

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.20 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997 ⁵⁸²

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

Section 42. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

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

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

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

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

Section 47. Settlement information. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

Section 48. Medical advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

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Section 52. **Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 45.

Section 53. **Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.

Section 54 - Section 62. **Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

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

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

Section 64. **Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

Section 65. **Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

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

March 19, 1997

TORT REFORM ROLLS ON

This session's tort reform bill passed the House of Representatives on March 18 by a vote of 22-12. There were over 10 hours of floor debate, and 83 submitted amendments. On March 19, the bill survived a vote for reconsideration by a margin of 28-11. This bill now goes to the Senate. It is 25 pages long, and contains 65 sections. Qualitatively, it contains much more beef than starch. Included are twelve sections taken verbatim from the recommendations of the Governor's Advisory Task Force on Civil Justice Reform, which was formed in the aftermath of the Governor's veto of last session's tort reform bill. Several other recommendations of the Task Force were included in one form or another.

To counter some of the misinformation that has found its way to the public, allow me to present the facts about what our bill does and does not do. Despite the misleading and sometimes totally false assertions contained in the tort lawyers' quarter page advertisements, there are two areas of potential awards or recovery which are not in any way reduced or affected by the bill.

First and foremost, this bill does not reduce any worker's compensation benefits. In fact, it enhances an injured workman's statutory recovery. Further, the bill does not limit economic damages, which cover all quantifiable lost past and future wages, past and future medical expenses, and any other actual costs or losses from the injury, damages or death. This type of damage recovery is fair and is required to place the injured person in the same position economically were it not for the accident.

This bill does, however, address the abuses which now occur. The mere threat of unlimited subjective damage claims, such as punitive damages and damages for "disfigurement or physical impairment", has the *in terrorem* (to turn around an ancient legal phrase) effect of extorting oversized settlements from partially at fault to totally innocent defendants.

Here is what the most significant portions of the tort reform bill will do:

- * Put a cap on punitive damages of the greater of \$300,000 or three times compensatory damages. In extreme cases, the cap is the greater of \$600,000 or four times compensatory damages.
- * Pay one half of punitive damage recoveries to the State of Alaska.
- * Put a cap on damages for non economic damages (pain, suffering, loss of enjoyment of life, disfigurement and physical impairment) of \$300,000, except that in aggravated cases the cap is \$500,000 per claim.

- * Require that "expert witnesses" in professional malpractice cases be licensed in the same profession anywhere in the world, in order to prevent egregiously slanted testimony from "hired gun" type of expert witness.

- * Allow a jury to know before it enters a verdict whether an injured person has realized a recovery for the same injury in another lawsuit or from another source.

- * Prevent lawyers from running up exorbitant fees (\$800,000 to more than \$1,000,000) as "independent counsel" for insured persons with respect to claims made which are unquestionably not covered by that person's insurance policy.

- * Punish lawyers with fines of up to \$10,000 for filing clearly frivolous lawsuits, or for falsifying material facts in a lawsuit.

- * Overrule an Alaska Supreme court decision which struck down the voter's initiative which directed that a person should only be held liable for damages in direct proportion to that person's degree of fault.

- * Establish a bar from filing lawsuits by persons who are injured while committing a felonious crime, or while operating a motor vehicle, aircraft or boat while under the influence of alcohol or illegal drugs .

- * Overrule another Alaska Supreme Court decision by granting immunity to hospitals from liability for negligence of independent contractor emergency room physicians, provided the physicians carry at least \$500,000 of liability insurance.

- * Reduce several statutes of limitations and the statute of repose to a reasonable length in order to prevent the assertion of stale or fraudulent claims which would be impossible to defend because 10 or 20 years have passed since the alleged negligent act.

- * Allow future damages to be paid to injured persons in periodic payments in order to protect injured persons from becoming wards of the state. Statistics show that about 25% to 30% of accident victims completely dissipate their judgments or settlements within two months of recovery, and 90% of them spend it all within 5 years.

- * Allow offers of judgment to be made by either party in order to encourage early settlement of litigation, by requiring the payment of actual attorney fees to the party making the offer to settle by those who fail to accept the offer of judgment when that offer is later proven at trial to have been virtually the same as the trial judgment.

- * Require collection of settlement information and insurance data in order to establish a data base from which to judge the effectiveness of tort reform.

- * Require a study and recommendations 10 months from now as to an alternative dispute resolution system, such as, for example, the mediation system that enjoys an 80% success rate in Seattle area federal courts.

The success of tort reform will be in the enactment of a package of reforms, such as the one in this bill, rather than going piecemeal. Getting this bill through both houses of this legislature will not be easy going. As noted in a February 27 editorial in the Wall Street Journal,

"the ABA [American Bar Association] has a long record of opposing any effort to improve the tort system....the ABA opposes a loser pays rule; opposes any limits on pain and suffering awards; opposes a "ceiling" on medical malpractice damages; and opposes product liability reform. In effect, then, the ABA wants to let plaintiffs' lawyers continue extorting billions from American Companies."

If we want an environment that is conducive to rational economic development, the creation of jobs, and a higher standard of living for all Alaskans, enactment of meaningful tort reform is paramount. Mere token reform, is not enough. Every Alaskan should thoroughly understand that the stakes are high, and the battle will not be easy, but that we can prevail.

Brian Porter

Alaska State Legislature



Official Business

House Majority Leader

March 18, 1997

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Sectional Summary
of
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An Act Relating to Civil Actions

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

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

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

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

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

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

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

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

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

(a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;

- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or fraudulent misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

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

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

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

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

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

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

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

On the floor of the House, this section was amended to include total blindness and third degree burns over one half of the injured person's body to the category of injuries having a \$500,000 cap.

Section 10. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought. It was amended by the House Finance Committee to clarify that punitive damages may be awarded for interference with a person's rights as well as interference with a person, if the appropriate showing was made.

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

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

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

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

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

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

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

This subsection also provides that if part of the judgment is owed to an attorney under a contingent fee agreement, those fees shall be reduced

to present value, if necessary, and paid to the attorney in a lump sum, leaving the rest of the judgment to be paid to the client in periodic payments.

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

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

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

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

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

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

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

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

the plaintiff has received, or will receive in the future, from collateral sources.

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

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

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

Section 17. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

On the floor of the House, this section was amended to exclude persons protected by the statute of repose from the operation of this section, with the result that fault of a person not present in the litigation because of the statute of repose is not attributable to that absent person.

Section 18. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

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

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

lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

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

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

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

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

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

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

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

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

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

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

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

Section 26. Judgment for plaintiff; punitive damages. This section contains a consistency change that applies the Section 24 interest rate to judgments against the State of Alaska.

Section 27. Interest in condemnation proceedings. This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 24.

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

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

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

within the purview of the questions to be answered by the medical advisory panel.

Section 31. Expert advisory panel; discovery. This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

Section 32. Expert advisory panel; public sector provider. This section is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

Section 33. Definitions; health care provider. This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

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

Section 35. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

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

Section 37. Civil liability of hospitals for non employees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room

physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

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

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

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

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

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

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

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

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

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

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

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Section 65. Severability. If any section of this Act is held invalid, the remainder of this Act shall not be affected.

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

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 3/18/97

Offered: 3/17/97

Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (b) This section does not apply if

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

25 (A) prolonged exposure to hazardous waste;

26 (B) an intentional act or gross negligence;

27 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 or

19 (4) is totally blind.

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

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

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

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

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

1 is greater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider, including a person providing services on behalf of a government¹ entity, when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert 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,

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

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

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

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

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

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

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

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

20 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **Sec. 09.65.035. Civil liability of electric utility.** (a) A utility offering
 6 electrical service to the public for compensation under a certificate of public
 7 convenience and necessity issued by the Alaska Public Utilities Commission under
 8 AS 42.05.221 may not be held strictly liable for property damage, death, or personal
 9 injury resulting from an act or omission of the utility relating to the production,
 10 delivery, or sale of electricity.

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

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

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

27 **Notice of Limited Liability**

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

30 (List specific emergency room physicians)

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

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

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

8 (d) In this section,

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

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

13 (3) "independent contractor" means an emergency room physician who
14 is not an employee or actual agent of the hospital in connection with the rendition of
15 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 while**
18 **under the influence of alcohol or drugs.** A person who suffers personal injury or
19 death or the person's personal representative under AS 09.55.570 or 09.55.580 may not
20 recover damages for the personal injury or death if the injury or death occurred while
21 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 nolo
24 contendere, and the felony substantially contributed to the personal injury or death;

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) divorce and dissolution;

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

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

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

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

6 (6) small claims under AS 22.15.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as
 28 soon as practicable after the exchange of initial disclosures required under Rule
 29 26(a)(1) and in any event at least 14 days before a scheduling conference is held or
 30 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of
 31 their claims and defenses and the possibilities for a prompt settlement of the case and

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

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

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

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

15 (4) whether a scheduling conference is unnecessary;

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

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

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

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

1 AS 09.68.130(c).

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

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

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

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

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

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

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

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

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

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

4 * **Sec. 53.** AS 09.55.548 is repealed.

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

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

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

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

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

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

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

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

1 prior offers.

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

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

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

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

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

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

SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(FIN)**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTIETH LEGISLATURE - FIRST SESSION****BY THE SENATE FINANCE COMMITTEE****Offered: 4/14/97****Referred: Rules****Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde****A BILL****FOR AN ACT ENTITLED**

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

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

6 * Section 1. LEGISLATIVE INTENT. In enacting this bill, it is the intent of this
7 legislature as a matter of public policy to
8 (1) ensure that this Act does not apply to or in any way have an effect on
9 existing litigation or a civil cause of action that accrues before the effective date of this Act;
10 it is the specific intent of the legislature that this Act not apply to or in any way have an
11 effect on In Re Exxon Valdez, A89-0095 Civ. (D.Alaska) or any other federal admiralty action
12 now or in the future;
13 (2) encourage the efficiency of the civil justice system by discouraging
14 frivolous litigation and by decreasing the amount, cost, and complexity of litigation without

1 diminishing the protection of innocent Alaskans' rights to reasonable, but not excessive,
2 compensation for tortious injuries caused by others;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (b) This section does not apply if

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

30 (A) prolonged exposure to hazardous waste;

31 (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.

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

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

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

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

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

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

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

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

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

23 or

24 (4) is totally blind.

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

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

28 **Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in
29 an action, whether in tort, contract, or otherwise, unless supported by clear and
30 convincing evidence of outrageous conduct, including acts done with malice or bad
31 motives, or reckless indifference to the interest of another person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) the amount of damages awarded shall be reduced by the
31 amount of federal and state income tax that would have been paid on damages

1 contained in the verdict under tax rates in effect on the date of the injury or
2 death; this paragraph does not apply to an award of damages if the damages are
3 taxable under federal or state law.

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

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

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

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

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

31 (f) A judgment ordering payment of future damages for personal injury or

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

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

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

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

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

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

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

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

(b) A person defending a claim may introduce into evidence at trial an amount paid or payable as a benefit to the claimant as a result of the personal injury or death under 42 U.S.C. 301 - 1397 (Social Security Act); a federal disability act; health,

1 sickness, disability, accident, or income-disability insurance; insurance that provides
2 health benefits or income-disability coverage; and a contract or agreement of a group,
3 organization, partnership, or corporation, or other collateral source, to provide, pay for,
4 or reimburse the cost of medical, hospital, dental, or other health care services,
5 disability, or lost wages. However, evidence of a collateral source described under
6 (a)(1) - (5) of this section may not be introduced into evidence at trial. If a person
7 defending a claim elects to introduce evidence described in this subsection, the
8 claimant may introduce evidence of the amount that the claimant has paid or
9 contributed to secure the claimant's right to the collateral benefit, including the cost
10 to the claimant resulting from depleted or exhausted coverage.

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

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

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

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

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

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

31 (b) In determining the percentages of fault, the trier of fact shall consider both

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 * **Sec. 29.** 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. 30. 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. 31. 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. 32. 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. 33. 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. 34. 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.

1d * **Sec. 35.** AS 09.60 is amended by adding a new section to read:

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

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

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

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

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

18 **Sec. 09.65.096. Civil liability of hospitals for certain physicians.** (a) A
 19 hospital is not liable for civil damages as a result of an act or omission by an
 20 emergency room physician who is not an employee or actual agent of the hospital if
 21 the hospital provides notice that the emergency room physician is an independent
 22 contractor and the emergency room physician is insured as described under (c) of this
 23 section. The hospital is responsible for exercising reasonable care in granting
 24 privileges to practice in the hospital, for reviewing those privileges on a regular basis,
 25 and for taking appropriate steps to revoke or restrict privileges in appropriate
 26 circumstances. The hospital is not otherwise liable for the acts or omissions of an
 27 emergency room physician who is an independent contractor. The notice required by
 28 this subsection must (1) be posted conspicuously in all admitting areas of the hospital;
 29 (2) consist of a sign at least four feet high and two feet wide, with print at least two
 30 inches high; (3) be published at least annually in a newspaper of general circulation
 31 in the area; and (4) be in substantially the following form:

1 **Notice to Hospital Users and**

2 **Notice of Limited Liability**

3 (Name of hospital) may not be responsible for the actions of
4 emergency room physicians in (name of hospital's emergency
5 room). The following emergency room physicians are
6 independent contractors and are not employees of the hospital:

7 (List specific emergency room physicians)

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

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

16 (d) In this section,

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

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

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

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

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

30 (1) engaged in the commission of a felony, the person has been
31 convicted of the felony, including conviction based on a guilty plea or plea of nolo

1 contendere, and the felony substantially contributed to the personal injury or death;

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

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

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

8 (3) fleeing after the commission, by that person, of conduct that would
9 constitute an unclassified felony, a class A felony, or a class B felony or being
10 apprehended for conduct that would constitute an unclassified felony, a class A felony,
11 or a class B felony if the conduct

12 (A) during the flight or apprehension substantially contributed
13 to the injury or death; and

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

16 (4) operating a vehicle, aircraft, or watercraft while under the influence
17 of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was
18 convicted, including conviction based on a guilty plea or plea of nolo contendere, and
19 the 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 conduct substantially
22 contributed to the personal injury or death and the conduct is proven by the defendant
23 in the civil trial by clear and convincing evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (g) If the employee or the employee's representative recovers damages from
 28 the third person, the employee or representative shall promptly pay to the employer the
 29 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]
 30 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs
 31 and expenses. Any excess recovery by the employee or representative shall be

1 credited against any amount payable by the employer thereafter. If the employer is
2 allocated a percentage of fault under AS 09.17.080, the amount due the employer
3 under this subsection shall be reduced by an amount equal to the employer's
4 equitable share of damages assessed under AS 09.17.080(c).

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

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

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

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

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

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

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

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

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

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

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

(4) whether a scheduling conference is unnecessary;

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

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

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

(3) **Settlement Information.** If a voluntary dismissal under this rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***Sec. 59.** AS 09.17.080(a), as amended by sec. 17 of this Act, has the effect of amending Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated

1 among the claimants, defendants, third-party defendants, persons who have been released from
2 liability, or other person who is responsible for the damages.

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

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

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

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

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

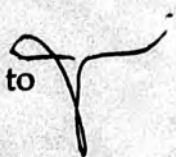
28 (c) In this section, "alternative dispute resolution" is limited to arbitration, mediation,
29 and early neutral evaluation.

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

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

To: Senator Tim Kelly

Fm: Jim Sourant. aide to
Brian Porter



April 13, 1997

Dear Senator Kelly:

1. We should have your committee substitute out of Mike Ford's hands by the time this memo is delivered to Tim B. Obviously, this is the important one.
2. As to the bill which passed out of Senate Finance Committee, copy attached, I make the following comments regarding the amendments made by that committee:
 - a. Page 1, lines 8-12 : This makes clear that the tort bill has absolutely no effect on the pending Exxon Valdez litigation, and that it will not apply to any future such admiralty disasters.
 - b. Page 5, lines 30-31: This makes clear that reckless conduct is enough to sustain a claim of punitive damages.
 - c. Page 7, lines 5-6: This makes clear that periodic payments are not mandatory on the parties, but available to the injured plaintiff if desired
 - d. Page 24, line 21: Consistency change for "c" above.
 - e. Don't get hung up on this version. It doesn't matter. It is your committee substitute that will matter.

Time - no Rules Committee Agreement

COMPARISON

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 1.</u> <u>INTENT</u>	Same.	Same.
<u>SECTION 2.</u> <u>LIQUIDATION OF A STATE</u> <u>BANK</u>	Same.	Same.
<u>SECTION 3.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 4.</u> <u>STATUTE OF LIMITATIONS</u> <u>FOR PROPERTY ACTIONS</u>	Same.	Same.
<u>SECTION 5.</u> <u>STATUTE OF REPOSE</u>	* Increased to 10 years. * Excepts from the statute of repose the situation where the facts which would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.	*8 years.
<u>SECTION 6.</u> <u>STATUTE OF</u> <u>LIMITATIONS FOR TORT</u> <u>AND OTHER CLAIMS</u>	Same.	Same.
<u>SECTION 7.</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same.	Same.
<u>SECTION 8.</u> <u>ADDITION TO</u> <u>DISABILITY OF</u> <u>MINORITY</u>	Same. 8 yrs	Same. 6 yrs

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 9.</u> <u>NON-ECONOMIC</u> <u>DAMAGES</u>	* Lower limit increases to \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater. * Upper limit increases to \$1.5 million or the person's life expectancy multiplied by \$30,000, whichever is greater. * Provides that these limits are the maximum amount that can be recovered for all claims arising out of a single injury.	*Lower limit of \$300,000. *Upper limit of \$500,000.

VERSION Z SECTION NUMBER	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 10.</u> <u>PUNITIVE DAMAGES</u>	*Adopts the Task Force recommendations for subsections a through e. *Retains the three times compensatory damage limit contained in the Senate Finance CS, but increases that limit to a maximum of \$500,000. * Increases the secondary limit to four times compensatory or \$3 million, whichever is greater. *Adds additional limits for punitive damages against an employer for violation of an unlawful employment practices prohibited by AS 18.80.220. *Limits are \$50,000 if the employer has less than fifteen employees; \$100,000 if fifteen or more but less than one hundred employees, \$300,000 if one hundred or more but less than two hundred employees; \$400,000 if 200 or more but less than five hundred employees; \$500,000 if more than 500 employees.	*Limit for most cases is three times compensatory damages or \$300,000, whichever is greater. *Secondary limit is four times compensatory damages or \$600,000, whichever is greater.
	Deleted.	Section 12. (Income taxes)
	Deleted.	Sections 13-15 (Periodic payments)
	Deleted.	Section 16 (Collateral benefits)

<u>VERSION Z</u> <u>SECTION NUMBER</u>	<u>SENATE CS FOR CS FOR SS FOR</u> <u>HB 58(WORK DRAFT Z)</u>	<u>SENATE CS FOR CS FOR SS FOR HB</u> <u>58(FIN)</u>
<u>SECTION 11.</u> <u>ALLOCATION OF FAULT</u>	*Requires the person to be joined in order to allocate fault unless the person ~~cannot be sued because of the statute of repose~~ , is not within the jurisdiction of the court, or is precluded from being joined by law or court rules or is cannot be reasonably located.	*Appears as section 17 in the Senate Finance CS. *Provides that fault would be allocated to all persons, regardless of whether they are joined as a party unless they cannot be sued because of the statute of repose.
<u>SECTION 12.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 18 in Senate Finance CS.
<u>SECTION 13.</u> <u>ALLOCATION OF FAULT</u>	No change.	*Appears as section 19 of Senate Finance CS.
<u>SECTION 14.</u> <u>INTENTIONAL CONDUCT</u>	No change.	*Appears as section 20 of Senate Finance CS.
<u>SECTION 15.</u> <u>EXPERT WITNESS</u> <u>QUALIFICATION</u>	*Substantially the same as section 21 of Senate Finance CS.	*Appears as section 21 of Senate Finance CS. *Substantially the same.
<u>SECTION 16.</u> <u>OFFERS OF JUDGMENT</u>	* Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer. * Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made.	*Appears as section 22 in Senate Finance CS.
<u>SECTION 17.</u> <u>OFFERS OF JUDGMENT</u>	Same.	* Appears as section 23 of Senate Finance CS

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 18.</u> <u>PREJUDGMENT</u> <u>INTEREST</u>	Same.	* Appears as section 24 of Senate Finance CS.
<u>SECTION 19.</u> <u>PREJUDGMENT</u> <u>INTEREST ON FUTURE</u> <u>DAMAGES</u>	Same.	* Appears as Senate Finance CS Section 25.
<u>SECTION 20.</u> <u>JUDGMENT FOR</u> <u>PLAINTIFF</u>	Same.	* Appears as section 26 of Senate Finance CS.
<u>SECTION 21.</u> <u>CONDEMNATION</u>	Same.	* Appears as section 27 of Senate Finance CS.
<u>SECTIONS 22 - 29.</u>	Same.	* Appears as sections 29-36 of Senate Finance CS.
<u>SECTION 30.</u> <u>CIVIL LIABILITY OF</u> <u>HOSPITALS</u>	* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year." * Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.	* Appears as section 37 in Senate Finance CS.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 31.</u> <u>DAMAGES FROM</u> <u>COMMISSION OF FELONY</u>	* Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death.	* Appears as section 38 in Senate Finance CS.
<u>SECTION 32.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	* Adds collection of attorney fees and costs information.	* Appears as section 39 in the Senate Finance CS.
<u>SECTION 33.</u> <u>INSURANCE REPORT</u>	Same.	* Appears as section 40 of Senate Finance CS.
<u>SECTIONS 34-39.</u>	Same.	* Appears as sections 41- 46.
<u>SECTION 40 (NEW)</u> <u>LIMITED DISCOVERY</u>	* Provides for limited discovery.	* Not present.
<u>SECTION 41.</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Includes attorney fee information.	* Appears as section 47 of Senate Finance CS.
<u>SECTION 42.</u> <u>DISCOVERY IN MEDICAL</u> <u>MALPRACTICE</u>	Same.	*Appears as section 48 of Senate Finance CS.
<u>SECTION 43.</u> <u>RULE 95</u>	*Increases sanctions to \$50,000.	* Appears as section 49 of Senate Finance CS. * Sanctions remain \$1,000.
<u>SECTION 44</u> <u>TRUTH PROVISION</u>	*Limited to Personal Injury and Property Damage cases.	* Appears as section 50 of Senate Finance CS. * Unlimited.
<u>SECTION 45-46.</u> <u>DISTRICT COURT</u> <u>PROCEDURES</u>	*Provides for expedited procedure in certain cases.	*Not present.

<u>VERSION Z</u> <u>SECTION NUMBER</u>	SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)	SENATE CS FOR CS FOR SS FOR HB 58(FIN)
<u>SECTION 47</u> <u>SETTLEMENT</u> <u>INFORMATION</u>	*Same as section 51 of Senate Finance CS, except that it includes attorney fee information.	* Appears as section 51 of Senate Finance CS.
<u>SECTION 48-54</u> <u>RULES CHANGES</u>	*Substantially the same.	*Appears as section 52-62 Repealers of Senate Finance CS.
<u>SECTION 55</u> <u>ALTERNATIVE DISPUTE</u> <u>RESOLUTION</u>	*Substantially the same.	*Appears as section 63 of Senate Finance CS.
<u>SECTION 56.</u>	Same.	*Appears as section 64 of Senate Finance CS.
<u>SECTION 57.</u>	Same.	*Appears as section 65 of Senate Finance CS.

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YOUNG & FELDMAN

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STATE OF ALASKA, DEPARTMENT OF LAW
1031 West Fourth Avenue, Suite 200
Anchorage, Alaska 99501
(907) 269-5190

FAX COVER SHEET

To: Attorney General Bruce M. Botelho
(907) 465-2076

From: Assistant Attorney General Gail T. Voigtlander

Date: April 13, 1997

No. of Pages: 8

Message: See attached signed version of resolutions agreement

Post-It Fax Note	7671	Date	4/14/97
To	Mike L.	From	Pam
Co/Dpt.		Co.	
Phone #		Phone #	
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Alaska State Legislature

Representative Brian S. Porter

HOUSE MAJORITY LEADER

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



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DISTRICT 20

Sectional Summary of SSHB 58 (JUD)

An Act Relating to Civil Actions

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

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

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

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

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

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

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

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

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

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

Section 6. Limitation of actions against health care providers. This section amends AS 09.10 by adding a new section. It generally requires that actions for medical malpractice involving children under the age of six at the time of the alleged negligent act or omission be brought before the child's eighth birthday, including actions involving birth injuries. This statute is tolled in cases where fraud or collusion, or intentional concealment of facts can be shown. It is also tolled until the actual discovery of a foreign object in the body of the injured person.

Section 7. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years. This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

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

Section 8. Noneconomic damages. This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places more stringent limits on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought.

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

Section 9. Punitive damages. This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts showing a deliberate disregard of another person from whom the punitive damages are sought.

Section 10. Punitive damages. This section relates to new subsections which are added to the preceding Section 9 in order to clarify and cap the amount of punitive damages which may be awarded.

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

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

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

Section 11. Award of damages; periodic payments. This section clarifies that an award for personal injuries is intended to include damages for death.

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

Section 12. Award of damages; periodic payments. This section clarifies that cases involving judgments in excess of \$100,000 may be paid in periodic payments (structured settlements or annuities) rather than in a lump sum payment if either party to the action requests payment by periodic payments.

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

Section 13. Award of damages; periodic payments. This section requires that if a structured settlement type of periodic payment is selected by the injured party, the court must require security be posted in the form of U.S. government obligations to ensure that the funds are available when they become due. Excepted from the posting of security requirement are the State of Alaska, self-insured municipalities, and insurance companies authorized to do business in the state if their financial strength is in the highest two categories as measured by any two nationally recognized independent rating services.

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

Section 14. Award of damages; periodic payments. This section clarifies that damage awards for personal injury or death are controlled by this statute.

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

Section 15. Collateral benefits. This section repeals and reenacts the collateral source statute, AS 09.17.070, which prevents double recovery by plaintiffs. In general, the award realized by an injured person is reduced by the amount of money the injured person has already received, or will likely receive in the future, from collateral sources.

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

This section will allow the defendant at trial to introduce evidence that the plaintiff has received, or will likely receive in the future, the types of collateral benefits appearing in subsection (b) of this section. However, the defendant is still precluded from offering at trial evidence of worker's compensation benefits received, life insurance death benefits received, and various federally funded collateral sources which by law must seek subrogation from the plaintiff's recovery under subsection (a).

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

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

Section 16. Apportionment of damages.

By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, this section requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

The elimination of two references to AS 09.16.040 is done because that statute was repealed by the 1987 Initiative Proposal.

Section 17. Apportionment of damages. This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

Section 18. Apportionment of damages. This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

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

✓ **Section 19. Definition; intentional torts.** This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

Section 20. Expert witness qualification. This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

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

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

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer, whether the offer is tendered by the party making the claim, or the party defending against the claim. The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as

evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

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

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

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

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

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

Section 24. Prejudgment interest. This new section is intended to preclude prejudgment interest from being awarded for future economic and future noneconomic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

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

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

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

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

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

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

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

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

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

Section 34. Attorney contingent fee agreements. This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted

under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery

Section 35. Civil liability of hospitals for nonemployees. This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room physicians who are independent contractors. Current law allows a claimant to sue only the hospital rather than the independent contractor who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987).

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

Section 36. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs. In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

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

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

Section 37. Collection of settlement information. This section is taken verbatim from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle cases to file information about the settlements, including amounts paid to settle.

Section 38. Insurance report. This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the

Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

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

Section 39. Appointment of independent counsel; conflicts of interest.

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

Section 40. Appointment of independent counsel; conflicts of interest. In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

Section 41. Workers' compensation lien. This section is a consistency change to the workers' compensation statutes required by the change in Section 18 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

✓ **Section 42. Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

Section 43. Alaska Rule of Civil Procedure 16.1(k)(4). This section is repealed as a consistency change to the foregoing section 42.

Section 44. Alaska Rule of Civil Procedure 16.1(n). This section also is a consistency change to the foregoing section 42. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

✓ **Section 45. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

✓ **Section 46. Medical advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.