

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2431.21 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997

**Section 47. Sanctions for rule violations.** This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$10,000 against attorneys, increased from \$1,000 under the existing rule.

**Section 48. Sanctions for rules violations.** This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

✓ **Section 49. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

**Section 50. Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 42.

**Section 51. Collateral benefits.** This section was repealed because it is no longer necessary in view of AS 09.17.070, which operates to adjust damages in all tort cases, including in medical malpractice arbitrations.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 51. Apportionment of damages.** This section changes Civil Rule 49 to conform to the changes made to AS 09.17.080(a)(2).

**Section 52 - Section 60. Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

**Section 61. 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 62. Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

**Section 63. Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

**Section 64. Effective date.** This Act takes effect July 1, 1997.

**CS FOR SENATE BILL NO. 15(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/13/97

Referred: Finance

Sponsor(s): SENATOR TAYLOR

**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; relating to motor vehicle liability insurance and  
 2 bonds; amending Rules 16.1, 26, 41, 49, 72.1, 79(b), 82(b), 95, and 100, Alaska  
 3 Rules of Civil Procedure; amending Rules 1 and 4, Alaska District Court Rules  
 4 of Civil Procedure; amending Rule 511, Alaska Rules of Appellate Procedure; and  
 5 repealing Rule 72.1, Alaska Rules of Civil Procedure; and providing for an  
 6 effective date."

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

8 \* Section 1. PURPOSE. It is the purpose of this Act to

- 9 (1) reduce the time and costs associated with civil litigation;  
 10 (2) improve access to justice for individuals and small businesses;  
 11 (3) provide for fair but not excessive compensation for persons injured through  
 12 the fault of others;  
 13 (4) increase the predictability of case outcomes to reduce inappropriate

1 litigation and settlement behavior; and

2 (5) collect information on the civil justice system and on the insurance industry  
3 to inform the public policy debate on tort reform related issues.

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

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

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

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

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

13 **Sec. 09.10.065. Contract actions to be brought in three years.** Unless an  
14 action is commenced within three years, a person may not bring an action upon a  
15 contract or liability, express or implied, excepting those described in AS 09.10.040 or  
16 as otherwise provided by law.

17 \* Sec. 5. AS 09.10.070(a) is amended to read:

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

25 \* Sec. 6. AS 09.17.010(c) is amended to read:

26 (c) The limit under (b) of this section does not apply to damages for severe  
27 disfigurement or severe physical impairment.

28 \* Sec. 7. AS 09.17.020 is repealed and reenacted to read:

29 **Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of  
30 punitive damages is presented to the fact finder, the fact finder shall determine,  
31 concurrent with all other issues presented, whether punitive damages shall be allowed

1 by using the standards set out in (b) of this section. If punitive damages are allowed,  
2 a separate proceeding under (c) of this section shall be conducted before the same fact  
3 finder to determine the amount of punitive damages to be awarded.

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

6 (1) was outrageous;

7 (2) was the result of malicious or hostile feelings toward the plaintiff;

8 or

9 (3) evidenced reckless indifference to the rights or safety of others.

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

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

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

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

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

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

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

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

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

30 (e) Unless that evidence is relevant to another issue in the case, discovery of  
31 evidence that is relevant to the amount of punitive damages to be determined under

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

(f) Except as provided in (g) of this section or otherwise provided by law, an award of punitive damages may not exceed the greater of

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

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

(g) Except as otherwise provided by law, if the fact finder finds that the conduct proven under (b) of this section was motivated by financial gain, it may award an amount of punitive damages not to exceed the greatest of

(1) the amount calculated under the limitation in (f) of this section;

(2) the average net annual income earned by the defendant for the five years before the date the trial began; or

(3) two times the amount of financial gain that the defendant received or expected to receive as a result of the defendant's misconduct.

(h) Punitive damages may not be awarded against a person that is immune by law from an award of punitive damages.

\* Sec. 8. AS 09.17.900 is amended to read:

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

1 civil litigation system can promote the timely and efficient resolution of many civil  
2 disputes. The purpose of AS 09.43.310 - 09.43.390 is to provide for an initial pilot  
3 program of alternative dispute resolution of certain civil cases filed in the superior  
4 court on or after January 1, 1998.

5 **Sec. 09.43.320. Pilot program for alternative dispute resolution.** (a) The  
6 supreme court shall provide for a pilot program under AS 09.43.310 - 09.43.390 for  
7 the submission of civil cases filed in the superior court, Third Judicial District, to  
8 alternative dispute resolution procedures. The program shall begin January 1, 1998,  
9 and operate for at least five years.

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

- 11 (1) divorce and dissolution;  
12 (2) adoption, custody, support, visitation, and emancipation of children;  
13 (3) children in need of aid cases under AS 47.10 or delinquent minors  
14 cases under AS 47.12;  
15 (4) domestic violence protective orders under AS 18.66.100 -  
16 18.66.180;  
17 (5) estate, guardianship, and trust cases filed under AS 13;  
18 (6) cases when no answer to the complaint or petition is filed by any  
19 party to the case with the court.

20 **Sec. 09.43.330. Structure of pilot program.** (a) The supreme court shall  
21 provide criteria for the screening of covered cases under the program to determine if  
22 the cases are appropriate for referral to alternative dispute resolution. The criteria shall  
23 be constructed so that at least 50 percent of the estimated number of covered cases  
24 filed in a calendar year are referred to alternative dispute resolution.

25 (b) The supreme court shall establish minimum qualifications for a person to  
26 be listed to conduct alternative dispute resolution procedures under AS 09.43.310 -  
27 09.43.390. The supreme court shall establish a list of persons determined to meet  
28 those qualifications and the current schedule of fees charged by the person listed.

29 (c) For a case referred under the program, the parties may mutually agree to  
30 select a person to conduct the alternative dispute resolution procedure regardless of  
31 whether the person appears on the list established under (b) of this section or whether

1 the person meets the minimum qualifications to be selected for the list. If an  
2 agreement cannot be reached, the trial court judge assigned the case shall appoint a  
3 person from the list. A person selected or appointed under this subsection has judicial  
4 immunity for conducting the alternative dispute procedure to the same extent as a  
5 judge and shall abide by applicable rules of confidentiality related to alternative dispute  
6 resolution procedures established by the supreme court.

7 (d) Fees and costs to conduct an alternative dispute resolution procedure under  
8 AS 09.43.310 - 09.43.390 shall be shared equally among the parties to the case being  
9 referred unless the court finds a party wholly or partially indigent and orders total or  
10 partial payment at public expense. The supreme court shall establish guidelines for the  
11 determination of total or partial indigency under the program. Fees and costs borne  
12 at public expense under this subsection constitute a lien on any recovery in the case  
13 by that party and shall be paid first from the recovery.

14 (e) The superior court shall establish standards for the timely referral to and  
15 the conclusion of the alternative dispute resolution procedure required under this  
16 program. The standards must include that the alternative dispute resolution procedure

17 (1) shall terminate no more than 100 days after the defendant's answer  
18 is served unless the trial court grants a time extension in an exceptional case and for  
19 good cause shown; and

20 (2) be limited to no more than 12 hours for the procedure unless the  
21 parties mutually agree to a longer period.

22 **Sec. 09.43.340. Evaluation of pilot program.** (a) The Alaska Judicial  
23 Council shall evaluate annually the efficacy of the pilot program. Among other  
24 factors, the evaluation shall address the speed with which cases are resolved, the  
25 satisfaction of the parties to the cases, the expenditures made by the parties to the  
26 cases, and the expenditure of court resources.

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

31 **Sec. 09.43.390. Definitions.** In AS 09.43.310 - 09.43.390,

1 (1) "alternative dispute resolution procedure" includes mediation and  
2 early neutral evaluation;

3 (2) "covered cases" means civil cases described in AS 09.43.320(a) and  
4 not excluded from participation in the program by AS 09.43.320(b);

5 (3) "program" means the alternative dispute resolution pilot program  
6 established in AS 09.43.320.

7 \* Sec. 13. AS 09.50.280 is amended to read:

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

12 \* Sec. 14. AS 09.55.440(a) is amended to read:

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

23 \* Sec. 15. AS 09.55.535 is repealed and reenacted to read:

24 **Sec. 09.55.535. Mandatory arbitration.** (a) A person who files an action for  
25 personal injury, death, or property damage shall also submit the claim to the court for  
26 arbitration unless the action is excluded under (b) of this section.

27 (b) A person is not required to comply with (a) of this section if the

28 (1) amount in controversy, excluding interest, costs, and attorney fees,  
29 exceeds \$100,000;

30 (2) parties have, under a written agreement made before the accrual of  
31 the action, agreed to submit the claim to arbitration; or

1 (3) action

2 (A) is a class action;

3 (B) seeks equitable or declaratory relief;

4 (C) concerns the title to real property;

5 (D) is a probate action;

6 (E) is an appeal from a court of limited jurisdiction;

7 (F) involves divorce or domestic relations;

8 (G) is an appeal from action by an administrative agency;

9 (H) is subject to the alternative dispute resolution procedure

10 under AS 09.43.320;

11 (I) is a small claims action.

12 (c) When a claim is submitted as required by (a) of this section, the court shall  
13 appoint an arbitrator to review the claim. The arbitrator appointed to review the claim  
14 shall interview the parties and examine all records or materials relating to the claim  
15 and may compel the attendance of witnesses, interview the parties, or consult with  
16 medical specialists.

17 (d) An arbitrator appointed under this section shall conduct a prehearing  
18 settlement conference within 30 days after the appointment. The arbitrator shall  
19 establish a period for discovery and a date for a hearing. The hearing date may not  
20 be more than 120 days after the settlement conference.

21 (e) An arbitrator shall render a decision within 30 days after hearing a claim  
22 under (d) of this section. The decision must contain findings of fact and conclusions  
23 of law. The decision of the arbitrator may be rejected by a party.

24 (f) If the decision of the arbitrator is rejected by a party, the action may  
25 proceed in the appropriate court. The arbitrator's decision is admissible in that action  
26 to the extent allowed under the Alaska Rules of Evidence and may be used by a party  
27 to support or oppose a claim of damages. If a party rejects the decision of the  
28 arbitrator and litigates the action in court but is not the prevailing party in the action,  
29 the court shall award actual costs and attorney fees to the opposing party.

30 (g) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)  
31 apply to an arbitration under this section to the extent the provisions do not conflict

1 with the provisions of this section.

2 \* **Sec. 16.** AS 09.65.210 is repealed and reenacted to read:

3 **Sec. 09.65.210. Damages resulting from the commission of a felony or**  
4 **other conduct that would constitute a felony.** (a) Except as provided in (b) of this  
5 section, a person who suffers personal injury or death may not recover damages for  
6 the personal injury or death if the injury or death occurred while the person was

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

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

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

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

16 (3) fleeing after the commission, by that person, of conduct that would  
17 constitute an unclassified felony or a class A or class B felony, or being apprehended  
18 for conduct that would constitute an unclassified felony or class A or class B felony  
19 if

20 (A) the conduct during the flight or apprehension substantially  
21 contributed to the injury or death; and

22 (B) the conduct that would constitute a felony is proven by the  
23 defendant in the civil trial by clear and convincing evidence.

24 (b) If the person is acquitted of all unclassified, class A, and class B felonies  
25 arising from the conduct, this section does not preclude the person from recovering  
26 damages for those injuries or death.

27 (c) This section does not affect a right of action under 42 U.S.C. 1983.

28 \* **Sec. 17.** AS 09.68 is amended by adding a new section to read:

29 **Sec. 09.68.130. Collection of settlement information.** (a) Except as  
30 provided in (c) of this section, the Alaska Judicial Council shall collect and evaluate  
31 information relating to the compromise or other settlement of all civil litigation. The

1 information, including the case name and file number, a general description of the  
 2 claims being settled, the dollar amount of the settlement, to whom it is to be paid, and  
 3 any nonmonetary terms, shall be collected on a form developed by the council for that  
 4 purpose.

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

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

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

19 \* Sec. 18. AS 18.80 is amended by adding a new section to read:

20 **Sec. 18.80.225. Punitive damages for unlawful employment practices. (a)**

21 In an action against an employer to recover damages for an unlawful employment  
 22 practice prohibited by AS 18.80.220, the amount of punitive damages awarded by the  
 23 court or jury may not exceed

- 24 (1) \$50,000 if the employer has less than 101 employees;
- 25 (2) \$100,000 if the employer has more than 100 but less than 201  
 26 employees;
- 27 (3) \$200,000 if the employer has more than 200 but less than 501  
 28 employees;
- 29 (4) \$300,000 if the employer has more than 500 employees.

30 (b) This section may not be construed to allow an award of punitive damages  
 31 against the state.

1 (c) In this section, "employees" means persons employed in each of 20 or  
2 more calendar weeks in the current or preceding calendar year.

3 \* **Sec. 19.** AS 21.06 is amended by adding a new section to read:

4 **Sec. 21.06.087. Insurance report.** (a) The director shall require reporting of  
5 and shall compile information necessary to evaluate

6 (1) the effect of the measures enacted in this Act on the availability and  
7 cost of insurance in the state; and

8 (2) the financial health and profitability of insurers doing business in  
9 the state.

10 (b) Information described in (a) of this section shall be provided by all insurers  
11 doing business in this state in the format specified by the director and must include  
12 factual information stating premiums, claims, expenses, and an allocation of investment  
13 profits or losses by line of business written in this state. Information shall be compiled  
14 by the division in a way that protects the identity of individual insureds.

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

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

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

24 \* **Sec. 20.** AS 21.36 is amended by adding a new section to read:

25 **Sec. 21.36.128. Civil action for claim settlement practices.** (a) A person  
26 who alleges a violation of AS 21.36.125 or a violation of a trade practice or claim  
27 settlement regulation adopted by the director may bring a civil action for damages.  
28 Notwithstanding any other provision of law, a person bringing an action under this  
29 section may not be required to prove that the violation occurred with a frequency that  
30 indicates a general business practice.

31 (b) Before filing a civil action under (a) of this section, the person filing the

1 action shall give at least 60 days written notice to the person who committed the  
2 violation. Notice required under this subsection must include

3 (1) a copy of the statute or regulation that the person is claimed to have  
4 violated;

5 (2) the facts and circumstances giving rise to the violation;

6 (3) the name of any individual involved in the violation;

7 (4) reference to any policy that is relevant to the violation; this  
8 paragraph does not apply if the person bringing the civil action is a third party  
9 claimant unless the insurer has provided the person bringing the civil action with a  
10 copy of the policy; and

11 (5) a statement that the notice is given in compliance with this  
12 subsection.

13 (c) If, within 60 days after notice required under (b) of this section is received  
14 by the insurer, the insurer pays the damages claimed by the person bringing the action  
15 or corrects the settlement practice giving rise to the action, a person may not bring an  
16 action under (a) of this section.

17 (d) If an insurer receives a notice described under (b) of this section or settles  
18 an alleged violation as provided under (c) of this section, the insurer shall provide a  
19 copy of the notice to the director or notify the director of the settlement within 30 days  
20 after receiving the notice or settling the matter.

21 (e) Upon mailing or delivering the notice required under (b) of this section,  
22 the applicable time limit for commencing an action under (a) of this section shall be  
23 tolled for 65 days.

24 (f) If the person filing an action under (a) of this section is a prevailing party,  
25 the person may recover

26 (1) costs and reasonable attorney fees; and

27 (2) damages that are foreseeable as a result of the violation, including  
28 damages in excess of applicable insurance policy limits.

29 (g) Notwithstanding any other provision of law, a person filing an action under  
30 (a) of this section may recover punitive damages if the act or omission giving rise to  
31 the violation is

- 1 (1) wilful, wanton, or malicious; or  
2 (2) in reckless disregard of the rights of the person filing the civil  
3 action.

4 (h) The rights provided under this section are in addition to other rights  
5 provided by law.

6 \* Sec. 21. AS 22.10.020(i) is amended to read:

7 (i) The superior court is the court of original jurisdiction over all causes of  
8 action arising under the provisions of AS 18.80. A person who is injured or aggrieved  
9 by an act, practice, or policy that [WHICH] is prohibited under AS 18.80 may apply  
10 to the superior court for relief. The person aggrieved or injured may maintain an  
11 action on behalf of that person or on behalf of a class consisting of all persons who  
12 are aggrieved or injured by the act, practice, or policy giving rise to the action. In an  
13 action brought under this subsection, the court may grant relief as to any act, practice,  
14 or policy of the defendant that [WHICH] is prohibited by AS 18.80, regardless of  
15 whether each act, practice, or policy, with respect to which relief is granted, directly  
16 affects the plaintiff, so long as a class or members of a class of which the plaintiff is  
17 a member are or may be aggrieved or injured by the act, practice, or policy. The court  
18 may enjoin any act, practice, or policy that [WHICH] is illegal under AS 18.80 and  
19 may, subject to AS 18.80.225, order any other relief, including the payment of money,  
20 that is appropriate.

21 \* Sec. 22. AS 22.15.030(a) is amended to read:

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

25 (1) for the recovery of money or damages when the amount claimed  
26 exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];

27 (2) for the recovery of specific personal property [,] when the value of  
28 the property claimed and the damages for the detention do not exceed \$100,000  
29 [\$50,000];

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

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

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

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

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$100,000 [\$50,000];

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

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

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

\* Sec. 23. AS 28.22 is amended by adding a new section to read:

**Sec. 28.22.150. Required medical payment policy provision.** If the insurance carrier denies coverage for a claim for medical treatment by the insured under a motor vehicle liability policy that contains medical coverage and the claim is later determined to be covered under the policy, the insurance carrier shall pay the insured's

(1) actual costs, plus interest from the date the claim is received by the insurer; and

(2) actual attorney fees or an amount equal to 50 percent of the disputed claim, whichever is greater; actual attorney fees awarded under this paragraph may not exceed \$250 per hour of work performed.

\* Sec. 24. AS 28.22.201(a) is amended to read:

(a) The uninsured and underinsured motorists coverage required under this chapter

(1) applies [DOES NOT APPLY] to bodily injury, sickness, disease, or death of an insured or damage to or destruction of property of an insured even if [UNTIL] the limits of liability bonds and policies that apply have not been used up by payments or judgments or settlements; however, the insurer shall, in each instance, receive a credit against the insured's total damages for amounts actually received by the insured for covered claims from other sources, including liability bonds, other insurance policies, judgments, or settlements;

(2) must be a single combined coverage; and

(3) may be rejected by the insured in writing; if the insured has rejected uninsured or underinsured coverage, the coverage may not be included in a supplemental, renewal, or replacement policy unless the insured subsequently requests uninsured or underinsured coverage in writing.

\* Sec. 25. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

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

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

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

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

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

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

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

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

1 (8) That the parties have complied with paragraph (k) of this rule.

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

3 (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as  
4 soon as practicable after the exchange of initial disclosures required under Rule  
5 26(a)(1) and in any event at least 14 days before a scheduling conference is held or  
6 a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of  
7 their claims and defenses and the possibilities for a prompt settlement or resolution of  
8 the case and to develop a proposed discovery plan. The attorneys of record and all  
9 unrepresented parties that have appeared in the case are jointly responsible for  
10 arranging and being present or represented at the meeting, for attempting in good faith  
11 to agree on the proposed discovery plan, and for submitting to the court within 10 days  
12 after the meeting a written report outlining the proposed discovery plan. The proposed  
13 discovery plan shall indicate the parties' views and proposals concerning

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

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

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

22 (4) whether a scheduling conference is unnecessary;

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

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

28 \* Sec. 27. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new  
29 paragraph to read:

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

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

9 \* Sec. 28. Rule 68, Alaska Rules of Civil Procedure, is repealed and reenacted to read:

10 **Rule 68. Offer of Judgment.** (a) At any time more than 10 days before the  
11 trial begins, either the party making a claim or the party defending against a claim may  
12 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. The offer may not be revoked in the 10-day period  
15 following service of the offer. If, within 10 days after service of the offer, the adverse  
16 party serves written notice that the offer is accepted, either party may then file the  
17 offer and notice of acceptance together with proof of service, and the clerk shall enter  
18 judgment. An offer not accepted within 10 days is considered withdrawn, and  
19 evidence of the offer is not admissible except in a proceeding to determine costs. The  
20 fact that an offer is made but not accepted does not preclude a subsequent offer.

21 (b) If the judgment finally rendered by the court is not more favorable to the  
22 offeree than the offer, the prejudgment interest accrued up to the date judgment is  
23 entered shall be adjusted as follows:

24 (1) if the offeree is the party making the claim, the interest rate will be  
25 reduced by the amount specified in AS 09.30.065;

26 (2) if the offeree is the party defending against the claim, the interest  
27 rate will be increased by the amount specified in AS 09.30.065.

28 (c) If the judgment finally rendered by the court is not more favorable to the  
29 offeree than the offer, the court's award of attorney's fees under Rule 82 shall be  
30 adjusted as follows:

31 (1) if the offeree is the party making the claim, the court shall adjust

1 its award of attorney's fees to the offeree as follows:

2 (A) if the offer was served no later than 30 days after both  
3 parties made the disclosures required by Rule 26(a)(1), the attorney's fees  
4 award shall be reduced by 50 percent;

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

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

11 (2) if the offeree is the party defending against the claim, the court  
12 shall adjust its award of attorney's fees to the offeror as follows:

13 (A) if the offer was served no later than 30 days after both  
14 parties made the disclosures required by Rule 26(a)(1), the attorney's fees  
15 award shall be increased by 50 percent;

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

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

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

28 \* Sec. 29. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

29 (g) Discovery. Except by leave of court, no discovery may be conducted until  
30 the report of the panel has been filed or until 60 days after selection of the panel [80  
31 DAYS HAVE ELAPSED FROM THE DATE THE CASE IS AT ISSUE], whichever

1 is first to occur, unless discovery is further stayed for good cause by order of the court.

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

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

8 \* Sec. 31. Rule 1(a)(1), District Court Rules of Civil Procedure is amended to read:

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

16 \* Sec. 32. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new  
17 subsection to read:

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

27 \* Sec. 33. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new  
28 subsection to read:

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

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

8 \* Sec. 34. AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.560(2), and  
9 09.55.560(3) are repealed.

10 \* Sec. 35. AS 28.20.445(c), 28.20.445(h); AS 28.22.211, and AS 28.40.100(a)(22) are  
11 repealed.

12 \* Sec. 36. Rules 16.1(k)(4) and 72.1, Alaska Rules of Civil Procedure, are repealed.

13 \* Sec. 37. AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of this  
14 Act, have the effect of amending

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

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

20 \* Sec. 38. AS 09.30.065, as amended by sec. 9 of this Act, has the effect of amending  
21 Rule 68, Alaska Rules of Civil Procedure, by altering the manner in which interest under  
22 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the  
23 offeree than the offer.

24 \* Sec. 39. AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, has the effect of  
25 amending Rule 100, Alaska Rules of Civil Procedure, by making the mediation process  
26 mandatory for certain civil cases in the superior court, Third Judicial District, and by  
27 expanding the scope of the rule to include other forms of alternative dispute resolution in  
28 addition to mediation.

29 \* Sec. 40. AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending  
30 Rule 79(b), Alaska Rule of Civil Procedure, by allowing the award of actual costs in certain  
31 actions.

1     \* **Sec. 41.** AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending  
 2 Rule 82(b), Alaska Rule of Civil Procedure, by allowing the award of actual attorney fees in  
 3 certain actions.

4     \* **Sec. 42.** AS 28.22.150(2), enacted by sec. 23 of this Act, amends Rule 82(b), Alaska  
 5 Rules of Civil Procedure, by providing for attorney fee awards in certain cases that may differ  
 6 from those awarded under Rule 82(b).

7     \* **Sec. 43. APPLICABILITY.** (a) Sections 1, 9, 15, 18, 20, 22, 25, 26, 28 - 32, 34, and  
 8 35 of this Act apply to all civil actions filed on or after the effective date of those sections.

9         (b) Sections 3 - 8, 10, 11, 13, 16, and 21 of this Act apply to all causes of action  
 10 accruing on or after the effective date of those sections.

11         (c) Section 12 of this Act applies only to those civil actions covered by the pilot  
 12 program for alternative dispute resolution established under the provisions of AS 09.43.310 -  
 13 09.43.390, as enacted by sec. 11 of this Act, filed on or after January 1, 1998.

14         (d) Sections 17, 27, and 33 of this Act apply only to all voluntary dismissals of civil  
 15 actions filed with the state court on or after January 1, 1998.

16         (e) Sections 19, 23, 24, and 35 of this Act apply to all insurers doing business in this  
 17 state on or after the effective date of those sections.

18     \* **Sec. 44. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the  
 19 application of a provision of this Act to any person or circumstance is held invalid, the  
 20 remainder of this Act and the application to other persons shall not be affected.

21     \* **Sec. 45. REVISOR'S INSTRUCTION.** Due to the addition of AS 09.43.310 - 09.43.390  
 22 in sec. 12 of this Act, in AS 21.89.100(d), the revisor of statutes shall substitute  
 23 "AS 09.43.010 - 09.43.220" for "AS 09.43."

24     \* **Sec. 46.** (a) AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of  
 25 this Act, take effect only if sec. 37 of this Act receives the two-thirds majority vote of each  
 26 house required by art. IV, sec. 15, Constitution of the State of Alaska.

27         (b) AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, takes effect only if  
 28 sec. 38 of this Act receives the two-thirds majority vote of each house required by art. IV,  
 29 sec. 15, Constitution of the State of Alaska.

30         (c) The amendments or the repeal of the following court rules takes effect only if all  
 31 amendments and the repeal listed in this subsection receive the two-thirds majority vote of

1 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

2 (1) Rule 16.1(c), Alaska Rules of Civil Procedure, as amended by sec. 25 of  
3 this Act;

4 (2) Rule 16.1(n), Alaska Rules of Civil Procedure, as amended by sec. 26 of  
5 this Act;

6 (3) Rule 16.1(k)(4), Alaska Rules of Civil Procedure, repealed by sec. 36 of  
7 this Act.

8 (d) AS 09.68.130, as enacted by sec. 17 of this Act, takes effect only if secs. 27 and  
9 33 both receive the two-thirds majority vote of each house required by art. IV, sec. 15,  
10 Constitution of the State of Alaska.

11 \* **Sec. 47.** Sections 1 - 8, 10 - 16, 18 - 24, 34, 35, and 37 - 46 of this Act take effect  
12 immediately under AS 01.10.070(c).

**SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 58**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES PORTER, Cowdery, Bunde**

**Introduced: 2/17/97**

**Referred: Judiciary, Finance**

**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; amending Rule 511, Alaska Rules of Appellate Procedure; and  
5 providing for an effective date."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (h) After the payment of all other claims, including interest at the rate of 10.5  
31 percent a year [ESTABLISHED UNDER AS 09.30.070], the department shall pay

1 claims that are otherwise valid but that were not filed within the time prescribed.

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

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

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

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

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

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

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

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

25 (b) This section does not apply if

26 (1) the personal injury, death, or property damage resulted from  
27 (A) prolonged exposure to hazardous waste;  
28 (B) an intentional act or gross negligence;  
29 (C) fraud or fraudulent misrepresentation;  
30 (D) breach of an express warranty or guarantee; or  
31 (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.

(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 is amended by adding a new section to read:

**Sec. 09.10.065. Limitation of actions against health care providers.** (a) Notwithstanding the disability of minority described under AS 09.10.140(a), an action based on professional negligence may not be brought against a health care provider if the injured person is, on the date of the alleged negligent act or omission, less than six years of age unless the action is commenced before the person's eighth birthday.

(b) The limitation imposed under (a) of this section is tolled during any period in which there exists

(1) fraud, including fraud or collusion by a parent, guardian, insurer, or health care provider, resulting in the failure to bring an action on behalf of an injured minor;

(2) intentional concealment of facts that would give notice of a potential action; or

(3) the undiscovered presence of a foreign object 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 object.

(c) In this section,

(1) "health care provider" has the meaning given in AS 09.55.560;

(2) "professional negligence" has the meaning given in AS 09.55.560;

(3) "professional services" has the meaning given in AS 09.55.560.

\* Sec. 7. 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. 8. AS 09.17.010 is repealed and reenacted to read:

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

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

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

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

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

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

\* Sec. 9. AS 09.17.020 is amended to read:

**Sec. 09.17.020. Punitive damages.** Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence of malice or conscious acts showing deliberate disregard of

1 another person by the person from whom the punitive damages are sought.

2 \* Sec. 10. AS 09.17.020 is amended by adding new subsections to read:

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

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

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

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

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

21 \* Sec. 11. AS 09.17.040(a) is amended to read:

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

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

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

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

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

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

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

31 (2) the amount of damages awarded shall be reduced by the

1 amount of federal and state income tax that would have been paid on damages  
 2 contained in the verdict under tax rates in effect on the date of the injury or  
 3 death; this paragraph does not apply to an award of damages if the damages are  
 4 taxable under federal or state law.

5 \* Sec. 12. AS 09.17.040(d) is amended to read:

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

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

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

31 \* Sec. 14. AS 09.17.040(f) is amended to read:

(f) A judgment ordering payment of [FUTURE] damages for personal injury or death by periodic payment shall specify the recipient, the dollar amount of the payments, including any increases in future payments for anticipated inflation, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the 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 Anchorage, all items index, compiled by the Bureau of Labor Statistics, United States Department of Labor.

\* Sec. 15. 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,

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

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

\* Sec. 16. AS 09.17.080(a) is amended to read:

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

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

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

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each person [PARTY] at fault, and the extent of the

1 causal relation between the conduct and the damages claimed. The trier of fact may  
2 assign a percentage of fault to [DETERMINE THAT] two or more persons [ARE TO  
3 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages  
4 claimed and the separate act or omission of each person cannot be distinguished.

5 \* Sec. 18. AS 09.17.080(c) is amended to read:

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

17 \* Sec. 19. AS 09.17.900 is amended to read:

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

26 \* Sec. 20. AS 09.20 is amended by adding a new section to read:

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

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

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

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

7 \* Sec. 21. AS 09.30.065 is amended to read:

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

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

30 (2) if the offer was served more than 60 days after both parties  
31 made the disclosures required by the Alaska Rules of Civil Procedure but more

1 than 90 days before the trial began, the offeree shall pay 75 percent of the  
 2 offeror's reasonable actual attorney fees;

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

8 \* Sec. 22. AS 09.30.065 is amended by adding new subsections to read:

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

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

21 \* Sec. 23. AS 09.30.070(a) is amended to read:

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

30 \* Sec. 24. AS 09.30.070 is amended by adding a new subsection to read:

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or punitive damages.

2 \* Sec. 25. AS 09.50.280 is amended to read:

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

7 \* Sec. 26. AS 09.55.440(a) is amended to read:

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

18 \* Sec. 27. AS 09.55.535(k) is amended to read:

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

25 \* Sec. 28. AS 09.55.536(a) is amended to read:

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

1 for a decision in the case. When the action is filed, the court shall, by order,  
 2 determine the professions or specialties to be represented on the expert advisory panel,  
 3 giving the parties the opportunity to object or make suggestions.

4 \* Sec. 29. AS 09.55.536(c) is amended to read:

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

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

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

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

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

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

22 (6) What specifically caused the medical injury?

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

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

27 \* Sec. 30. AS 09.55.536(f) is amended to read:

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

prescribed in (c) of this section, the court may, upon application, grant the panel [IT]  
an additional 30 days.

\* Sec. 31. AS 09.55.536 is amended by adding a new subsection to read:

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

\* Sec. 32. AS 09.55.560(1) is amended to read:

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

\* Sec. 33. AS 09.55.560 is amended by adding new paragraphs to read:

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

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

\* Sec. 34. AS 09.60 is amended by adding a new section to read:

**Sec. 09.60.080. Contingent fee agreements.** If an attorney contracts for or

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

6 \* Sec. 35. AS 09.65 is amended by adding a new section to read:

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

20 **Notice of Limited Liability**

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

23 (List specific emergency room physicians)

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

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

1 (d) In this section,

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

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

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

9 \* Sec. 36. AS 09.65.210 is repealed and reenacted to read:

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

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

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

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

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

24 (3) fleeing after the commission, by that person, of conduct that would  
25 constitute an unclassified felony, a class A felony, or a class B felony or being  
26 apprehended for conduct that would constitute an unclassified felony, a class A felony,  
27 or a class B felony if the conduct

28 (A) during the flight or apprehension substantially contributed  
29 to the injury or death; and

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

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

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

\* Sec. 37. AS 09.68 is amended by adding a new section to read:

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

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

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

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

\* Sec. 38. AS 21.06 is amended by adding a new section to read:

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

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

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

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

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

20   \* **Sec. 39.** AS 21.89.100(d) is amended to read:

21           (d) If the insured selects independent counsel at the insurer's expense, the  
 22 insurer may require that the independent counsel have at least four years of experience  
 23 in civil litigation, including defense experience in the general subject area at issue in  
 24 the civil action, and malpractice insurance. Unless otherwise provided in the insurance  
 25 policy, the obligation of the insurer to pay the fee charged by the independent counsel  
 26 is limited to the rate that is actually paid by the insurer to an attorney in the ordinary  
 27 course of business in the defense of a similar civil action in the community in which  
 28 the claim arose or is being defended. In providing independent counsel, the insurer  
 29 is not responsible for the fees and costs of defending an allegation for which  
 30 coverage is properly denied and shall be responsible only for the fees and costs  
 31 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 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. 40. 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. 41. 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. 42. AS 44.77.015(a) is amended to read:

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

\* Sec. 43. Rule 16.1(c), Alaska Rules of Civil Procedure, is amended to read:

(c) Motion to Set Trial and Certificate. Unless otherwise ordered by the court, a [A] motion to set trial may not be filed until after the meeting of parties

under (n) of this rule has occurred and the scheduling order under Rule 16(b) has been issued [105 DAYS AFTER SERVICE OF THE SUMMONS AND COMPLAINT]. A party seeking to obtain a trial date must serve and file a motion to set trial together with a certificate, signed by counsel, stating:

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

**\* Sec. 44.** 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

1 disclosures under the rules, including a statement as to when the disclosures required  
2 under Rule 26(a) were made;

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

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

8 (4) whether a scheduling conference is unnecessary;

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

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

14 \* Sec. 45. Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new  
15 paragraph to read:

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

26 \* Sec. 46. Rule 72.1(g), Alaska Rules of Civil Procedure, is amended to read:

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

31 \* Sec. 47. Rule 95(b), Alaska Rules of Civil Procedure, is amended to read:

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

\* Sec. 48. Rule 95, Alaska Rules of Civil Procedure, is amended by adding a new subsection to read:

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

\* Sec. 49. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new 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. 50. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

\* Sec. 51. AS 09.55.548 is repealed.

\* Sec. 52. AS 09.17.020(d), as enacted by sec. 10 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.

1     \* **Sec. 53.** AS 09.17.040(a), as amended by sec. 11 of this Act, has the effect of amending  
2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to reduce an award of  
3 damages by certain tax rates in effect on the date of injury or death if taxable.

4     \* **Sec. 54.** AS 09.17.040(d), as amended by sec. 12 of this Act, has the effect of amending  
5 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments be paid  
6 periodically if requested by a party, with a lump sum payment for certain attorney fees.

7     \* **Sec. 55.** AS 09.17.040(e), as amended by sec. 13 of this Act, has the effect of amending  
8 Rule 58, Alaska Rules of Civil Procedure, by imposing certain requirements when a judgment  
9 is paid by periodic payments.

10    \* **Sec. 56.** AS 09.17.040(f), as amended by sec. 14 of this Act, has the effect of amending  
11 Rule 58, Alaska Rules of Civil Procedure, by requiring that certain judgments include any  
12 increases for future inflation.

13    \* **Sec. 57.** AS 09.17.080(a), as amended by sec. 16 of this Act, has the effect of amending  
14 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special  
15 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated  
16 among the claimants, defendants, third-party defendants, persons who have been released from  
17 liability, or other person who is responsible for the damages.

18    \* **Sec. 58.** AS 09.20.185, enacted by sec. 20 of this Act, has the effect of amending  
19 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person  
20 testifying as an expert witness.

21    \* **Sec. 59.** AS 09.30.065, as amended by secs. 21 and 22 of this Act, has the effect of  
22 amending Rule 68, Alaska Rules of Civil Procedure, by requiring the offeree to pay costs and  
23 reasonable actual attorney fees on a sliding scale of percentages in certain cases, by  
24 eliminating provisions relating to interest and by providing that a subsequent offer revokes  
25 prior offers.

26    \* **Sec. 60.** AS 09.30.070(c), added by sec. 24 of this Act, has the effect of amending  
27 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be  
28 awarded for future economic or noneconomic damages.

29    \* **Sec. 61.** ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this  
30 legislation to create a pilot alternative dispute resolution procedure within the existing civil  
31 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil

1 disputes.

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

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

14 \* Sec. 62. APPLICABILITY. This Act applies to all causes of action accruing on or after  
15 the effective date of this Act.

16 \* Sec. 63. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the  
17 application of a provision of this Act to any person or circumstance is held invalid, the  
18 remainder of this Act and the application to other persons shall not be affected.

19 \* Sec. 64. This Act takes effect July 1, 1997.

**SCOMM**

**101A:16**

**SENATE CS FOR CS FOR SS FOR HOUSE BILL NO. 58(RLS) am S**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTIETH LEGISLATURE - FIRST SESSION**

**BY THE SENATE RULES COMMITTEE**

**Amended: 4/16/97**

**Offered: 4/16/97**

**Sponsor(s): REPRESENTATIVES PORTER, Cowdery, Bunde**

**SENATORS Pearce, Sharp, Kelly, Miller**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; relating to independent counsel provided under  
2 an insurance policy; relating to attorney fees; amending Rules 16.1, 26, 41, 49,  
3 58, 68, 72.1, 82, and 95, Alaska Rules of Civil Procedure; amending Rules 1 and  
4 4, District Court Rules of Civil Procedure; amending Rule 702, Alaska Rules of  
5 Evidence; and amending Rule 511, Alaska Rules of Appellate Procedure."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) This section does not apply if

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

10 (2) the facts that would give notice of a potential cause of action are

11 intentionally concealed;

12 (3) a shorter period of time for bringing the action is imposed under

13 another provision of law;

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

15 (5) the facts that would constitute accrual of a cause of action of a

16 minor are not discoverable in the exercise of reasonable care by the minor's parent or

17 guardian.

18 (c) The limitation imposed under (a) of this section is tolled during any period

19 in which there exists the undiscovered presence of a foreign body that has no

20 therapeutic or diagnostic purpose or effect in the body of the injured person and the

21 action is based on the presence of the foreign body.

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

23 (a) Except as otherwise provided by law, a [A] person may not bring an

24 action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2)

25 [OR] for personal [ANY] injury or death, [TO THE PERSON] or injury to the rights

26 of another not arising on contract and not specifically provided otherwise; (3) for

27 taking, detaining, or injuring personal property, including an action for its

28 specific recovery; (4) [(2)] upon a statute for a forfeiture or penalty to the state; or

29 (5) [(3)] upon a liability created by statute, other than a penalty or forfeiture; unless

30 the action is commenced within two years of the accrual of the cause of action.

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

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

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

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

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

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

(b) Except as provided under (c) of this section, the damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, whichever is greater.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$1,000,000 or the person's life expectancy in years multiplied by \$25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.

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

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

**Sec. 09.17.020. Punitive damages.** (a) In an action in which a claim of punitive damages is presented to the fact finder, the fact finder shall determine,

1 concurrently with all other issues presented, whether punitive damages shall be allowed  
2 by using the standards set out in (b) of this section. If punitive damages are allowed,  
3 a separate proceeding under (c) of this section shall be conducted before the same fact  
4 finder to determine the amount of punitive damages to be awarded.

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

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

8 or

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

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

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

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

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

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

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

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

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

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

30 (e) Unless that evidence is relevant to another issue in the case, discovery of  
31 evidence that is relevant to the amount of punitive damages to be determined under

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

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

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

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

13 (g) Except as provided in (h) of this section, if the fact finder determines that  
14 the conduct proven under (b) of this section was motivated by financial gain and the  
15 adverse consequences of the conduct were actually known by the defendant or the  
16 person responsible for making policy decisions on behalf of the defendant, it may  
17 award an amount of punitive damages not to exceed the greatest of

18 (1) four times the amount of compensatory damages awarded to the  
19 plaintiff in the action;

20 (2) four times the aggregate amount of financial gain that the defendant  
21 received as a result of the defendant's misconduct; or

22 (3) the sum of \$7,000,000.

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

27 (1) \$200,000 if the employer has less than 100 employees in this state;

28 (2) \$300,000 if the employer has 100 or more but less than 200  
29 employees in this state;

30 (3) \$400,000 if the employer has 200 or more but less than 500  
31 employees in this state; and

(4) \$500,000 if the employer has 500 or more employees in this state.

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

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

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

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

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

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

(A) within the jurisdiction of the court;

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

and

(C) reasonably locatable [UNDER AS 09.16.040].

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each person [PARTY] at fault, and the extent of the

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

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

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

18 \* Sec. 14. AS 09.17.900 is amended to read:

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

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

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

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

country;

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

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

(b) The provisions of (a) of this section do not apply if the state has not recognized a board that has certified the witness in the particular field or matter at issue.

\* Sec. 16. 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, or if there are multiple defendants at least 10 percent less favorable to the offeree than the offer, the offeree, whether the party making the claim or defending against the claim, shall pay all costs as allowed under the Alaska Rules of Civil Procedure and shall pay reasonable actual attorney fees incurred by the offeror from the date the offer was made, [THE INTEREST AWARDED UNDER AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED] as follows:

(1) if the offer was served no later than 60 days after both parties made the disclosures required by the Alaska Rules of Civil Procedure the offeree shall pay 75 percent of the offeror's reasonable actual attorney fees [OFFEREE IS THE PARTY MAKING THE CLAIM, THE INTEREST RATE SHALL BE

1 REDUCED BY FIVE PERCENT A YEAR];

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

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

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

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

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

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

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

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or punitive damages.

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

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

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

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

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

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

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

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

1 the case and the reasons for the panel's answers:

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

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

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

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

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

15 (6) What specifically caused the medical injury?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 09.65.085. Civil liability of electric utility.** (a) A utility offering

1 electrical service to the public for compensation under a certificate of public  
 2 convenience and necessity issued by the Alaska Public Utilities Commission under  
 3 AS 42.05.221 may not be held strictly liable for property damage, death, or personal  
 4 injury resulting from an act or omission of the utility relating to the production,  
 5 delivery, or sale of electricity.

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

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

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

23 Notice to Hospital Users and

24 Notice of Limited Liability

25 (Name of hospital) may not be responsible for the actions of  
 26 emergency room physicians in (name of hospital's emergency  
 27 room). The following emergency room physicians are  
 28 independent contractors and are not employees of the hospital:  
 29 (List specific emergency room physicians)

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

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

(d) In this section,

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

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

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

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

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

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

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

(A) the felonious conduct; and

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

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

(A) the felonious conduct; and

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

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

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

(A) the violation of AS 28.35.030; and

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

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

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

- (1) the case name and file number;
- (2) a general description of the claims being settled;
- (3) if the case is resolved by way of settlement,
  - (A) the gross dollar amount of the settlement;

1 (B) to whom the settlement was paid;

2 (C) the dollar amount of advanced costs and attorney fees that  
3 were deducted from the gross dollar amount of the settlement before  
4 disbursement to the claimant;

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

6 (E) the total costs and attorney fees paid by or owed by all  
7 parties; and

8 (F) any nonmonetary terms, including whether the attorney fees  
9 incurred by the claimant were based on a contingent fee agreement or upon an  
10 hourly rate; if a contingent fee was paid, the percentage of the total settlement  
11 represented by the fee must be included; or, if an hourly rate, the hourly rate  
12 paid;

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

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

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

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

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

20 (E) the dollar amount of advanced costs and attorney fees that  
21 were deducted from the gross dollar amount of the judgment before distribution  
22 to the claimant;

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

25 (G) any nonmonetary terms, including whether the attorney fees  
26 incurred by the claimant were based on a contingent fee agreement or upon an  
27 hourly rate; if a contingent fee was paid, the percentage of the total settlement  
28 represented by the fee must be included; or, if an hourly rate, the hourly rate  
29 paid.

30 (b) The information received by the council under (a) of this section is  
31 confidential. This restriction does not prevent the disclosure of summaries and

1 statistics in a manner that does not allow the identification of particular cases or  
2 parties.

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

5 (1) divorce and dissolution;

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

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

9 (4) domestic violence protective orders under AS 18.66.100 -  
10 18.66.180;

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

12 (6) small claims under AS 22.15.040.

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

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

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

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

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

30 (e) The division may consult with the Alaska Judicial Council when  
31 determining what information to require to be reported under (a) - (c) of this section

1 and when implementing the compilation required under (a) of this section.

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

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

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

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

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

25 (g) If the employee or the employee's representative recovers damages from  
 26 the third person, the employee or representative shall promptly pay to the employer the  
 27 total amounts paid by the employer under (e)(1)(A) - (C) [(e)(1)(A), (B), AND (C)]  
 28 of this section [,] insofar as the recovery is sufficient after deducting all litigation costs  
 29 and expenses. Any excess recovery by the employee or representative shall be  
 30 credited against any amount payable by the employer thereafter. If the employer is  
 31 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. 37. AS 44.77.015(a) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

2             (n) **Meeting of Parties.** Except when otherwise ordered, the parties shall, as  
 3     soon as practicable after the exchange of initial disclosures required under Rule  
 4     26(a)(1) and in any event at least 14 days before a scheduling conference is held or  
 5     a scheduling order is due under Rule 16(b), meet to discuss the nature and basis of  
 6     their claims and defenses and the possibilities for a prompt settlement of the case and  
 7     to develop a proposed discovery plan. The attorneys of record and all unrepresented  
 8     parties that have appeared in the case are jointly responsible for arranging and being  
 9     present or represented at the meeting, for attempting in good faith to agree on the  
 10    proposed discovery plan, and for submitting to the court within 10 days after the  
 11    meeting a written report outlining the proposed discovery plan. The proposed  
 12    discovery plan shall indicate the parties' views and proposals concerning

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

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

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

21               (4) whether a scheduling conference is unnecessary;

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

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

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

29             (g) **Limited Discovery; Expedited Calendaring.** In a civil action for personal  
 30    injury or property damage involving less than \$100,000 in claims the parties shall limit  
 31    discovery to that allowed under Rule 1(a)(1), District Court Rules, and shall avail

1 themselves of the expedited calendaring procedures allowed under Rule 4, District  
2 Court Rules.

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

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

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

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

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

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

26 \* Sec. 44. Rule 1(a)(1), District Court Rules of Civil Procedure, is amended to read:

27 (1) The procedure in civil actions and proceedings before district judges  
28 and magistrates shall be governed by the rules governing the procedure in the superior  
29 court to the extent that such rules are applicable. However, in a civil action for  
30 personal injury or property damage, unless otherwise agreed by all parties or  
31 permitted by order of the court in exceptional cases and for good cause shown,

1 discovery shall be limited to the disclosures required under Civil Rule 26(a) and  
2 to the taking by each party of the deposition of one or more opposing parties and  
3 of one additional person who is not a party.

4 \* Sec. 45. Rule 4, District Court Rules of Civil Procedure, is amended by adding a new  
5 subsection to read:

6 (b) In a civil action for personal injury or property damage, unless otherwise  
7 permitted by order of the court in exceptional cases and for good cause shown, all  
8 parties shall file a memorandum to set the case for trial, as set out in Civil Rule 40(b),  
9 no later than 180 days after service of the complaint on all parties to the case. The  
10 memorandum shall contain a certification that each party has exchanged the  
11 information described in Rule 26(a), Alaska Rules of Civil Procedure, and may state  
12 their separate positions if they do not agree concerning information or estimates to be  
13 provided in the memorandum. After the court satisfies itself that the information  
14 described in Rule 26(a), Alaska Rules of Civil Procedure, has been disclosed, the court  
15 shall set the case for trial as soon as practicable, but no sooner than 30 days after the  
16 court makes the determination regarding disclosure.

17 \* Sec. 46. Rule 511, Alaska Rules of Appellate Procedure, is amended by adding a new  
18 subsection to read:

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

29 \* Sec. 47. Rule 16.1(k)(4), Alaska Rules of Civil Procedure, is repealed.

30 \* Sec. 48. AS 09.17.020(e), as enacted in sec. 10 of this Act, has the effect of amending  
31 Rule 26, Alaska Rules of Civil Procedure, by limiting discovery in certain actions.

1     \* Sec. 49. AS 09.17.020(j), as enacted by sec. 10 of this Act, has the effect of amending  
2 Rule 58, Alaska Rules of Civil Procedure, by requiring the court to require that a certain  
3 percentage of an award of punitive damages be deposited into the general fund.

4     \* Sec. 50. AS 09.17.080(a), as amended by sec. 11 of this Act, has the effect of amending  
5 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special  
6 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated  
7 among the claimants, defendants, third-party defendants, persons who have been released from  
8 liability, or other person who is potentially responsible for the damages.

9     \* Sec. 51. AS 09.20.185, enacted by sec. 15 of this Act, has the effect of amending  
10 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person  
11 testifying as an expert witness.

12     \* Sec. 52. AS 09.30.065, as amended by secs. 16 and 17 of this Act, has the effect of  
13 amending Rules 68 and 82, Alaska Rules of Civil Procedure, by requiring the offeree to pay  
14 costs and reasonable actual attorney fees on a sliding scale of percentages in certain cases, b  
15 eliminating provisions relating to interest and by changing provisions related to attorney fee  
16 awards.

17     \* Sec. 53. AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending  
18 Rule 58, Alaska Rules of Civil Procedure, by providing that prejudgment interest may not be  
19 awarded for future economic or noneconomic damages or punitive damages.

20     \* Sec. 54. ALTERNATIVE DISPUTE RESOLUTION. (a) It is the intent of this  
21 legislation to create an alternative dispute resolution procedure within the existing civil  
22 litigation system in order to promote the timely, inexpensive, and efficient resolution of civil  
23 disputes. It is also the intent of this legislation that the Alaska Supreme Court implement the  
24 alternative dispute resolution procedure not later than July 1, 1998.

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

1 within each program that are amenable to alternative dispute resolution, the cost to the parties  
2 and to the Alaska Court System under these programs, and the qualifications of the neutral  
3 parties, including nonlawyers, who will provide dispute resolution services under the program.  
4 The work required under this section shall be completed for the amount of money appearing  
5 on the fiscal note submitted by the Alaska Judicial Council dated March 17, 1997.

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

8 \* Sec. 55. APPLICABILITY. This Act applies to all causes of action accruing on or after  
9 the effective date of this Act.

10 \* Sec. 56. SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the  
11 application of a provision of this Act to any person or circumstance is held invalid, the  
12 remainder of this Act and the application to other persons shall not be affected.

# 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



**DISTRICT 20**

April 20, 1997

Sectional Summary  
of

SENATE CS FOR CS FOR SS FOR HB 58 ( RLS ) am S

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 ten years.** This section adds a new section which generally imposes a ten 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 ten, although the ten years may be waived by contract.

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.

In medical malpractice cases involving children, the statute of repose does not apply if the facts that would give notice of a potential cause of action

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of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

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 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 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 eight years at the time of the injury, until the minor's eighth birthday. This means the minor may bring an action for birth trauma injuries, or other injuries sustained before the age of eight, anytime before the minor's tenth birthday. This is consistent with the operation of the statute of repose.

**Section 9. Noneconomic damages.** This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places caps 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. Under existing law, there are no caps on noneconomic damages for "disfigurement or severe physical impairment."

This section leaves intact the existing recovery cap of \$500,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage. However, it now takes into consideration injuries to children and young adults by allowing the greater of \$400,000 or the injured person's life expectancy in years multiplied by \$8,000. These caps are per occurrence, and not per claimant.

In more serious cases, the recovery cap is substantially raised from previous versions of the bill to \$1,000,000. Again, in the case of injuries to children or young adults, the cap now is the greater of \$1,000,000 or the injured person's life expectancy in years multiplied by \$25,000. These caps are per occurrence, and not per claimant.

**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 essentially restates the language used by the Alaska Supreme Court to sustain a finding of punitive damages: there must be outrageous conduct done with malice or bad motives or a reckless indifference to the interests of another. *Cummings. Sea Lion Corporation*, 924 P. 2d 1011,1022 (Ak. 1996).

Subsections (a) through (e) are substantially identical to the language recommended by the Governor's task force.

Subsection (f) imposes a cap on punitive damages of the greater of three times compensatory damages or \$500,000.

Subsection (g) places a higher cap on punitive damages in cases where, in connection with commercial activities, the wrongful conduct was motivated by financial gain, and the likelihood of injury or damage was 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 the injuries, death or property damages. Under these circumstances, the cap on punitive damages would be the greatest of (1) four times compensatory damages, (2) four times the aggregate amount of financial gain that the defendant received as a result of the defendant's misconduct, or (3) \$7,000,000.

Subsection (h) caps on punitive damages in unlawful employment practice cases vary in four categories, depending upon the number of employees the business has in this state. Where employers have fewer than 100 employees, punitive damages are capped at \$200,000. Where employers have 500 or more employees, the punitive damage cap is \$500,000.

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

#### **Section 11. Apportionment of damages.**

Under present law, fault can be allocated only to parties who are present in the lawsuit. This section would allow allocation of fault to a person who is not a party to the action, if the person has been identified as a

potentially responsible person, but (a) the person is outside the jurisdiction of the court; or, (b) the person is precluded from being joined by law or court rule; or (c) is a person who is not reasonably locatable. Under this section, fault cannot be allocated to a person who cannot be joined because of the statute of repose.

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

**Section 12. 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 13. Apportionment of damages; worker's compensation lien.** 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 14. 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 15. 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.

This section does not apply if the state has not recognized a board that has certified the witness in the particular field or matter in issue.

**Section 16. 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 (or at least 10% less favorable if there are multiple defendants), 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 imposed, based on how soon after the commencement of the action 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 75% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

**Section 17. Offers of judgment.** This 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.

**Section 18. 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 Alaska usury statute, AS 45.45.010(b).

**Section 19. 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 20. Judgment for plaintiff; punitive damages.** This section contains a consistency change that applies the Section 19 interest rate to judgments against the State of Alaska.

**Section 21. 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 19.

**Section 22. 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 23. 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 24. 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 25. 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 26. 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 27. Definitions; professional negligence and professional services.** This section adds new subsections to define professional negligence and professional services in the health care area.

**Section 28. Attorney contingent fee agreements.** This section adds a new section AS 09.60.080 which provides that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall be subject to reduction by the percentage of a contingent fee agreement between the attorney and the client.

**Section 29. 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 30. Civil liability of hospitals for certain physicians.** 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 independent contractor physicians. Current law allows a claimant to sue only the hospital rather than the emergency room physician 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, and \$1,500,000 for all incidents in a year.

**Section 31. 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 requires clear and convincing evidence that the claimant's conduct substantially contributed to the personal injury or death.

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

**Section 32. Collection of settlement information.** This approach of this section is generally taken from the Governor's Task Force report. It amends AS 09.68 by adding a new section which requires civil litigants who settle, or otherwise dispose of cases, to file information about the settlements or judgments, including the amounts received by the attorneys on both sides. This data will be essential in assessing the efficiency of the civil justice system in the future.

**Section 33. 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 34. 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 35. 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 36. Workers' compensation lien.** This section is a consistency change to the workers' compensation statutes required by the change in Section 13 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 37. 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 38. 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 39. Alaska Rule of Civil Procedure 16.1(n).** This section is a consistency change to the foregoing section 38. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

**Section 40. Limited Discovery; Expedited Calendaring.** This section applies the District Court streamlined provisions found in sections 44 and 45 of this bill to Superior Court personal injury and property damage cases involving \$100,000 in claims or less.

**Section 41. 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 42. 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.

**Section 43. Sanctions for rule violations.** This section modifies Civil Rule 95 by imposing increased sanctions against attorneys and their clients for any infraction of the rules, including Civil Rule 11. It permits fines of up to \$50,000 against attorneys, increased from \$1,000 under the existing rule.

**Section 44. District Court; Deposition limitation.** This section requires that in District Court personal injury and property damage cases depositions be limited to two for each side, unless the parties otherwise agree, or the court for good cause otherwise directs.

**Section 45. District Court; Expedited Trials.** This section requires that in District Court personal injury and property damage cases, all parties must file a memorandum to set the case for trial within six months after service of the complaint, and that the court shall set the case for trial "as soon as practicable" after confirming that all parties have exchanged the discovery materials required by Rule 26(a).

**Section 46. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

**Section 47. Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 39.

**Sections 48-53. Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

**Section 54. 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