17.080(b) is amended to read:

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

15 * Sec. 13. AS 09.17.080(c) is amended to read:

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

27 * Sec. 14. AS 09.17.900 is amended to read:

28 Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or omissions
29 that are in any measure negligent, [OR] reckless, or intentional toward the person or
30 property of the actor or others, or that subject a person to strict tort liability. The term
31 also includes breach of warranty, unreasonable assumption of risk not constituting an

1 enforceable express consent, misuse of a product for which the defendant otherwise
2 would be liable, and unreasonable failure to avoid an injury or to mitigate damages.
3 Legal requirements of causal relation apply both to fault as the basis for liability and
4 to contributory fault.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) What specifically caused the medical injury?

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

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

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

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

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

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

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

9 * Sec. 26. AS 09.55.560(1) is amended to read:

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

25 * Sec. 27. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

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

(List specific emergency room physicians)

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

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

(d) In this section,

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

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

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

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

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

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

(2) engaged in conduct that would constitute the commission of an unclassified felony, a class A, or a class B felony for which the person was not convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

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

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

(A) the felonious conduct; and

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

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

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

(A) the violation of AS 28.35.030; and

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

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

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

1 must include

2 (1) the case name and file number;

3 (2) a general description of the claims being settled;

4 (3) if the case is resolved by way of settlement,

5 (A) the gross dollar amount of the settlement;

6 (B) to whom the settlement was paid;

7 (C) the dollar amount of advanced costs and attorney fees that
8 were deducted from the gross dollar amount of the settlement before
9 disbursement to the claimant;

10 (D) the net amount actually disbursed to the claimant;

11 (E) the total costs and attorney fees paid by defending parties;

12 and

13 (F) any nonmonetary terms, including whether the attorney fees
14 incurred by the claimant were based on a contingent fee agreement or upon an
15 hourly rate; if a contingent fee was paid, the percentage of the total settlement
16 represented by the fee must be included; or, if an hourly rate, the hourly rate
17 paid;

18 (4) if the case is resolved by dismissal, summary judgment, trial, or
19 otherwise,

20 (A) the gross dollar amount of the judgment;

21 (B) the amount of attorney fees awarded and to which party;

22 (C) the amount of costs awarded and to which party;

23 (D) the net amount, after deduction of (B) and (C) of this
24 paragraph, for which the prevailing party has judgment;

25 (E) the dollar amount of advanced costs and attorney fees that
26 were deducted from the gross dollar amount of the judgment before distribution
27 to the claimant;

28 (F) the total costs and attorney fees paid by defending parties;

29 and

30 (G) any nonmonetary terms, including whether the attorney fees
31 incurred by the claimant were based on a contingent fee agreement or upon an

1 hourly rate; if a contingent fee was paid, the percentage of the total settlement
2 represented by the fee must be included; or, if an hourly rate, the hourly rate
3 paid.

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

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

- 10 (1) divorce and dissolution;
- 11 (2) adoption, custody, support, visitation, and emancipation of children;
- 12 (3) children-in-need-of-aid cases under AS 47.10 or delinquent minors
13 cases under 47.12;
- 14 (4) domestic violence protective orders under AS 18.66.100 -
15 18.66.180;
- 16 (5) estate, guardianship, and trust cases filed under AS 13;
- 17 (6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

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

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

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

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

30 (g) If the employee or the employee's representative recovers damages from
31 the third person, the employee or representative shall promptly pay to the employer the

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

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

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

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

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

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

1 pro se parties who are responsible for the conduct of the litigation;

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

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

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

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

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

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

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

26 (4) whether a scheduling conference is unnecessary;

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

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

1 * **Sec. 40.** Rule 26, Alaska Rules of Civil Procedure, is amended by adding a new
2 subsection to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (e) **Settlement Information.** If a dismissal under (a) or (b) of this rule is the
31 result of compromise or other settlement between the parties, the parties shall submit

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

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

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

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

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

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

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

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

31 * Sec. 55. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this

1 legislation to create a pilot alternative dispute resolution procedure within the existing civil
2 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil
3 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the
4 alternative dispute resolution procedure not later than July 1, 1998.

5 (b) The Alaska Judicial Council shall consult with the Alaska Dispute Settlement
6 Association, review court sanctioned alternative dispute resolution programs in other states and
7 in the federal court system, and shall confer with and obtain the approval of the Alaska Court
8 System regarding the establishment of a program for alternative dispute resolution within the
9 Alaska Court System. The Alaska Judicial Council shall submit a proposed statute or rule
10 change, or both, and a report to the legislature by December 31, 1997. The proposed statute
11 or rule change and report must include specific types of programs, specific types of cases
12 within each program that are amenable to alternative dispute resolution, the cost to the parties
13 and to the Alaska Court System under these programs, and the qualifications of the neutral
14 parties, including nonlawyers, who will provide dispute resolution services under the program.
15 The work required under this section shall be completed for the amount of money appearing
16 on the fiscal note submitted by the Alaska Court System dated March 17, 1997.

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

19 * Sec. 56. APPLICABILITY. This Act applies to all causes of action accruing on or after
20 the effective date of this Act.

21 * Sec. 57. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the
22 application of a provision of this Act to any person or circumstance is held invalid, the
23 remainder of this Act and the application to other persons shall not be affected.

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

April 14, 1997

SUBJECT: Civii actions (SCS CSSSHB 58)

TO: Representative Brian Porter
Attn: Jim

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

pg 10
The draft you requested is enclosed. There are two points I wanted to bring to your attention. First, in sec. 5, under AS 09.10.055(d)(5), the language seems directed to a claimant who is a minor, but the section of course applies to claimants of all ages. This paragraph should probably be changed to limit the provisions to actions involving a person under age 18. Second, the exception to expert witness testimony contained in subsection (b), in sec. 15, should be reviewed. This may be so broad as to preclude expert witness testimony in a manner you do not intend.

Please contact me if you have further questions.

MFF:lmb
97-053.lmb

Enclosure

FORD

note: ① I did not renumber # Numbers,
to keep it convenient.
② I have identified most of
the charges, but not all — so
proof carefully.
Jim

LS0056\L.a

DRAFT 3: April 12, 1997

SCS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Amended:

Offered:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (11) ensure that this Act does not apply to or in any way have an
35 effect on existing litigation or a civil cause of action that accrues before the
36 effective date of this Act; it is the specific intent of the legislature that this Act

emergency
room
physicians

New

OR ANY OTHER FEDERAL ADMIRALTY
ACTION NOW OR IN THE FUTURE.

1 not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095
2 Civ. (D. Alaska); and

3 ~~(12) ensure that this Act does not apply to or in any way have an~~
4 ~~effect on any maritime or admiralty actions arising under federal law.~~ JAK

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

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

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

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

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

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

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

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

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

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

35 (b) This section does not apply if

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

- 1 (A) prolonged exposure to hazardous waste;
2 (B) an intentional act or gross negligence;
3 (C) fraud or fraudulent misrepresentation;
4 (D) breach of an express warranty or guarantee; or
5 (E) a defective product; in this subparagraph, "product" means
6 an object that has intrinsic value, is capable of delivery as an assembled whole
7 or as a component part, and is introduced into trade or commerce;

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

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

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

13 (c) ~~The facts that would give notice of a potential cause of action~~
14 The limitation imposed under (a) of this section is tolled during
15 any period in which there exists the undiscovered presence of a foreign body
16 that has no therapeutic or diagnostic purpose or effect in the body of the
17 injured person and the action is based on the presence of the foreign body.

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

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

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

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

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

Delete

(c) In an action for personal injury ~~and death~~ of a person who was under the age of eight years at the time of the injury or death, 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 of a person, including a loss of consortium claim,~~ arising out of a single injury or death may not exceed \$300,000. *the greater of the person's life expectancy in years*

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$500,000 when the 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 injured person's body; or

(4) is totally deaf or 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.

~~(e) In subsection (b), "all claims of a person" means claims of a spouse, dependent children, or other dependents of the injured person.~~

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

Sec. 09.17.020. Punitive damages. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and ~~convincing evidence of outrageous conduct, including~~

AMENDMENT

OFFERED IN THE SENATE
TO: CSSH 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 three times the amount of compensatory damages awarded or \$500,000,
2 whichever amount is greater.

3 (c) The amount of punitive damages awarded by a court or jury under
4 (a) of this section may not exceed four times the amount of compensatory
5 damages awarded or \$1,500,000, whichever amount is greater, if

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

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

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

18 *Delete*
19 *Sec. 13. AS+09.17.040(d) is amended to read:

20 (d) In an action to recover damages, the court shall, at the request of a
21 [AN INJURED] party, enter judgment ordering that amounts awarded a
22 judgment creditor for future damages that exceed \$500,000 be paid to the
23 maximum extent feasible by periodic payments rather than by a lump-sum
24 payment. If a portion of the judgment awarded is owed to an attorney under a
25 contingent fee agreement, that portion of the judgment shall be reduced to
26 present value, if necessary, and paid in a lump sum, and the remaining
27 portion of the judgment shall be paid as provided under this subsection.

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

29 (e) Except as provided in this subsection, if a judgment is paid by
30 structured settlement type periodic payments, the [THE] court shall [MAY]
31 require security be posted in the form of United States government
32 obligations [,] in order to ensure that funds are available as periodic payments
33 become due. The court may not require security to be posted if the state, a
34 self-insured municipality, or an authorized insurer, as defined in
35 AS+21.90.900, acknowledges to the court its obligation to discharge the
36 judgment, provided that an authorized insurer must be rated by two

delete

1 nationally recognized independent rating agencies to be in the two highest
2 categories of quality and financial soundness. If a judgment is paid by annuity
3 type period payments, the court shall require the annuity be purchased from
4 an authorized insurer that is rated by two nationally recognized independent
5 rating agencies to be in the two highest categories of quality and financial
6 soundness. The injured party shall determine whether a structured
7 settlement or an annuity is the source of the periodic payments. The injured
8 party may not be required to accept a structured settlement or annuity from
9 the defendant's or other party's insurer or from any affiliated companies of
10 the insurer.

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

12 (f) A judgment ordering payment of future damages for personal
13 injury or death by periodic payment shall specify the recipient, the dollar
14 amount of the payments, including any increases in future payments for
15 anticipated inflation, the interval between payments, and the number of
16 payments or the period of time over which payments shall be made.
17 Payments may be modified only in the event of the death of the judgment
18 creditor, in which case payments may not be reduced or terminated, but shall
19 be paid to persons to whom the judgment creditor owed a duty of support, as
20 provided by law, immediately before death. In the event the judgment
21 creditor owed no duty of support to dependents at the time of the judgment
22 creditor's death, the money remaining shall be distributed in accordance with
23 a will of the deceased judgment creditor accepted into probate or under the
24 intestate laws of the state if the deceased had no will. In this subsection,
25 "inflation" means the change in the consumer price index for United States
26 city average, all urban consumers, all items indices, compiled by the Bureau
27 of Labor Statistics, United States Department of Labor.

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

29 (a) In all actions involving fault of more than one person [PARTY TO
30 THE ACTION], including third-party defendants and persons who have *settled or*
31 released [UNDER AS+09.16.040], the court, unless otherwise agreed by all
32 parties, shall instruct the jury to answer special interrogatories or, if there is
33 no jury, shall make findings, indicating
34 (1) the amount of damages each claimant would be entitled to
35 recover if contributory fault is disregarded; and

1 (2) the percentage of the total fault [OF ALL OF THE PARTIES
2 TO EACH CLAIM] that is allocated to each claimant, defendant, third-party
3 defendant, [AND] person who has been released from liability, or other
4 person responsible for the damages, ^{so long as} ~~to each claimant regardless of whether the~~
5 ~~other person, including an employer, is or could have been named as a party~~
6 ~~to the action.~~ so long as any such other responsible person is identified to the
7 plaintiff within 120 days of the service of the complaint. In this paragraph,
8 "other person responsible" does not include a person protected from a civil
9 action under AS 09.10.055 [UNDER AS 09.16.040].

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

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

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

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

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

33 Sec. 09.17.900. Definition. In this chapter, "fault" includes acts or
34 omissions that are in any measure negligent, [OR] reckless, or intentional
35 toward the person or property of the actor or others, or that subject a person to
36 strict tort liability. The term also includes breach of warranty, unreasonable

1 assumption of risk not constituting an enforceable express consent, misuse of
2 a product for which the defendant otherwise would be liable, and
3 unreasonable failure to avoid an injury or to mitigate damages. Legal
4 requirements of causal relation apply both to fault as the basis for liability and
5 to contributory fault.

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

7 Sec. 09.20.185. Expert witness qualification. (a) Except as provided
8 under (b) of this section, an action based on professional negligence, a person
9 may not testify as an expert witness on the issue of the appropriate standard of
10 care unless the witness

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

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

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

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

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

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

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1 offeree, whether the party making the claim or defending against the claim,
2 shall pay all costs as allowed under the Alaska Rules of Civil Procedure and
3 shall pay reasonable actual attorney fees incurred by the offeror from the date
4 the offer was made, [THE INTEREST AWARDED UNDER AS+09.30.070 AND
5 ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE
6 ADJUSTED] as follows:

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

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

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

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

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

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

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

1 (a) Notwithstanding AS+45.45.010, the [THE] rate of interest on
2 judgments and decrees for the payment of money, including prejudgment
3 interest, is three percentage points above the 12th Federal Reserve District
4 discount rate in effect on January+2 of the year in which the judgment or
5 decree is entered [10.5 PERCENT A YEAR], except that a judgment or decree
6 founded on a contract in writing, providing for the payment of interest until
7 paid at a specified rate not exceeding the legal rate of interest for that type of
8 contract, bears interest at the rate specified in the contract if the interest rate is
9 set out in the judgment or decree.

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

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

13 * Sec. 26. AS+09.50.280 is amended to read:

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

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

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

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

30 (k) The provisions of AS+09.43.010 - 09.43.180 (Uniform Arbitration
31 Act) apply to arbitrations under this section if they do not conflict with the
32 provisions of this section; arbitrations under this section shall be conducted
33 in accordance with procedures established by any rules of court which may be
34 adopted and according to provisions of AS+09.55.540 - 09.55.547, 09.55.554+-
35 09.55.560 [AS 09.55.540 - 09.55.548 AND AS+09.55.554 - 09.55.560], and
36 AS+09.65.090.

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

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

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

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

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

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

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

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

28 (5) If the answer to question 4 is "yes," what [^{What}~~WHAT~~] is the
29 nature and extent of the medical injury?

30 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

35 * Sec. 35. 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
2 or collects a contingency fee in connection with an action for personal injury,
3 death, or property damage and the damages awarded by a court or jury
4 include an award of punitive damages, the contingent fee due the attorney
5 shall be calculated after that portion of punitive damages due the state under
6 AS+09.17.020(d) has been deducted from the total award of damages.

7 * Sec. 36. 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
11 under AS+42.05.221 may not be held strictly liable for property damage, death,
12 or personal injury resulting from an act or omission of the utility relating to
13 the production, delivery, or sale of electricity.

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

16 * Sec. 37. 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
20 hospital if the hospital provides notice that the emergency room physician is
21 an independent contractor and the emergency room physician is insured as
22 described under (c) of this section. The hospital is responsible for exercising
23 reasonable care in granting privileges to practice in the hospital, for reviewing
24 those privileges on a regular basis, and for taking appropriate steps to revoke
25 or restrict privileges in appropriate circumstances. The hospital is not
26 otherwise liable for the acts or omissions of an emergency room physician
27 who is an independent contractor. The notice required by this subsection
28 must be posted conspicuously in all admitting areas of the hospital, published
29 at least annually in a newspaper of general circulation in the area, and must
30 be in substantially the following form:

31 Notice of Limited Liability

32 The following emergency room physicians are independent contractors and
33 are not employees of the hospital:

34 (List specific emergency room physicians)

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

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

8 (d) In this section,

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

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

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

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

17 Sec. 09.65.210. Damages resulting from commission of a felony or
18 while under the influence of alcohol or drugs. A person who suffers personal
19 injury or death or the person's personal representative under AS+09.55.570 or
20 09.55.580 may not recover damages for the personal injury or death if the
21 injury or death occurred while the person was

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

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

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

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

33 (3) fleeing after the commission, by that person, of conduct that
34 would constitute an unclassified felony, a class A felony, or a class B felony or
35 being apprehended for conduct that would constitute an unclassified felony, a
36 class A felony, or a class B felony if the conduct

*as his or
her
exclusive
or predominant
medical
practice.*

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

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

5 (4) operating a vehicle, aircraft, or watercraft, and it is proven by
6 the defendant in the civil trial by clear and convincing evidence that the
7 person did so while under the influence of intoxicating liquor or any
8 controlled substance in violation of AS+28.35.030, or was convicted, including
9 conviction based on a guilty plea or plea of nolo contendere, and the conduct
10 substantially contributed to the personal injury or death; or

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

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

16 Sec. 09.68.130. Collection of settlement information. (a) Except as
17 provided in (c) of this section, the Alaska Judicial Council shall collect from
18 counsel for all parties information relating to the compromise or other
19 ~~settlement~~ ^{Resolution} of all civil litigation. The information, including the

20 (1) case name and file number;

21 (2) a general description of the claims being settled;

22 (3) if the case is resolved by way of settlement:

23 (i) the gross dollar amount of the settlement,

24 (ii) to whom the settlement was paid,

25 (iii) the dollar amount of (a) advanced costs and (b)
26 attorney fees that were deducted from the gross dollar amount of the
27 settlement prior to disbursement to the claimant;

28 (iv) the net amount actually disbursed to the claimant;

29 (v) the total costs and attorney fees paid by defending
30 parties, and;

31 (vi) any nonmonetary terms, including whether the
32 attorney fees incurred by the claimant were based on a contingent fee
33 agreement (report percentages) or upon an hourly rate (report hourly rates);

34 (4) if the case is resolved by dismissal, summary judgment, trial
35 or otherwise:

36 (i) the gross dollar amount of the judgment;

1 (ii) the amount of attorney fees awarded, and to which
2 party;

3 (iii) the amount of costs awarded, and to which party;

4 (iv) the net amount, after deduction of (ii) and (iii), for
5 which the prevailing party has judgment;

6 (v) the dollar amount of (a) advanced costs and (b)
7 attorney fees that were deducted from the gross dollar amount of the
8 judgment prior to distribution to the claimant;

9 (vi) the total costs and attorney fees paid by defending
10 parties, and;

11 (vii) any nonmonetary terms, including whether the
12 attorney fees incurred by the claimant were based on a contingent fee
13 agreement (report percentages) or upon an hourly rate (report hourly rates);
14 shall be collected on a form developed by the council for
15 that purpose.

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

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

22 (1) divorce and dissolution;

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

25 (3) children-in-need-of-aid cases under AS+47.10 or delinquent
26 minors cases under 47.12;

27 (4) domestic violence protective orders under AS+18.66.100+-
28 18.66.180;

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

30 (6) small claims under AS+22.15.040.

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

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

36 (b) Information described in (a) of this section shall be provided by all
37 insurers doing business in this state in the format specified by the director and

1 must include factual information stating premiums, claims, losses, expenses,
2 and solvency of the company as a whole. Information shall be compiled by
3 the division in a way that protects the identity of individual insureds.

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

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

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

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

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

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

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

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

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

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

18 (a) For the purposes of filing claims for medical services provided
19 under AS+47.07 or AS+47.25.120 - 47.25.300, "promptly," in AS+44.77.010(a),
20 means (1) within six months after the date of service, or as provided in (b) of
21 this section, if there is no third-party claim, or (2) within 12 months after the
22 date of service if there is a third-party claim. Except as provided in (c) of this
23 section, a claim may not be paid if it is not filed promptly; an inference to the
24 contrary may not be drawn from AS+09.10.053 [AS 09.10.050], AS+09.50.250 -
25 09.50.300, or AS+37.25.010.

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

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

- 34 (1) That the issues in the case have actually been joined;
35 (2) That all parties have completed discovery or have a
36 reasonable opportunity to do so within the next 60 days;

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

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

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

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

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

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

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

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

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

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

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

4 (4) whether a scheduling conference is unnecessary;

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

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

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

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

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

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

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

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

new

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

3 (c) If the trier of fact determines that a party to a civil action has
4 intentionally made a false statement of a material fact in connection with the
5 prosecution or defense of a civil action, the court shall enter judgment against
6 the party making the false statement on the issue to which the false statement
7 relates. If the civil action involves multiple claims and the false statement
8 does not apply to all claims, the judgment required under this subsection
9 shall apply only to those claims to which the false statement relates.

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

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

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

23 * Sec. 53. AS+09.55.548 is repealed.

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

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

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

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

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

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

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

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

22 * Sec. 63. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of
23 this legislation to create an alternative dispute resolution procedure within
24 the existing civil litigation system in order to promote the timely,
25 inexpensive, and efficient resolution of civil disputes. It is further the intent
26 of this section than the Alaska Supreme Court implement this alternative
27 dispute resolution procedure no later than July 1, 1998.

28 (b) The Alaska Judicial Council shall consult with the Alaska Dispute
29 Settlement Association, review court sanctioned alternative dispute
30 resolution programs in other states and in the federal court system, and shall
31 confer with, and obtain the approval of, the Alaska Supreme Court regarding
32 the establishment of a program for alternative dispute resolution within the
33 Alaska Court System. The Alaska Judicial Council shall submit a proposed
34 statute or rule change, or both, and forward them to the Alaska Legislature by
35 December 31, 1997. The proposed statute or rule change, or both, and report,
36 must include specific types of programs, specific types of cases within each

New
staff

1 program that are amenable to alternative dispute resolution, the cost to the
2 parties and to the Alaska Court System under these programs, and the
3 qualifications of the neutral parties, including nonlawyers, who will provide
4 dispute resolution services under the program. The entire task shall be
5 accomplished for no more than the amounts appearing on the fiscal note
6 submitted by the Alaska Court System dated March 17, 1997.

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

9 *Sec. 63A. District Court Civil Rule 1(a)(1) is amended to read:

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

18 *Sec. 63B. District Court Civil Rule 4 is amended by adding a new
19 subsection to read:

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

30 *Sec. 63C. Civil Rule 26 is amended by adding a new subsection to read:

31 (g) **Limited Discovery; ~~Expedited and~~ Expedited Calendaring.** In
32 cases involving less than \$100,000 in claims, or less than \$100,000 in
33 counterclaims, the parties may agree, by written stipulation filed with the
34 court, to limit discovery to that allowed under District Court Rule 1(a)(1), and
35 to avail themselves of the expedited calendaring procedures allowed under
36 District Court Rule 4.

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

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

7

8

9 0-LS0056\L.a

10

AMENDMENT - 6

Rules Committee Substitute

BY THE SENATE RULES COMMITTEE

SENATOR KELLY

TO: CSSSHB 58(FIN) am

1 Page 19, following line 6:

2 Insert a new bill section to read:

3 **** Sec. 40. AS 18.80 is amended by adding a new section to read:**4 **Sec. 18.80.225. Punitive damages for unlawful employment practices. (a)**5 Notwithstanding any other provision of law, in an action against an employer to
6 recover damages for an unlawful employment practice prohibited by AS 18.80.220,
7 the amount of punitive damages awarded by the court or jury may not exceed

8 (1) \$10,000 if the employer has fewer than 15 employees in this state;

9 (2) \$50,000 if the employer has 15 or more employees but fewer than

10 100 employees in this state;

11 (3) \$100,000 if the employer has 100 or more employees but fewer
12 than 200 employees in this state;13 (4) \$200,000 if the employer has 200 or more employees but fewer
14 than 500 employees in this state;

15 (5) \$300,000 if the employer has 500 or more employees in this state.

16 (b) This section may not be construed to allow an award of punitive damages
17 against the state or a party immune under another provision of law.18 (c) In this section, "employees" means persons employed in each of 20 or
19 more calendar weeks in the current or preceding calendar year."

20 Renumber the following bill sections accordingly.

note: ① I did not renumber # numbers,
to keep it convenient.
② I have identified most of
the charges, but not all — so
proof carefully.
Tim

LS0056\L.a

DRAFT 3: April 12, 1997

SCS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(RLS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Amended:

Offered:

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL FOR AN ACT ENTITLED

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

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

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

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

*Emergency room physicians
who are acting as*

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

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

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

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

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

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

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

25 (9) ensure that in actions involving the fault of more than one
26 person, the fault of each claimant, defendant, third-party defendant, person
27 who has been released from liability, or other person responsible for the
28 damages, ^{AND AVAILABLE FOR SETTLEMENT} be determined and awards be allocated in accordance with the fault
29 of each, thereby ~~overriding~~ ^{MODIFYING} Berner v. Wichman, 874 P.2d 949 (Alaska 1994);

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

New
34 (11) ensure that this Act does not apply to or in any way have an
35 effect on existing litigation or a civil cause of action that accrues before the
36 effective date of this Act; it is the specific intent of the legislature that this Act

*Emergency
Room
Physicians*

OR ANY OTHER FEDERAL ADMIRALTY
ACTION NOW OR IN THE FUTURE.

1 not apply to or in any way have an effect on In Re Exxon Valdez, A89-0095
2 Civ. (D. Alaska); and

3 ~~(12) ensure that this Act does not apply to or in any way have an~~
4 ~~effect on any maritime or admiralty actions arising under federal law.~~ JAF

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

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

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

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

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

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

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

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

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

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

35 (b) This section does not apply if

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

← the facts that would give notice of a potential cause of action are not discoverable in the exercise of reasonable care by the minor, parent or guardian.

- (A) prolonged exposure to hazardous waste;
- (B) an intentional act or gross negligence;
- (C) fraud or fraudulent misrepresentation;
- (D) breach of an express warranty or guarantee; or
- (E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce;

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

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

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

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

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

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

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

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

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

CK
delete
1 (c) In an action for personal injury ~~or death~~ of a person who was under
2 the age of eight years at the time of the injury ~~or death~~, the time period before
3 the person's eighth birthday is not a part of the time limit imposed under
4 AS+09.10.070(a) for commencing the civil action.

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

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

11 (b) Except as provided under (c) of this section, the damages awarded by ~~delete~~
12 a court or a jury under (a) of this section for all claims ~~of a person~~, including a
13 loss of consortium claim, arising out of a single injury or death may not
14 exceed ~~\$300,000~~. *the greater of the person's life expectancy*
in years times \$10,000 or \$500,000.

15 (c) In an action for personal injury, the damages awarded by a court or
16 jury that are described under (b) of this section, may not exceed \$500,000 when
17 the injured person, as a result of the injury, *the greater of the person's life*
expectancy

18 (1) has lost, or has lost the functional use of, ~~one or more limbs~~; *in years*

19 (2) has permanently impaired cognitive capacity and is incapable ~~of~~ *times*
20 of making independent, responsible decisions; *\$300,000 or \$1,500,000.*

21 (3) has third degree burns over one half or more of the injured
22 person's body; or

23 (4) is totally deaf or totally blind.

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

26 ~~(e) In subsection (b), "all claims of a person" means claims of a spouse,~~
27 ~~dependent children, or other dependents of the injured person.~~

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

29 Sec. 09.17.020. Punitive damages. Punitive damages may not be
30 awarded in an action, whether in tort, contract, or otherwise, unless
31 supported by clear and ~~convincing evidence of outrageous conduct, including~~

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."

See
New
Punitive
Section.
ON the
way.