

ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672 ⁵⁹⁹

2431.37 SCOMM 101A: CIVIL JUSTICE/TORT REFORM - HB 58, 1997

1 award shall be increased by 50 percent;

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

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

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

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

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

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

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

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

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

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

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

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

12 * **Sec. 29.** Alaska Rule of Appellate Procedure 511 is amended by adding a new subsection
13 to read:

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

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

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

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

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

1 * **Sec. 32.** AS 09.30.065, as amended by sec. 8 of this Act, has the effect of amending
2 Alaska Rule of Civil Procedure 68 by altering the manner in which interest under
3 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the
4 offeree than the offer.

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

9 * **Sec. 34.** AS 09.55.536(f), as amended by sec. 15 of this Act, has the effect of amending
10 Alaska Rule of Civil Procedure 72.1(g) by changing the duration of the stay on further
11 discovery when an expert advisory panel is appointed to evaluate a health care provider
12 malpractice claim.

13 * **Sec. 35. APPLICABILITY.** (a) Sections 1, 8, 13 - 16, 19, 21, 22, 24 -28, and 30 of this
14 Act apply to all civil actions filed on or after the effective date of those sections.

15 (b) Sections 2 - 7, 9, 10, 12, and 17 of this Act apply to all causes of action accruing
16 on or after the effective date of those sections.

17 (c) Section 11 of this Act applies to those civil actions covered by the pilot program
18 for alternative dispute resolution established under the provisions of AS 09.42 as enacted by
19 sec. 11 of this Act filed on or after January 1, 1998.

20 (d) Sections 18, 23, and 29 of this Act apply to all voluntary dismissals of civil
21 actions filed with the state court on or after January 1, 1998.

22 (e) Section 20 of this Act applies to all insurers doing business in this state on or after
23 the effective date of that section.

24 * **Sec. 36. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
25 application of a provision of this Act to any person or circumstance is held invalid, the
26 remainder of this Act and the application to other persons shall not be affected.

27 * **Sec. 37.** (a) AS 09.17.020 (a), (c), (d), and (e), as repealed and reenacted by sec. 6 of
28 this Act, take effect only if sec. 31 of this Act receives the two-thirds majority vote of each
29 house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (b) AS 09.42, as enacted by sec. 11 of this Act, takes effect only if sec. 33 of this Act
31 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution

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1 of the State of Alaska.

2 (c) The amendments or the repeal of the following court rules take effect only if all
 3 amendments and the repeal listed in this subsection receive the two-thirds majority vote of
 4 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

5 (1) Alaska Rule of Civil Procedure 16(c), as amended by sec. 21 of this Act;

6 (2) Alaska Rule of Civil Procedure 16.1(n), as amended by sec. 22 of this Act;

7 (3) Alaska Rule of Civil Procedure 16.1(k)(4), repealed by sec. 30 of this Act.

8 (d) AS 09.68.130, as enacted by sec. 18 of this Act, takes effect only if secs. 23 and

9 29 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. 38. Sections 23 and 29 of this Act take effect January 1, 1998.

12 * Sec. 39. Except as provided in sec. 38 of this Act, this Act takes effect immediately
 13 under AS 01.10.070(c).

HOUSE BILL NO. 60

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/13/97

Referred: Labor and Commerce, Judiciary, House Special Committee on World Trade and State/Federal Relations, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; providing for related insurance reports;
2 amending Alaska Rules of Civil Procedure 16.1, 26, 41, 49, 68, 72.1, 95, and
3 100; amending District Court Rules of Civil Procedure 1 and 4; amending
4 Alaska Rule of Appellate Procedure 511; and providing for an effective date."

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

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

- 7 (1) reduce the time and costs associated with civil litigation;
8 (2) improve access to justice for individuals and small businesses;
9 (3) provide for fair but not excessive compensation for persons injured through
10 the fault of others;
11 (4) increase the predictability of case outcomes to reduce inappropriate
12 litigation and settlement behavior; and
13 (5) collect information on the civil justice system and on the insurance industry
14 to inform the public policy debate on tort reform-related issues.

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

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

5 * Sec. 3. AS 09.10 is amended by adding a new section to read:

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

10 * Sec. 4. AS 09.10.070(a) is amended to read:

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

18 * Sec. 5. AS 09.17.010(c) is amended to read:

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

21 * Sec. 6. AS 09.17.020 is repealed and reenacted to read:

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

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

30 (1) was outrageous;

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

1 or

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

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

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

7 (2) the degree of the defendant's awareness of that likelihood;

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

10 (4) the duration of the misconduct and any intentional concealment of
11 it;

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

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

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

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

22 (e) Unless that evidence is relevant to another issue in the case, discovery of
23 evidence that is relevant to the amount of punitive damages to be determined under
24 (c)(3) or (c)(6) of this section may not be conducted until after the fact finder has
25 determined that an award of punitive damages is allowed under (a) and (b) of this
26 section. The court may issue such orders as necessary, including directing the parties
27 to have the information relevant to the amount of punitive damages to be determined
28 under (c)(3) or (c)(6) of this section available for production immediately at the close
29 of the initial trial, so as to minimize the delay between the initial trial and the separate
30 proceeding to determine the amount of punitive damages.

31 (f) Except as provided in (g) or (h) of this section or otherwise provided by

1 law, an award of punitive damages may not exceed the greater of

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

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

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

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

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

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

14 (h) Notwithstanding (g) of this section and except as otherwise provided by
15 law, if the fact finder finds that the conduct proven under (b) of this section was
16 employment-related, an award of punitive damages may not exceed

17 (1) the amount calculated under the limitations of (f) of this section,
18 if the conduct of the employer affected only one employee; or

19 (2) the greater of the amounts calculated under the limitations of (f) or
20 (g) of this section, if the employer engaged in a pattern or practice affecting more than
21 one employee.

22 (i) Punitive damages may not be awarded against a person or an entity that is
23 immune by law from an award of punitive damages.

24 (j) In this section, "employment-related" includes conduct of hiring, firing,
25 transferring, promoting, demoting, or terminating an employee by an employer.

26 * Sec. 7. AS 09.17.900 is amended to read:

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

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

4 * Sec. 8. AS 09.30.065 is amended to read:

5 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
 6 the trial begins either the party making a claim or the party defending against a claim
 7 may serve upon the adverse party an offer to allow judgment to be entered in complete
 8 satisfaction of the claim for the money or property or to the effect specified in the
 9 offer, with costs then accrued. If within 10 days after the service of the offer the
 10 adverse party serves written notice that the offer is accepted, either party may then file
 11 the offer and notice of acceptance together with proof of service, and the clerk shall
 12 enter judgment. An offer not accepted within 10 days is considered withdrawn and
 13 evidence of that offer is not admissible except in a proceeding to determine the form
 14 of judgment after verdict. If the judgment finally entered on the claim as to which an
 15 offer has been made under this section is not more favorable to the offeree than the
 16 offer, the interest awarded under AS 09.30.070 and accrued up to the date judgment
 17 is entered shall be adjusted as follows:

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

20 (A) if the offer was served no later than 30 days after both
 21 parties made the disclosures required by Alaska Rule of Civil Procedure
 22 26(a)(1), the interest rate shall be reduced by five percent;

23 (B) if the offer was served more than 30 days after both
 24 parties made the disclosures required by Alaska Rule of Civil Procedure
 25 26(a)(1), but more than 90 days before the trial began, the interest rate
 26 shall be reduced by three percent;

27 (C) if the offer was served 90 days or less but more than
 28 10 days before the trial began, the interest rate shall be reduced by two
 29 percent [REDUCED BY FIVE PERCENT A YEAR];

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

1 (A) if the offer was served no later than 30 days after both
 2 parties made the disclosures required by Alaska Rule of Civil Procedure
 3 26(a)(1), the interest rate shall be increased by five percent;

4 (B) if the offer was served more than 30 days after both
 5 parties made the disclosures required by Alaska Rule of Civil Procedure
 6 26(a)(1), but more than 90 days before the trial began, the interest rate
 7 shall be increased by three percent;

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

11 * Sec. 9. AS 09.30.070(a) is amended to read:

12 (a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments
 13 and decrees for the payment of money, including prejudgment interest, shall be
 14 determined in accordance with (c) of this section [IS 10.5 PERCENT A YEAR],
 15 except that a judgment or decree founded on a contract in writing, providing for the
 16 payment of interest until paid at a specified rate not exceeding the legal rate of interest
 17 for that type of contract, bears interest at the rate specified in the contract if the
 18 interest rate is set out in the judgment or decree.

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

20 (c) Except as otherwise provided in (a) of this section, the rate of interest on
 21 judgments and decrees for the payment of money is the rate for a five-year constant
 22 maturity United States Treasury note published in the applicable Federal Reserve H.15
 23 Statistical Release, plus one and one-half percent. This rate is the rate in effect as of
 24 the first business day of the month during which prejudgment interest begins to accrue
 25 on a claim under (b) of this section, and remains constant with respect to the claim
 26 until the judgment or decree is satisfied. This rate of interest shall be determined as
 27 of the first business day of every month by the administrative director of the state
 28 court system.

29 * Sec. 11. AS 09 is amended by adding a new chapter to read:

30 **Chapter 42. Alternative Dispute Resolution.**

31 **Sec. 09.42.010. Findings; purpose.** The legislature finds that providing a

1 formalized program of alternative dispute resolution procedures within the existing
2 civil litigation system can promote the timely and efficient resolution of many civil
3 disputes. The purpose of this chapter is to provide for an initial pilot program of
4 alternative dispute resolution of certain civil cases filed in the superior court on or
5 after January 1, 1998.

6 **Sec. 09.42.020. Pilot program for alternative dispute resolution.** (a) The
7 supreme court shall provide for a pilot program under this chapter for the submission
8 of civil cases filed in the superior court, third judicial district, to alternative dispute
9 resolution procedures. The program shall begin January 1, 1998 and operate for at
10 least five years.

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

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

21 **Sec. 09.42.030. Structure of pilot program.** (a) The supreme court shall
22 provide criteria for the screening of covered cases under the program to determine if
23 the cases are appropriate for referral to alternative dispute resolution. The criteria shall
24 be constructed so that at least 50 percent of the estimated number of covered cases
25 filed in a calendar year are referred to alternative dispute resolution.

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

30 (c) For a case referred under the program, the parties may mutually agree to
31 select any person to conduct the alternative dispute resolution procedure regardless of

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

8 (d) Fees and costs to conduct an alternative dispute resolution procedure under
9 this chapter shall be shared equally among the parties to the case being referred, unless
10 the court finds a party indigent and orders payment at public expense. The supreme
11 court shall establish guidelines for the determination of indigency under the program.
12 Fees and costs borne at public expense under this subsection constitute a lien on any
13 recovery in the case 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. 09.42.040. 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. 09.42.050. Definitions.** In this chapter,

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

3 (2) "covered cases" means civil cases described in AS 09.42.020(a) and
4 not excluded from participation in the program by AS 09.42.020(b);

5 (3) "program" means the alternative dispute resolution pilot program
6 established in AS 09.42.020.

7 * Sec. 12. 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. 13. AS 09.55.536(a) is amended to read:

13 (a) In an action for damages due to personal injury or death based upon the
14 provision of professional services by a health care provider, including a person
15 providing services on behalf of a governmental entity, when the parties have not
16 agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within
17 20 days after filing of answer to a summons and complaint a three-person expert
18 advisory panel unless the court decides that an expert advisory opinion is not necessary
19 for a decision in the case. When the action is filed the court shall, by order, determine
20 the professions or specialties to be represented on the expert advisory panel, giving the
21 parties the opportunity to object or make suggestions.

22 * Sec. 14. AS 09.55.536(c) is amended to read:

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

27 (1) Why did the claimant come [WHAT WAS THE DISORDER FOR
28 WHICH THE PLAINTIFF CAME] to medical care?

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

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

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

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

(6) What specifically caused the medical injury?

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

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

* Sec. 15. AS 09.55.536(f) is amended to read:

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

* Sec. 16. 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. 17. AS 09.65.210 is repealed and reenacted to read:

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

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

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

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

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

6 and

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

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

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

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

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

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

21 * Sec. 18. AS 09.68 is amended by adding a new section to read:

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

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

1 parties.

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

- 4 (1) divorce and dissolution;
- 5 (2) adoption, custody, support, visitation, and emancipation of children;
- 6 (3) children in need of aid cases under AS 47.10 or delinquent minors
7 cases under AS 47.12;
- 8 (4) domestic violence protective orders under AS 18.66.100 -
9 18.66.180;
- 10 (5) estate, guardianship, and trust cases filed under AS 13;
- 11 (6) small claims under AS 22.15.040.

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

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

- 16 (1) for the recovery of money or damages when the amount claimed
17 exclusive of costs, interest, and attorney fees does not exceed \$100,000 [\$50,000];
- 18 (2) for the recovery of specific personal property, when the value of
19 the property claimed and the damages for the detention do not exceed \$100,000
20 [\$50,000];
- 21 (3) for the recovery of a penalty or forfeiture, whether given by statute
22 or arising out of contract, not exceeding \$100,000 [\$50,000];
- 23 (4) to give judgment without action upon the confession of the
24 defendant for any of the cases specified in this section, except for a penalty or
25 forfeiture imposed by statute;
- 26 (5) for establishing the fact of death or cause and manner of death of
27 any person in the manner prescribed in AS 09.55.020 - 09.55.069;
- 28 (6) for the recovery of the possession of premises in the manner
29 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage
30 to the property does not exceed \$100,000 [\$50,000];
- 31 (7) for the foreclosure of a lien when the amount in controversy does

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 * Sec. 22. Alaska Rule of Civil Procedure 16.1(n) is repealed and reenacted to read:

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

- 31 (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. 23. Alaska Rule of Civil Procedure 41(a) is amended by adding a new paragraph
15 to read:

16 (3) Settlement Information. If a voluntary dismissal under this rule is
17 the result of compromise or other settlement of the parties, the parties shall submit to
18 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 such a
23 certification signed by or on behalf of all parties who have appeared in the action.
24 The requirements of this paragraph do not apply to the types of cases listed in
25 AS 09.68.130(c).

26 * Sec. 24. Alaska Rule of Civil Procedure 68 is repealed and reenacted to read:

27 **Rule 68. Offer of Judgment.** (a) At any time more than 10 days before the
28 trial begins, either the party making a claim or the party defending against a claim may
29 serve upon the adverse party an offer to allow judgment to be entered in complete
30 satisfaction of the claim for the money or property or to the effect specified in the
31 offer, with costs then accrued. The offer may not be revoked in the 10-day period

1 following service of the offer. If within 10 days after service of the offer, the adverse
2 party serves written notice that the offer is accepted, either party may then file the
3 offer and notice of acceptance together with proof of service, and the clerk shall enter
4 judgment. An offer not accepted within 10 days is considered withdrawn and evidence
5 of the offer is not admissible except in a proceeding to determine costs. The fact that
6 an offer is made but not accepted does not preclude a subsequent offer.

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

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

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

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

17 (1) if the offeree is the party making the claim, the court shall adjust
18 its award of attorney's fees to the offeree as follows:

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

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

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

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

30 (A) if the offer was served no later than 30 days after both
31 parties made the disclosures required by Rule 26(a)(1), the attorney's fees

1 award shall be increased by 50 percent;

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

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

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

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

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

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

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

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

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

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

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

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

12 * **Sec. 29.** Alaska Rule of Appellate Procedure 511 is amended by adding a new subsection
13 to read:

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

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

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

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

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

1 * **Sec. 32.** AS 09.30.065, as amended by sec. 8 of this Act, has the effect of amending
2 Alaska Rule of Civil Procedure 68 by altering the manner in which interest under
3 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the
4 offeree than the offer.

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

9 * **Sec. 34.** AS 09.55.536(f), as amended by sec. 15 of this Act, has the effect of amending
10 Alaska Rule of Civil Procedure 72.1(g) by changing the duration of the stay on further
11 discovery when an expert advisory panel is appointed to evaluate a health care provider
12 malpractice claim.

13 * **Sec. 35. APPLICABILITY.** (a) Sections 1, 8, 13 - 16, 19, 21, 22, 24 -28, and 30 of this
14 Act apply to all civil actions filed on or after the effective date of those sections.

15 (b) Sections 2 - 7, 9, 10, 12, and 17 of this Act apply to all causes of action accruing
16 on or after the effective date of those sections.

17 (c) Section 11 of this Act applies to those civil actions covered by the pilot program
18 for alternative dispute resolution established under the provisions of AS 09.42 as enacted by
19 sec. 11 of this Act filed on or after January 1, 1998.

20 (d) Sections 18, 23, and 29 of this Act apply to all voluntary dismissals of civil
21 actions filed with the state court on or after January 1, 1998.

22 (e) Section 20 of this Act applies to all insurers doing business in this state on or after
23 the effective date of that section.

24 * **Sec. 36. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
25 application of a provision of this Act to any person or circumstance is held invalid, the
26 remainder of this Act and the application to other persons shall not be affected.

27 * **Sec. 37.** (a) AS 09.17.020 (a), (c), (d), and (e), as repealed and reenacted by sec. 6 of
28 this Act, take effect only if sec. 31 of this Act receives the two-thirds majority vote of each
29 house required by art. IV, sec. 15, Constitution of the State of Alaska.

30 (b) AS 09.42, as enacted by sec. 11 of this Act, takes effect only if sec. 33 of this Act
31 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution

1 of the State of Alaska.

2 (c) The amendments or the repeal of the following court rules take effect only if all
3 amendments and the repeal listed in this subsection receive the two-thirds majority vote of
4 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

5 (1) Alaska Rule of Civil Procedure 16(c), as amended by sec. 21 of this Act;

6 (2) Alaska Rule of Civil Procedure 16.1(n), as amended by sec. 22 of this Act;

7 (3) Alaska Rule of Civil Procedure 16.1(k)(4), repealed by sec. 30 of this Act.

8 (d) AS 09.68.130, as enacted by sec. 18 of this Act, takes effect only if secs. 23 and

9 29 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. 38. Sections 23 and 29 of this Act take effect January 1, 1998.

12 * Sec. 39. Except as provided in sec. 38 of this Act, this Act takes effect immediately

13 under AS 01.10.070(c).

- ① who does sectorial analysis? Roger?
- ② Roger say look at Gov's AD R
for ideas & - AD R people should.
- ③ me: MADD onld if bar recovery
or for felons? Drugs?
- ④ Botelho's ideas:
- Alcohol & Drug impaired
motivated by Penal Gov't for punishment -
- ⑤ Ct System v. Judicial encl.?
- ⑥ Mr. Winter showed Bill Allen
voted in favor of multiple incumbents -
- ⑦ Pull Gov's th re up voted when
done.
- ⑧ Sunset AD R after 2 yrs?
- ⑨ Like Decision - Barred
- ⑩ Brady wanted "Settlement ~~ser~~" for \$360 -
- ⑪ Make Rule 11 mandatory,
or Secretary -

643 60

too ① UNVocal
Kevin Tobler 276-7600

too ② ALCO: Govt Affairs ~~263-4655~~
Nancy Schoepfester ~~276-1715~~
[Schoepfester] FAX 265-1502

too ③ AP: External Affairs ~~561-5111~~
Paul Kinnel & John Kingstadt
463-5242

✓ ④ Echo Bty 586-4161
David Stone, P.R. Mgr.

too ⑤ AMAX Gold Engr 1-303-643-5090
- Govt Affairs. ~~586-5111~~
Bull, 9100 E. Main St
Englewood Colo. 80112
Mgr of Govt Affairs.

too ⑥ Cominco 907-426-9127
Tim Smith, Op. Mgr.
Cell # of Genl Mgr.

Make sure they know we
w/s they not want ~~it~~ be
out front.

too ⑦ AK Miners Assoc'n - 276-0344
Steve Borrell, Exec.
- He'll call Judy Brady at AOSC.

⑧2

~~TCO~~ ⑧ Bernie Smith 907-561-552/
T80R0 MGR for Govt Affairs

~~TCO~~ ⑨ Judy Brady 1-807-
272-1481
#06C

Ardie Gray → P.R. Affairs Mgr.

⑩ ~~TCO~~ ~~⑩~~ Sent them copy of plan
H.S. when done

~~TCO~~ ⑪ FNBA — ~~276-5300~~
Litwells 265-3416

⑫ Kennerly 1-907-789-8000

SCOMM

101A:37

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

2 **Sec. 09.30.065. Offers of judgment.** At any time more than 10 days before
3 the trial begins, either the party making a claim or the party defending against a claim
4 may serve upon the adverse party an offer to allow judgment to be entered in complete
5 satisfaction of the claim for the money or property or to the effect specified in the
6 offer, with costs then accrued. If within 10 days after the service of the offer the
7 adverse party serves written notice that the offer is accepted, either party may then file
8 the offer and notice of acceptance together with proof of service, and the clerk shall
9 enter judgment. An offer not accepted within 10 days is considered withdrawn, and
10 evidence of that offer is not admissible except in a proceeding to determine the form
11 of judgment after verdict. If the judgment finally entered on the claim as to which an
12 offer has been made under this section is not more favorable to the offeree than the
13 offer, the interest awarded under AS 09.30.070 and accrued up to the date judgment
14 is entered shall be adjusted as follows:

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

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

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

24 (C) if the offer was served 90 days or less but more than 10
25 days before the trial began, the interest rate shall be reduced by two
26 percent; this subparagraph does apply if the offer is also subject to (A) of
27 this paragraph [REDUCED BY FIVE PERCENT A YEAR];

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

30 (A) if the offer was served no later than 30 days after both
31 parties made the disclosures required by Rule 26(a)(1), Alaska Rules of

Civil Procedure, the interest rate shall be increased by five percent;

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

(C) if the offer was served 90 days or less but more than 10 days before the trial began, the interest rate shall be increased by two percent; this subparagraph does not apply if the offer is also subject to (A) of this paragraph [INCREASED BY FIVE PERCENT A YEAR].

* Sec. 10. AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments and decrees for the payment of money, including prejudgment interest, shall be determined in accordance with (c) of this section [IS 10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 11. AS 09.30.070 is amended by adding a new subsection to read:

(c) Except as otherwise provided in (a) of this section, the rate of interest on judgments and decrees for the payment of money is the rate for a five-year constant maturity United States Treasury note published in the applicable Federal Reserve H.15 Statistical Release, plus one and one-half percent. This rate is the rate in effect as of the first business day of the month during which prejudgment interest begins to accrue on a claim under (b) of this section and remains constant with respect to the claim until the judgment or decree is satisfied. This rate of interest shall be determined as of the first business day of every month by the administrative director of the Alaska Court System.

* Sec. 12. AS 09.43 is amended by adding a new article to read:

Article 3. Alternative Dispute Resolution.

Sec. 09.43.310. Findings; purpose. The legislature finds that providing a formalized program of alternative dispute resolution procedures within the existing

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 *NWS* 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, 17, 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).

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:

Referred:

Sponsor(s): **SENATOR TAYLOR****A BILL****FOR AN ACT ENTITLED**

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

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

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

8 (1) reduce the time and costs associated with civil litigation;

9 (2) improve access to justice for individuals and small businesses;

10 (3) provide for fair but not excessive compensation for persons injured through
11 the fault of others;

12 (4) increase the predictability of case outcomes to reduce inappropriate
13 litigation and settlement behavior; and

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

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

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

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

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

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

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

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

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

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

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

* Sec. 7. 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, concurrent with all other issues presented, whether punitive damages shall be allowed by using the standards set out in (b) of this section. If punitive damages are allowed,

1 a separate proceeding under (c) of this section shall be conducted before the same fact
2 finder to determine the amount of punitive damages to be awarded.

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

5 (1) was outrageous;

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

7 or

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

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

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

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

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

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

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

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

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

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

29 (e) Unless that evidence is relevant to another issue in the case, discovery of
30 evidence that is relevant to the amount of punitive damages to be determined under
31 (c)(3) or (6) of this section may not be conducted until after the fact finder has

1 determined that an award of punitive damages is allowed under (a) and (b) of this
2 section. The court may issue orders as necessary, including directing the parties to
3 have the information relevant to the amount of punitive damages to be determined
4 under (c)(3) or (6) of this section available for production immediately at the close of
5 the initial trial in order to minimize the delay between the initial trial and the separate
6 proceeding to determine the amount of punitive damages.

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

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

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

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

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

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

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

21 (h) Notwithstanding (f) or (g) of this section and except as otherwise provided
22 by law, if the fact finder finds that the conduct proven under (b) of this section was
23 employment related, an award of punitive damages may not exceed

24 (1) the amount calculated under the limitations of (f) of this section if
25 the conduct of the employer affected only one employee; or

26 (2) the greater of the amounts calculated under the limitations of (f) or
27 (g) of this section if the employer engaged in a pattern or practice affecting more than
28 one employee.

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

31 (j) In this section, "employment related" includes conduct of hiring, firing,

transferring, promoting, demoting, or terminating an employee by an employer.

* 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.

* Sec. 9. 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 not more favorable to the offeree than the offer, 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 offeree is the party making the claim, the interest rate shall be adjusted as follows:

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

(B) if the offer was served more than 30 days after both parties made the disclosures required by Rule 26(a)(1), Alaska Rules of

Civil Procedure, but more than 90 days before the trial began, the interest rate shall be reduced by three percent;

(C) if the offer was served 90 days or less but more than 1) days before the trial began, the interest rate shall be reduced by two percent; this subparagraph does apply if the offer is also subject to (A) of this paragraph [REDUCED BY FIVE PERCENT A YEAR];

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

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

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

(C) if the offer was served 90 days or less but more than 10 days before the trial began, the interest rate shall be increased by two percent; this subparagraph does not apply if the offer is also subject to (A) of this paragraph [INCREASED BY FIVE PERCENT A YEAR].

* Sec. 10. AS 09.30.070(a) is amended to read:

(a) Notwithstanding AS 45.45.010, the [THE] rate of interest on judgments and decrees for the payment of money, including prejudgment interest, shall be determined in accordance with (c) of this section [IS 10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 11. AS 09.30.070 is amended by adding a new subsection to read:

(c) Except as otherwise provided in (a) of this section, the rate of interest on judgments and decrees for the payment of money is the rate for a five-year constant maturity United States Treasury note published in the applicable Federal Reserve H.15

1 Statistical Release, plus one and one-half percent. This rate is the rate in effect as of
2 the first business day of the month during which prejudgment interest begins to accrue
3 on a claim under (b) of this section and remains constant with respect to the claim
4 until the judgment or decree is satisfied. This rate of interest shall be determined as
5 of the first business day of every month by the administrative director of the Alaska
6 Court System.

7 * Sec. 12. AS 09.43 is amended by adding a new article to read:

8 **Article 3. Alternative Dispute Resolution.**

9 **Sec. 09.43.310. Findings; purpose.** The legislature finds that providing a
10 formalized program of alternative dispute resolution procedures within the existing
11 civil litigation system can promote the timely and efficient resolution of many civil
12 disputes. The purpose of AS 09.43.310 - 09.43.390 is to provide for an initial pilot
13 program of alternative dispute resolution of certain civil cases filed in the superior
14 court on or after January 1, 1998.

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

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

- 21 (1) divorce and dissolution;
22 (2) adoption, custody, support, visitation, and emancipation of children;
23 (3) children in need of aid cases under AS 47.10 or delinquent minors
24 cases under AS 47.12;
25 (4) domestic violence protective orders under AS 18.66.100 -
26 18.66.180;
27 (5) estate, guardianship, and trust cases filed under AS 13;
28 (6) cases when no answer to the complaint or petition is filed by any
29 party to the case with the court.

30 **Sec. 09.43.330. Structure of pilot program.** (a) The supreme court shall
31 provide criteria for the screening of covered cases under the program to determine if

1 the cases are appropriate for referral to alternative dispute resolution. The criteria shall
2 be constructed so that at least 50 percent of the estimated number of covered cases
3 filed in a calendar year are referred to alternative dispute resolution.

4 (b) The supreme court shall establish minimum qualifications for a person to
5 be listed to conduct alternative dispute resolution procedures under AS 09.43.310 -
6 09.43.390. The supreme court shall establish a list of persons determined to meet
7 those qualifications and the current schedule of fees charged by the person listed.

8 (c) For a case referred under the program, the parties may mutually agree to
9 select a person to conduct the alternative dispute resolution procedure regardless of
10 whether the person appears on the list established under (b) of this section or whether
11 the person meets the minimum qualifications to be selected for the list. If an
12 agreement cannot be reached, the trial court judge assigned the case shall appoint a
13 person from the list. A person selected or appointed under this subsection has judicial
14 immunity for conducting the alternative dispute procedure to the same extent as a
15 judge and shall abide by applicable rules of confidentiality related to alternative dispute
16 resolution procedures established by the supreme court.

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

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

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

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

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

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

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

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

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

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

17 * **Sec. 13.** AS 09.50.280 is amended to read:

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

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

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

1 judgment.

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

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

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

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

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

11 (3) action

12 (A) is a class action;

13 (B) seeks equitable or declaratory relief;

14 (C) concerns the title to real property;

15 (D) is a probate action;

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

17 (F) involves divorce or domestic relations;

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

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

20 under AS 09.43.320.

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

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

30 (e) An arbitrator shall render a decision within 30 days after hearing a claim
31 under (d) of this section. The decision must contain findings of fact and conclusions

1 of law. The decision of the arbitrator may be rejected by a party.

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

8 (g) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)
9 apply to an arbitration under this section to the extent the provisions do not conflict
10 with the provisions of this section.

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

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

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

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

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

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

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

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

31 (B) the conduct that would constitute a felony is proven by the

1 defendant in the civil trial by clear and convincing evidence.

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

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

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

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

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

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

20 (1) divorce and dissolution;

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

22 (3) children in need of aid cases under AS 47.10 or delinquent minors
23 cases under AS 47.12;

24 (4) domestic violence protective orders under AS 18.66.100 -
25 18.66.180;

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

27 (6) small claims under AS 22.15.040.

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

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

31 (1) the effect of the measures enacted in this Act on the availability and

1 cost of insurance in the state; and

2 (2) the financial health and profitability of insurers doing business in
3 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, expenses, and an allocation of investment
7 profits or losses by line of business written in this state. Information shall be compiled
8 by the division in a way that 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 of insurance to carry out its responsibilities under (a) and
12 (b) of this section.

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

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

18 * Sec. 19. AS 22.10.020(i) is amended to read:

19 (i) The superior court is the court of original jurisdiction over all causes of
20 action arising under the provisions of AS 18.80. A person who is injured or aggrieved
21 by an act, practice, or policy that [WHICH] is prohibited under AS 18.80 may apply
22 to the superior court for relief. The person aggrieved or injured may maintain an
23 action on behalf of that person or on behalf of a class consisting of all persons who
24 are aggrieved or injured by the act, practice, or policy giving rise to the action. In an
25 action brought under this subsection, the court may grant relief as to any act, practice,
26 or policy of the defendant that [WHICH] is prohibited by AS 18.80, regardless of
27 whether each act, practice, or policy, with respect to which relief is granted, directly
28 affects the plaintiff, so long as a class or members of a class of which the plaintiff is
29 a member are or may be aggrieved or injured by the act, practice, or policy. The court
30 may enjoin any act, practice, or policy that [WHICH] is illegal under AS 18.80 and
31 may, subject to AS 18.80.225, order any other relief, including the payment of money,

1 that is appropriate.

2 * **Sec. 20.** AS 22.15.030(a) is amended to read:

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

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

8 (2) for the recovery of specific personal property [,] when the value of
9 the property claimed and the damages for the detention do not exceed \$100,000
10 [\$50,000];

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

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

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

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

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

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

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

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

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

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

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

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

19 * Sec. 22. Rule 16.1(n), Alaska Rules of Civil Procedure, is repealed and reenacted to read:

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

- 31 (1) what changes should be made in the timing or forms of subsequent

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

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

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

(4) whether a scheduling conference is unnecessary;

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

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

* **Sec. 23.** Rule 41(a), Alaska Rules of Civil Procedure, is amended by adding a new paragraph to read:

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

* **Sec. 24.** Rule 68, Alaska Rules of Civil Procedure, is repealed and reenacted to read:

Rule 68. Offer of Judgment. (a) 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. The offer may not be revoked in the 10-day period

1 following service of the offer. If, within 10 days after service of the offer, the adverse
2 party serves written notice that the offer is accepted, either party may then file the
3 offer and notice of acceptance together with proof of service, and the clerk shall enter
4 judgment. An offer not accepted within 10 days is considered withdrawn, and
5 evidence of the offer is not admissible except in a proceeding to determine costs. The
6 fact that an offer is made but not accepted does not preclude a subsequent offer.

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

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

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

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

17 (1) if the offeree is the party making the claim, the court shall adjust
18 its award of attorney's fees to the offeree as follows:

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

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

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

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

30 (A) if the offer was served no later than 30 days after both
31 parties made the disclosures required by Rule 26(a)(1), the attorney's fees

award shall be increased by 50 percent;

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

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

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

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

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

* Sec. 26. 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. 27. Rule 1(a)(1), District Court Rules of Civil Procedure is amended to read:

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

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

2 * **Sec. 28.** Rule 4, District Court Rules of Civil Procedure, is amended by adding a new
3 subsection to read:

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

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

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

25 * **Sec. 30.** AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.560(2), and
26 09.55.560(3) are repealed.

27 * **Sec. 31.** Rules 16.1(k)(4) and 72.1, Alaska Rules of Civil Procedure, are repealed.

28 * **Sec. 32.** AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of this
29 Act, have the effect of amending

30 (1) Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to conduct
31 a separate proceeding for the determination of a punitive damages award after it has

1 determined that punitive damages are allowed in a case; and

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

4 * **Sec. 33.** AS 09.30.065, as amended by sec. 9 of this Act, has the effect of amending
5 Rule 68, Alaska Rules of Civil Procedure, by altering the manner in which interest under
6 AS 09.30.070 is adjusted under AS 09.30.065 when a judgment is not more favorable to the
7 offeree than the offer.

8 * **Sec. 34.** AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, has the effect of
9 amending Rule 100, Alaska Rules of Civil Procedure, by making the mediation process
10 mandatory for certain civil cases in the superior court, Third Judicial District, and by
11 expanding the scope of the rule to include other forms of alternative dispute resolution in
12 addition to mediation.

13 * **Sec. 35.** AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending
14 Rule 79(b), Alaska Rule of Civil Procedure, by allowing the award of actual costs in certain
15 actions.

16 * **Sec. 36.** AS 09.55.535(f), as enacted in sec. 15 of this Act, has the effect of amending
17 Rule 82(b), Alaska Rule of Civil Procedure, by allowing the award of actual attorney fees in
18 certain actions.

19 * **Sec. 37. APPLICABILITY.** (a) Sections 1, 9, 15, 20 - 22, 24 - 28, 30, and 31 of this
20 Act apply to all civil actions filed on or after the effective date of those sections.

21 (b) Sections 3 - 8, 10, 11, 13, 16, and 19 of this Act apply to all causes of action
22 accruing on or after the effective date of those sections.

23 (c) Section 12 of this Act applies only to those civil actions covered by the pilot
24 program for alternative dispute resolution established under the provisions of AS 09.43.310 -
25 09.43.390, as enacted by sec. 11 of this Act, filed on or after January 1, 1998.

26 (d) Sections 17, 23, and 29 of this Act apply only to all voluntary dismissals of civil
27 actions filed with the state court on or after January 1, 1998.

28 (e) Section 18 of this Act applies to all insurers doing business in this state on or after
29 the effective date of that section.

30 * **Sec. 38. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act or the
31 application of a provision of this Act to any person or circumstance is held invalid, the

1 remainder of this Act and the application to other persons shall not be affected.

2 * **Sec. 39.** REVISOR'S INSTRUCTION. Due to the addition of AS 09.43.310 - 09.43.390
3 in sec. 12 of this Act, in AS 21.89.100(d), the revisor of statutes shall substitute
4 "AS 09.43.010 - 09.43.220" for "AS 09.43."

5 * **Sec. 40.** (a) AS 09.17.020(a), (c), (d), and (e), as repealed and reenacted by sec. 7 of
6 this Act, take effect only if sec. 32 of this Act receives the two-thirds majority vote of each
7 house required by art. IV, sec. 15, Constitution of the State of Alaska.

8 (b) AS 09.43.310 - 09.43.390, as enacted by sec. 12 of this Act, takes effect only if
9 sec. 34 of this Act receives the two-thirds majority vote of each house required by art. IV,
10 sec. 15, Constitution of the State of Alaska.

11 (c) The amendments or the repeal of the following court rules takes effect only if all
12 amendments and the repeal listed in this subsection receive the two-thirds majority vote of
13 each house required by art. IV, sec. 15, Constitution of the State of Alaska:

14 (1) Rule 16.1(c), Alaska Rules of Civil Procedure, as amended by sec. 21 of
15 this Act;

16 (2) Rule 16.1(n), Alaska Rules of Civil Procedure, as amended by sec. 22 of
17 this Act;

18 (3) Rule 16.1(k)(4), Alaska Rules of Civil Procedure, repealed by sec. 31 of
19 this Act.

20 (d) AS 09.68.130, as enacted by sec. 17 of this Act, takes effect only if secs. 23 and
21 29 both receive the two-thirds majority vote of each house required by art. IV, sec. 15,
22 Constitution of the State of Alaska.

23 * **Sec. 41.** Sections 17, 23, and 29 of this Act take effect January 1, 1998.

24 * **Sec. 42.** Except as provided in sec. 41 of this Act, this Act takes effect immediately
25 under AS 01.10.070(c).

SCOMM

101A:38

TONY KNOWLES
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
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June 14, 1996

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Post-It Fax Note 7671		Date 6-14	# of pages 8
To Brian	From Juneau		
Co/Dept	Co.		
Phone #	Phone #		
Fax # 277-8787	Fax # 258-5510		

Dear Speaker Phillips:

Under authority of art. II, sec. 15, of the Alaska Constitution, I have vetoed the following bill:

Senate CS for CS for House Bill 158 am S (ct rls fld S)
"An Act relating to civil action."

I agree with many Alaskans that meaningful reform of Alaska's civil justice system is necessary. The system should be more efficient yet just, and we should reduce frivolous litigation while preserving the ability of innocent victims to be compensated for injuries caused by others. Alaska businesses are faced with the risk of excessive lawsuit awards, high liability insurance rates and the threat of settlement or costly litigation. These costs ultimately are passed on to Alaska consumers. I believe we can improve the system while protecting the rights of all Alaskans. Unfortunately, this bill does not fairly and reasonably address these problems.

During this year's legislative session, some good concepts for reforming our civil justice system were discussed, including reasonable limits on punitive damages, cutting back on frivolous lawsuits, insurance rate reductions and mediation to encourage early settlement of suits. Few of those concepts survived in this bill in a form that improves the situation. Instead, the current version was hastily rewritten in the dead of night and subject to little public review. When problems were identified by my Administration and others, they were ignored. (True?)

As a result, this bill falls far short of the mark of meaningful and responsible tort reform. It is extreme, seriously flawed and fails to implement these positive aspects of tort reform.

in a reasonable way. In fact, in some cases, this bill makes problems worse by increasing litigation expenses, lengthening the litigation process and clouding the rights of thousands of Alaskan families. A growing number of Alaskans from all walks of life -- fishermen, Native organizations, local governments, conservation groups -- oppose the bill.

I am vetoing this bill for three primary reasons: it was the product of a flawed public process, it dictates poor public policy, and it contains serious legal defects and constitutional problems.

Flawed public process. Although the bill was the subject of many hearings, the Legislature chose to ignore the progress made during that process. Instead, the bill was largely rewritten by the Senate Rules Committee with little public notice or involvement.

One result of that process, which supporters of the bill claim is unintentional, is dangerous and likely unconstitutional. This bill would retroactively preclude certain punitive damage awards to innocent victims, even after a jury has issued a verdict. In a case familiar to all Alaskans, I am advised this provision could jeopardize the rights of 30,000 Alaskans affected by the Exxon Valdez oil spill. No responsible public official can or should take that risk.

Even legislative leaders recognized this flaw in the bill when, on the 28th day of the 30-day special session, they requested another opportunity to correct the bill.

Poor public policy. The bill is littered with poor public policy provisions which complicate, instead of streamline, the civil justice system which increases the amount, cost and complexity of litigation and which limit the rights of innocent Alaskans to reasonable and just compensation for injuries caused by others.

Certainly a key provision of any tort reform effort should be reduced insurance rates so individuals and businesses receive some relief from the high cost of insurance. Yet, there is no guarantee of reduced insurance rates resulting from this bill. Despite many efforts by my Administration and others to provide meaningful relief in liability insurance rates as part of this bill, the Legislature rejected them.

Legal defects and constitutional problems. The bill contains contradictions, legal defects and provisions which are likely unconstitutional. For example, the "statute of repose" provision would prevent a suit being filed against a wrongdoer after 10 years, even if the injury did not occur until after this period of time. The Alaska Supreme Court has already indicated this provision may be unconstitutional.

The restrictions on expert testimony could prevent family doctors from testifying as experts about medical conditions of their long-term patients, a provision which is likely unconstitutional. The burden on injured workers to reimburse their employer for workers'

conclusionary
this bill will
do this, so
cannot respond

Frame?
NOT AN
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Bill.
True?
NO
LOBBIES!
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compensation benefits out of partial damages collected from another wrongdoer is unfair and unworkable.

My Administration and others identified many of these problems and offered solutions, but they were ignored. Attached to this letter is a detailed analysis of HB158.

I remain ready to work with the Legislature and all affected Alaskans to develop a new bill through an open public process that achieves fairness, efficiency and reduction of insurance rates. To that end, I will appoint an advisory task force charged with reporting back to me before the next legislative session recommendations for accomplishing the following goals:

1. Make the civil justice system more efficient and reduce frivolous litigation;
2. Provide for fair and just, but not excessive, compensation for those injured by wrongdoing;
3. Lower liability insurance rates; and
4. Provide for reasonable punitive damage awards sufficient to deter conduct and practices that harm innocent Alaskans, without hampering a positive business environment or allowing excessive windfall recoveries.

I look forward to working with you to reform Alaska's civil liability system.

Sincerely,

S/S TONY KNOWLES
Tony Knowles
Governor

ANALYSIS OF SCS CS HB 158 (Rls) and S (ct rls fld s) - TORT REFORM

Throughout the Legislative process, the consistent Administration position has been that tort reform legislation should do three things: 1) make the civil justice system more efficient and reduce frivolous litigation; 2) still allow for fair and just compensation for injured parties, and not create major constitutional problems through unfair treatment of those who have been injured; and 3) lower liability insurance rates. The corollary to these precepts is that tort reform legislation should *not* 1) increase the cost, complexity, and amount of litigation; or 2) cut off the rights of injured Alaskans to recover reasonable compensation for injuries sustained by another party's negligent acts. Although some of the provisions included in this bill arguably comply with these basic tenets, when viewed as a whole this bill fails to meet most, if not all, of these tests.

The bill will increase the amount, cost, and complexity of litigation.

The Department of Law has prepared a detailed analysis outlining the numerous legal issues raised by this bill. It is worthwhile to briefly list the principal issues identified by Law, since each would likely lead to additional litigation.

1. *Commercial Recreational Activities (sec. 2).* This section of the bill was added very late in the legislative process, without adequate time for public comment or legal review. No other state has similar statutes. Law has now identified several ambiguities in the section, which will likely lead to extensive clarifying litigation. Also, the section probably violates constitutional equal protection guarantees.
2. *Statute of Repose (sec. 3).* This provision would prevent a suit from being filed against a wrongdoer after 10 years, even if the injury did not occur until after this period of time.¹ The Alaska Supreme Court has already indicated that such a statute may be unconstitutional.
3. *Retroactivity of Punitive Damages Limitations (sec. 24).* By far the most disturbing section of the bill is the clause providing a retroactive effective date for the bill's punitive damages limits. This provision is probably unconstitutional as a violation of due process, and might also constitute an unlawful taking, especially because the section appears to be designed to benefit specific private parties to existing lawsuits. Furthermore, an argument can, and most certainly would, be made that the section applies to the punitive damages award in the *Exxon Valdez* litigation.
4. *Allocation of Fault (secs. 10-11).* The proposed changes would allow the fact finder in a trial (the jury, or the judge in a case tried without a jury) to apportion responsibility for the accident not only among the parties in court, but to any parties responsible for the injuries, even if one or more of those responsible are immune from liability. It creates the classic "empty chair" situation, where all those potentially liable to plaintiff argue that the majority of fault lies with those not in court.² Also, because the bill section was not coordinated with worker's compensation statutes, the injured

person could be required to give back some of his recovery to his employer, even though he could not receive compensation for the employer's fault in causing the accident.

5. *Offers of Judgment (sec. 13).* Without getting into the complexities of the legal analysis, the practical effect of the changes proposed could be to *reduce*, rather than increase, the incentives for early settlement of cases.

6. *Admissibility of Expert Testimony (sec. 15).* The restrictions on expert witnesses are at best confusing, and if interpreted by a court expressly as written, would likely be unconstitutional.

7. *New Civil Causes of Action for Frivolous Practice (sec. 19).* This section would create extensive additional litigation, providing an avenue for litigious litigants to bring many new claims and new lawsuits, adding to the cost and complexity of litigation.³

The bill will cut off the rights of injured Alaskans to reasonable and just compensation for injuries.

1. *Statute of Repose (sec. 3).* As noted above, operation of the statute of repose would cut off a person's right to recover, even if the accident had not yet occurred.⁴

2. *Hospital Non-Liability (sec. 18).* The bill would allow a hospital to exempt itself from liability for damages caused by the negligence of its emergency room doctors, if those doctors carry at least \$500,000 in insurance. That amount of insurance is probably inadequate to compensate for most serious emergency room injuries.

3. *Commercial Recreational Activities (sec. 2).* Although the tort reform advocates claim that this section merely codifies current law, the extensive lobbying efforts of the visitor industry clearly demonstrate that industry believes this section will reduce their liability to injured customers.

4. *Mandatory Arbitration (sec. 17).* In general the concept of alternative dispute resolution procedures such as arbitration and mediation can, in some cases, reduce the overall costs of litigation. However, the provisions in this bill could have the additional effect of foreclosing legitimate damage claims. The arbitration procedures set out in the bill have been made applicable only to relatively small cases where the amount claimed is less than \$50,000; by requiring the parties to pay all costs associated with the arbitration, the bill might effectively cut off a smaller claimant's ability to bring suit in the first place.

5. *Offers of Judgment (sec. 13).* The provisions relating to offers of judgment place an almost impossible burden on a plaintiff in a case involving multiple defendants, because the plaintiff will be required not only to reasonably predict how much he or she will recover in the case, but also the relative percentage of responsibility for each defendant; if the predictions for any single defendant are wrong, the plaintiff risks being held liable for all costs and attorney fees of the defendant who made the offer. Many injured plaintiffs cannot afford to take such risks and will be forced to accept unreasonably low settlement offers.

The Legislature totally failed to utilize a public, consensual process in crafting this bill.

Although this legislation went through several committees and had numerous hearings, the Legislature chose to ignore the results of that process and instead adopt a new version of the bill in the final hours without any public process. This session, several hearings were held on HB 158 in the Senate Judiciary and Finance Committees, in which many of the suggestions raised by the Administration and others were incorporated into the bill.

However, the Finance Committee version of the bill was essentially and a totally new version adopted by the Senate Rules Committee, apparently with the assistance and input of the strongest tort reform advocates. Included in this final version for the first time were the provisions relating to commercial recreational activities, a new arbitration procedure, and the retroactive limitations on punitive damages. The only public hearing on the final bill was a 15 minute Rules Committee hearing, held minutes after the bill was made available to the public for the first time.

The Legislature was unwilling to work to adopt acceptable, reasonable tort reform. For example, the tort reform advocates argued that tort reform would help reduce liability insurance rates. However, the Legislature refused to require a 10 percent reduction in rates as a precondition for the bill's taking effect, because the advocates argued that it would take a few years of the bill being in place before any results would be realized.

In response to this argument, Senator Phillips offered an amendment on the Senate floor to sunset the bill in five years if rates did not come down, thereby giving the bill's provisions a chance to have an impact before the rate reduction would be required; this amendment was also rejected.

Conclusion

Last year, Alaskans were charged with 28,370 misdemeanors, 2,778 felonies, came to court 68,761 times for traffic offenses, filed 8,692 domestic relations cases (including 3,984 for divorce or dissolution), and filed 9,717 small claims cases. There were 21,378 cases filed in Superior Court. However, there were only 993 personal injury cases filed —4.6 percent of the total. Only 43 civil jury trials were held last year in the state, and these included not only tort claims, but debt collection, review of administrative orders, and contract disputes. Thus, contrary to the claims of tort reform advocates, there is no explosion of tort litigation in Alaska.

Nonetheless, there are several features of this bill that could improve our civil justice system and form the basis for effective, responsible tort reform. Placing a reasonable limit on the amount of punitive damages that may be awarded in future cases (sec. 7) may be worthy of consideration, and a requirement that some percentage of such awards be turned over to the state (sec. 7) can maintain the benefits of the punitive damage process without giving plaintiffs an unreasonable windfall recovery. Tying interest rates on judgments to a variable market rate makes sense (sec. 14). Allowing hospitals to avoid liability for negligence of their emergency room doctors (sec. 18) may be a laudable goal, provided the doctors are required to carry sufficient insurance to protect patients. Prohibiting a person who is injured while committing a felony from recovering for such injuries

(sec. 20) does not offend most people's sense of justice. And enhancing the penalties under Civil Rule 11 against attorneys who file frivolous pleadings (sec. 21) could help reduce litigation and ensure better judicial practice. Other related concepts that warrant consideration, discussed at various times during the hearing process on this bill, include some method to ensure insurance rate reductions, and mandatory mediation similar to that proposed in CSHB 414 (Jud).

In short, there are many aspects of tort reform that could help reduce the costs and complexity of litigation, and presumably the cost of liability insurance in Alaska, without at the same time cutting off our citizens' right to recover reasonable compensation for injuries caused by the fault of others. Unfortunately, in passing HB 158, the Legislature chose a less humanistic approach: it elected to simply grant unwarranted benefits to insurance companies by cutting off injured parties' rights.

Alaska Department of Commerce and Economic Development, 6/13/96



LAWS OF ALASKA

1996

Source

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

Chapter No.

AN ACT

Relating to civil actions.

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

THE ACT FOLLOWS ON PAGE 1