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lice academy and she had notice of all facts which reasonable inquiry would disclose, rather than in 1985, when she first became aware of circumstances allegedly indicating that the municipality's acts constituted illegal discrimination. Russell v. Municipality of Anchorage, 743 P.2d 372 (Alaska 1987).

Mining claims. — Plaintiffs' claims of intentional dilution of ore and unworkmanlike mining arose out of alleged injuries to plaintiffs' personal and real property, and were governed by AS 09.10.050, not this section, which deals with tort claims. McKibben v. Mohawk Oil Co., 667 P.2d 1223 (Alaska 1983).

Claims barred. — Where workers' compensation insurance carrier paid benefits to employee and became subrogated by operation of law to employee's rights to all defenses which alleged tort-feasor could have raised against employee, the carrier's failure to sue within two years of accident was a bar to its claim. Providence Wash. Ins. Co. v. DeHavilland Aircraft Co., 699 P.2d 355 (Alaska 1985).

C. Misrepresentation and Negligence.

Legal malpractice. [illegible] before the statute of limitations begins to run, nor is it necessary that the client know the full extent of his damages. Wettanen v. Cowper, 749 P.2d 362 (Alaska 1988).

D. Libel.

When publication occurred.

For a libel action predicated upon allegedly defamatory affidavits filed pursuant to the dismissal of a criminal prosecution against plaintiff, the statute of limitations began to run on the date the affidavits were filed with the court and released to the press, or at the latest the date of the newspaper article reporting them, even though there were subsequent publications. McCutcheon v. State, 746 P.2d 461 (Alaska 1987).

IV. OTHER STATUTORY LIABILITY.

Breach of collective bargaining agreement. — A claim based upon plaintiff's failure to be paid at a rate commensurate with the work he was doing and upon violation of AS 23.05.140(b), as to payment of wages on termination of employment, is not strictly or solely an action for liability upon a statute, but may be construed to state a cause of action for breach of the collective bargaining agreement. As such, it is controlled by the six-year statute of limitations for contract actions, AS 09.10.050, and the superior court erred in dismissing the count based upon the running of the two-year statute of limitations for actions based upon paragraph (3) of this section. Reed v. Municipality of Anchorage, 741 [illegible] 1181 (Alaska 1987).

V. PROCEDURE.

A. Generally.

Statute of limitations does not begin to run until the claimant discovers, or reasonably should have discovered, the existence of all elements essential to the cause of action. Dalkovski v. Glad, 774 P.2d 202 (Alaska 1989).

Amendment related back, etc.

Amended complaint substituting a named person for a "John Doe" defendant in an action against the state and two state troopers properly related back to the date of the original complaint, where [illegible] through his counsel, the state attorney general's office, which represented all of the defendants from the outset. Farmer v. State, 788 P.2d 43 (Alaska 1990).

Addition of defendant, etc.

Addition by plaintiff of a new party by means of a "cross claim" against a defendant in another action (brought by a different plaintiff) which was consolidated with the instant action did not relate back to first plaintiff's original complaint where the first plaintiff failed to show that he had made a true mistake regarding the identity or name of the new party. Atkins v. DeHavilland Aircraft Co., 699 P.2d 352 (Alaska 1985).

Claim not barred.

Where employee was terminated on Wednesday, March 31, 1982, under AS 23.05.140(b) employer had until Monday, April 5, 1982, three working days after it terminated him, to pay him his due compensation, and he would have two years — until April 5, 1984 — to bring suit on his claim of violation of AS 23.05.140(b) under AS 09.10.070(3). Since he filed his complaint on April 2, 1984, that part alleging that employer violated AS 23.05.140(b) was timely filed. Reed v. Mu-

nicipality of Anchorage, 741 P.2d 1181 (Alaska 1987).

Equitable estoppel.

Where plaintiff had reason to sue for the defendant's failure to procure the type of insurance coverage which it had promised and defendant allegedly dissuaded it from filing suit by assuring that the loss of the crane was in fact covered under the policy, the reasonableness of plaintiff's alleged reliance on these promises, and the date when defendant's conduct ceased to justify further delay in bringing suit, were questions of fact which it was necessary to resolve in order to determine whether equitable estoppel should have been applied. Gudenau & Co. v. Sweeney Ins., Inc., 736 P.2d 763 (Alaska 1987).

Where defendant was granted a summary judgment based upon plaintiff's failure to file a wrongful death action within the time prescribed by this section, trial court's dismissal of plaintiff's Rule of Civil Procedure 60(2)(b) motion seeking vacation of defendant's summary judgment was reversed and remanded to permit plaintiff to argue that, because defendant fraudulently concealed evidence, plaintiff was prevented from showing that defendant should be equitably estopped from asserting the statute of limitations defense. Palmer v. Borg-Warner Corp., 838 P.2d 1243 (Alaska 1992).

B. Tolling Statute.

Equitable tolling. — A plaintiff must satisfy three requirements in order to establish his right to pursue an otherwise untimely remedy: (1) His pursuit of the initial remedy must give the defendant notice of the existence of a legal claim against it; (2) the defendant must not be prejudiced in its ability to gather evidence by the bringing of the second claim; and (3) the plaintiff must have acted in good faith. Gudenau & Co. v. Sweeney Ins., Inc., 736 P.2d 763 (Alaska 1987).

Courts will not force a plaintiff to simultaneously pursue two separate and duplicative remedies, and where the plaintiff adopts a single course of action which is dismissed or otherwise fails, courts generally allow the plaintiff to pursue a second remedy based on the same right or claim, tolling the limitations period during the pendency of the initial defective action. Gudenau & Co. v. Sweeney Ins., Inc., 736 P.2d 763 (Alaska 1987).

The doctrine of equitable estoppel did not bar a safety helmet manufacturer from asserting the statute of limitations as a defense to a drilling company employee's suit for injuries sustained while wearing a helmet, where although there was enough readily available information to alert the employee to a design problem had he investigated the helmet's alleged design defects within two years after the accident, he simply did not exercise due diligence by attempting to discover the facts. Mine Safety Appliances Co. v. Stiles, 756 P.2d 288 (Alaska 1988).

Discovery of defect. — Statute of limitations was not tolled on a drilling company employee's suit against a safety helmet manufacturer for injuries sustained while wearing a helmet, where the employee discovered an alleged defect in the helmet six years after the accident, after having made no attempt to investigate any role the helmet may have played in the accident within the two-year limitations period. Mine Safety Appliances Co. v. Stiles, 756 P.2d 288 (Alaska 1988).

This section was tolled during plaintiff's minority.

The statute of limitations on actions for loss of parental consortium is tolled until the child reaches the age of majority. Truesdell v. Halliburton Co., 754 P.2d 236 (Alaska 1988).

Attainment of the age of majority is analogous to other events that trigger running of time periods; the limitation period excludes the day of the event (attainment of majority), and includes the last day in the period, unless that day is a holiday. Fields v. Fairbanks N. Star Borough, 818 P.2d 658 (Alaska 1991).

Filing wage claim tolls statute. — Department of labor proceedings are a form of quasi-judicial relief; therefore, filing a statutory wage claim with the department equitably tolls the statute of limitations if the other requirements of that doctrine are established. Dayhoff v. Temsco Helicopters, Inc., 772 P.2d 1085 (Alaska 1989).

Sec. 09.10.100. Other actions in 10 years.

NOTES TO DECISIONS

Quoted in Bibo v. Jeff[illegible]'s Restaurant, 770 P.2d 290 (Alaska 1989).

Sec. 09.10.120. Actions in name of state, political subdivisions, or public corporations.

NOTES TO DECISIONS

Taxation of escaped properties. — The six-year statute of limitations for actions in the name of a political subdivision applies to the taxation of escaped properties. Municipality of Anchorage v. Alaska Distribs. Co., 725 P.2d 692 (Alaska 1986).

Cited in Williams v. BP Alaska Exploration, Inc., 677 P.2d 236 (Alaska 1983).

Sec. 09.10.140. Disabilities of minority and incompetency. (a) If a person entitled to bring an action mentioned in this chapter is at the time the cause of action accrues either (1) under the age of majority, or (2) incompetent by reason of mental illness or mental disability, the time of a disability identified in (1) or (2) of this subsection is not a part of the time limit for the commencement of the action. Except as provided in (b) of this section, the period within which the action may be brought is not extended in any case longer than two years after the disability ceases.

(b) An action based on a claim of sexual abuse under AS 09.55.650 may be brought more than three years after the plaintiff reaches the age of majority if it is brought under the following circumstances:

(1) if the claim asserts that the defendant committed one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered that the act caused the injury or condition;

(2) if the claim asserts that the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff shall commence the action within three years after the plaintiff discovered or through use of reasonable diligence should have discovered the effect of the injury or condition attributable to the series of acts; a claim based on an assertion of more than one act of sexual abuse is not limited to plaintiff's first discovery of the relationship between any one of those acts and the injury or condition, but may be based on plaintiff's discovery of the effect of the series of acts. (§ 1.14 ch 101 SLA 1962; am § 1 ch 46 SLA 1979; am § 1 ch 88 SLA 1986; am §§ 2, 3 ch 4 SLA 1990)

Effect of amendments. — The 1986 amendment, in the first sentence deleted "or (3) imprisoned on a criminal charge, or in execution under sentence of a court for a term less than the person's natural life," preceding "the time of the disability," and in the second sentence substituted "The" for "But the."

The 1990 amendment, effective February 2, 1990, in subsection (a), rewrote item (2) and added the exception at the beginning of the second sentence, and added subsection (b).

Editor's notes. — Section 11, ch. 4, SLA 1990 provides that the 1990 amendments to this section "apply to all actions commenced on or after February 2, 1990, regardless of when the cause of action may have arisen."

NOTES TO DECISIONS

II. Minority.
III. Incompetency.
IV. Imprisonment.

II. MINORITY.

Determination of age.

Attainment of the age of majority is analogous to other events that trigger running of time periods; the limitation period excludes the day of the event (attainment of majority), and includes the last day in the period, unless that day is a holiday. Fields v. Fairbanks N. Star Borough, 818 P.2d 658 (Alaska 1991).

Statute of limitations on actions for loss of parental consortium is tolled until the child reaches the age of majority. Truesdell v. Halliburton Co., 754 P.2d 236 (Alaska 1988).

III. INCOMPETENCY.

English deficiency not mental disability. — An English deficiency alone does not constitute mental incompetency under subsection (a)(2), since it is an individual's mental capacity to understand his rights, not whether the individual actually understood or knew of those rights, that is the dispositive inquiry. Hernandez-Robaina v. State, 849 P.2d 783 (1993).

IV. IMPRISONMENT.

Imprisonment not in effect when claim accrued, etc.

In a products liability action, neither three days' bedrest necessitated by plaintiff's injuries nor plaintiff's incarceration approximately one year after the accident in question tolled the statute of limitations. Thus plaintiff's complaint, filed two years and one day after plaintiff sustained injuries, was not timely filed. Yurioff v. American Honda Motor Co. & Port Lions Community Store, 803 P.2d 386 (Alaska 1990).

Sec. 09.10.160. Disability of alien during war.

NOTES TO DECISIONS

Quoted in Yurioff v. American Honda Motor Co. & Port Lions Community Store, 803 P.2d 386 (Alaska 1990).

Sec. 09.10.170. Injunction against commencement of action.

NOTES TO DECISIONS

Quoted in Yurioff v. American Honda Motor Co. & Port Lions Community Store, 803 P.2d 386 (Alaska 1990).

Sec. 09.10.180. Disability.

NOTES TO DECISIONS

Construed with AS 09.10.140. — In a products liability action, neither three days' bedrest necessitated by plaintiff's injuries nor plaintiff's incarceration approximately one year after the accident in question tolled the statute of limitations. Thus plaintiff's complaint, filed two years and one day after plaintiff sustained injuries, was not timely filed. Yurioff v. American Honda Motor Co. & Port Lions Community Store, 805 P.2d 365 (Alaska 1990).

Sec. 09.10.230. Certain actions relating to real property.

NOTES TO DECISIONS

Editor's notes. — The cited reference is set out below as a correction of the cited reference in the main pamphlet.

Fraud. — In applying the discovery rule for fraud under this section, there is no requirement that a fraud victim must have acted reasonably. Carter v. Hoblit, 755 P.2d 1084 (Alaska 1988).

Where defendant and two other persons had purchased property with the understanding that they would own and later subdivide the property, defendant's failure to disclose the fact that title had been placed in his name alone could be viewed as a fraud. Carter v. Hoblit, 755 P.2d 1084 (Alaska 1988).

Cited in Monroe v. California Yearly Meeting of Friends Church, 564 F.2d 304 (9th Cir. 1977).

Sec. 09.10.240. Commencement of action after dismissal or reversal.

If an action is commenced within the time prescribed and is dismissed upon the trial or upon appeal after the time limited for bringing a new action, the plaintiff or, if the plaintiff dies and the cause of action in favor of the plaintiff survives, the heirs or representatives may commence a new action upon the cause of action within one year after the dismissal or reversal on appeal. All defenses available against the action, if brought within the time limited, are available against the action when brought under this provision. (§ 1.24 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

NOTES TO DECISIONS

Dismissal for failure to prosecute. — This section applies to cases dismissed pursuant to Civil Rule 41(e) for failure to prosecute. Smith v. Stratton, 835 P.2d 1162 (Alaska 1992).

Defendant who has requested an indefinite extension of time in which to answer the complaint, resulting in a dismissal for failure to prosecute, was estopped from relying on the statute of limitations to dismiss the refiled claim where the defendant was aware of the claim against her and benefited from the delay because she was not required to retain an attorney to answer the complaint, and the plaintiff acted in good faith in granting extensions of the time to answer. Smith v. Stratton, 835 P.2d 1162 (Alaska 1992).

Quoted in Evron v. Gilo, 777 P.2d 182 (Alaska 1989).

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APPENDIX C

ALASKA STATUTES SUPPLEMENTAL

LIMITATIONS ON CIVIL LIABILITY

SECTION 7

SECTION 8

SECTION 9

SECTION 10

SECTION 11

SECTION 12

SECTION 13

SECTION 14

SECTION 15

SECTION 16

SECTION 17

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SECTION 30

Sec. 09.17.010. Noneconomic damages. (a) In an action to recover damages for personal injury based on negligence, damages for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life and other nonpecuniary damage.

(b) The amount of damages awarded by a court or a jury under (a) of this section may not exceed $500,000 for each claim based on a separate incident or injury.

(c) The limit under (b) of this section does not apply to damages for disfigurement or severe physical impairment. (§ 1 ch 139 SLA 1986)

Sec. 09.17.020. Punitive damages. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence. (§ 1 ch 139 SLA 1986)

NOTES TO DECISIONS

Quoted in State Farm Mut. Auto. Ins. Co. v. Weiford, 831 P.2d 1264 (Alaska 1992).

Sec. 09.17.030. Damages resulting from commission of a crime. A person who suffers personal injury or death may not recover damages for the personal injury or death if the injuries or death occurred while the person was engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the felony substantially contributed to the injury or death. This section does not affect a right of action under 42 U.S.C. 1983. (§ 1 ch 139 SLA 1986)

NOTES TO DECISIONS

Constitutionality. — This section, as applied to an arrestee who filed a personal injury action against state troopers for allegedly using excessive force in apprehending him, did not deprive him of due process under the constitution of Alaska. Sun v. State, 830 P.2d 772 (Alaska 1992).

Plea of nolo contendere. — This section precludes a person who receives injuries in the course of a felony, and pleads nolo contendere to that felony, from later contesting whether he actually committed the felony. Sun v. State, 830 P.2d 772 (Alaska 1992).

Causation. — Arrestee's commission of a felony, i.e., assaulting state troopers who attempted to apprehend him, "substantially contributed to the injury," where nothing in the record showed a break in the nexus between the arrestee's assault and the troopers' instantaneous response thereto with deadly force. Sun v. State, 830 P.2d 772 (Alaska 1992).

Quoted in Lord v. Fogcutter Bar & Stacy Cap, 813 P.2d 660 (Alaska 1991).

Sec. 09.17.040. Award of damages. (a) In every case where damages for personal injury are awarded by the court or jury, the verdict shall be itemized between economic loss and noneconomic loss, if any, as follows:

(1) past economic loss;

(2) past noneconomic loss;

(3) future economic loss;

(4) future noneconomic loss; and

(5) punitive damages.

(b) The fact finder shall reduce future economic damages to present value. In computing the portion of a lump-sum award that is attributable to future economic loss, the fact finder shall determine the present amount that, if invested at long-term future interest rates in the best and safest investments, will produce over the life expectancy of the injured party the amount necessary to compensate the injured party for

(1) the amount of wages the injured party could have been expected to earn during future years, taking into account future anticipated inflation and reasonably anticipated increases in the injured party's earnings; and

(2) the amount of money necessary during future years to provide for all additional economic losses related to the injury, taking into account future anticipated inflation.

(c) Subsection (b) of this section does not apply to future economic damages if the parties agree that the award of future damages may be computed under the rule adopted in the case of Beaulieu v. Elliott, 434 P.2d 665 (Alaska 1967).

(d) In an action to recover damages, the court shall, at the request of an injured party, enter judgment ordering that amounts awarded a judgment creditor for future damages be paid to the maximum extent feasible by periodic payments rather than by a lump-sum payment.

(e) The court may require security be posted, in order to ensure that funds are available as periodic payments become due. The court may not require security to be posted if an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its obligation to discharge the judgment.

(f) A judgment ordering payment of future damages by periodic payment shall specify the recipient, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments shall be made. Payments may be modified only in the event of the death of the judgment creditor, in which case payments may not be reduced or terminated, but shall be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before death. In the event the judgment creditor owed no duty of support to dependents at the time of the judgment creditor's death, the money remaining shall be

distributed in accordance with a will of the deceased judgment creditor accepted into probate or under the intestate laws of the state if the deceased had no will.

(g) If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make payments required under (d) of this section, the court shall, in addition to the required periodic payments, order the judgment debtor to pay the judgment creditor any damages caused by the failure to make periodic payments, including costs and attorney fees. (§ 1 ch 139 SLA 1986)

Revisor's notes. — In 1986, the number "665" was substituted for "655" to correct a manifest error in subsection (c).

In 1988, a reference to "(d) of this section" was substituted for "(c) of this section" to correct a manifest error in subsection (g).

Cross references. — For effect of this section on Alaska Rules of Civil Procedure 49 and 58, see §§ 5 and 7, respectively, ch. 139, SLA 1986, in the Temporary and Special Acts.

NOTES TO DECISIONS

Future damages in wrongful death cases. — The clear legislative purpose of subsection (b) is to require the reduction of present value of future economic damages in wrongful death cases in the absence of an agreement of the parties to do otherwise. Beck v. State, 837 P.2d 105 (Alaska 1992).

Sec. 09.17.050. Limited liability of certain directors and officers. (a) Unless the act or omission constituted gross negligence, a person may not recover tort damages for personal injury, death, or damage to property for an act or omission to act in the course and scope of official duties, from one of the following:

(1) a member of the board of directors or an officer of a nonprofit corporation;

(2) a member of the board of directors of a public or nonprofit hospital, or a member of a citizen's advisory board of any hospital;

(3) a member of a school board of a school district;

(4) a member of the governing body, a commission, or a citizen's advisory committee of a municipality of the state;

(5) a member of the board of directors, an officer, or an employee of a regional development organization.

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the corporation or the corporation's shareholders may not be limited or modified.

(c) In this section,

(1) "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code);

(2) "regional development organization" has the meaning given in AS 44.33.026. (§ 1 ch 139 SLA 1986; am §§ 1, 2 ch 68 SLA 1993)

Effect of amendments. — The 1993 amendment, effective July 1, 1993, added paragraph (a)(5); and, in subsection (c), added the paragraph (1) designation and added paragraph (2).

Sec. 09.17.060. Effect of contributory fault. In an action based on fault seeking to recover damages for injury or death to a person or harm to prope ' ", contributory fault chargeable to the claimant diminishes propo.tionately the amount awarded as compensatory damages for the injury attributable to the claimant's contributory fault, but does not bar recovery. (§ 1 ch 139 SLA 1986)

NOTES TO DECISIONS

Ski injury. — While recovery is barred for an injury caused solely by an inherent risk of skiing, comparative fault applies when the injury is caused by a combination of an inherent risk of skiing and the ski area operator's negligence. Hiibschman ex rel. Welch v. City of Valdez, 821 P.2d 1354 (Alaska 1991).

Quoted in Loeb v. Rasmussen, 822 P.2d 914 (Alaska 1991).

Sec. 09.17.070. Collateral benefits. (a) After the fact finder has rendered an award to a claimant, and after the court has awarded costs and attorney fees, a defendant may introduce evidence of amounts received or to be received by the claimant as compensation for the same injury from collateral sources that do not have a right of subrogation by law or contract.

(b) If the defendant elects to introduce evidence under (a) of this section, the claimant may introduce evidence of

(1) the amount that the actual attorney fees incurred by the claimant in obtaining the award exceed the amount of attorney fees awarded to the claimant by the court; and

(2) the amount that the claimant has paid or contributed to secure the right to an insurance benefit introduced by the defendant as evidence.

(c) If the total amount of collateral benefits introduced as evidence under (a) of this section exceeds the total amount that the claimant introduced as evidence under (b) of this section, the court shall deduct from the total award the amount by which the value of the nonsubrogated sum awarded under (a) of this section exceeds the amount of payments under (b) of this section.

(d) Notwithstanding (a) of this section, the defendant may not introduce evidence of

(1) benefits that under federal law cannot be reduced or offset;

(2) a deceased's life insurance policy; or

(3) gratuitous benefits provided to the claimant.

(e) This section does not apply to a medical malpractice action filed under AS 09.55. (§ 1 ch 139 SLA 1986)

Sec. 09.17.080. Apportionment of damages. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.16.040, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

(2) the percentage of the total fault of all of the parties to each claim that is allocated to each claimant, defendant, third-party defendant, and person who has been released from liability under AS 09.16.040.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault, and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.16.040, and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault.

(d) The court shall enter judgment against each party liable on the basis of several liability in accordance with that party's percentage of fault. (§ 1 ch 139 SLA 1986; am §§ 15, 16 ch 14 SLA 1987; am 1987 Initiative Proposal No. 2, § 1)

Cross references. — For effect of this section on Alaska Rules of Civil Procedure 49, 52, and 58, see §§ 5-7, ch. 139, SLA 1986, in the Temporary and Special Acts.

Effect of amendments. — The 1987 amendment substituted "AS 09.16.040" for "AS 09.17.090" in subsection (a) in the introductory language and at the end of paragraph (2) and in the first sentence of subsection (c).

The 1988 amendment, effective March 5, 1989, in subsection (d), substituted "several liability in accordance with that party's percentage of fault" for "joint and several liability, except that a party who is allocated less than 50 percent of the total fault allocated to all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party."

Editor's notes. — 1987 Initiative Proposal No. 2, § 4 provides: "Sections 1 — 2 of this Act apply to all causes of action accruing after the effective date of this Act [March 5, 1989]."

1987 Initiative Proposal No. 2, § 5 provides: "If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."

AS 09.16.040, referred to in subsections (a) and (c), was repealed by 1987 Initiative Proposal No. 2, § 2.

NOTES TO DECISIONS

Workers' Compensation Act provisions unaffected. — When the legislature enacted this section, it left intact the exclusive liability and employer reimbursement provisions of the Workers' Compensation Act. Lake v. Construction Mach., Inc., 787 P.2d 1027 (Alaska 1990).

Criminal context precluded. — This provision has no direct bearing in the criminal context, where a court's authority to require payment of restitution exists independently of its authority to order payment of damages in civil matters. Noffsinger v. State, 850 P.2d 647 (Alaska Ct. App. 1993).

Joinder of potentially liable actors. — Because the allocation of a portion of fault to nonparties is not permitted by this section, nor practical in the courtroom, the defendant must join any potentially liable actors and articulate in third-party complaints the manner in which those actors caused the plaintiff's injuries. This having been done, the trier of fact will then be able to accurately allocate a portion of fault to each party. Robinson v. U-Haul Co., 785 F. Supp. 1378 (D. Alaska 1992).

Separate trial for contribution issues. — Although a single trial allocating fault among all potentially liable parties may promote judicial economy, nothing in the legislative history of this section indicates that the legislature intended to require a single trial for both first-party and third-party claims. The traditional two-step system of first establishing liability and then seeking contribution is not inconsistent with the comparative negligence principles underlying the Tort Reform Act. Borg-Warner Corp. v. Avco Corp., 850 P.2d 628 (1992).

Liability allocation among all unintentional tortfeasors. — The Tort Reform Act clearly contemplates a relative allocation of fault between all unintentional tortfeasors, whether negligent, grossly negligent or willful and wanton. Borg-Warner Corp. v. AVCO Corp., 850 P.2d 628 (1993).

Employee's action against third-party tortfeasors. — Evidence of an employer's negligence may be relevant and admissible in an employee's action against third-party tortfeasors to prove that the employer was entirely at fault, or that the employer's fault was a superseding cause of the injury. Under this section, the finder of fact may allocate all or none of the total fault to the employer. It may not allocate only a portion of the total fault to the employer, Jury instructions must be carefully prepared to prevent a panel from attributing to the employee any negligence of the employer. Lake v. Construction Mach., Inc., 787 P.2d 1027 (Alaska 1990).

Contribution claims to which Act applicable. — The Tort Reform Act of 1986 applies only when plaintiff's injury occurred on or after June 11, 1986, the effective date of that act. It does not apply to contribution claims accruing after that date, arising from torts which occurred prior to June 11, 1986. Ogle v. Craig Taylor Equip. Co., 761 P.2d 722 (Alaska 1988).

Contribution against joint tortfeasors. — For cases construing former AS 09.16, see Vertecs Corp. v. Fiberchem, Inc., 669 P.2d 958 (Alaska 1983); Foss Alaska Line v. Northland Servs., Inc., 724 P.2d 523 (Alaska 1986); Fellows v. Tlingit-Haida Regional Elec. Auth., 740 P.2d 428 (Alaska 1987); Tommy's Elbow Room, Inc. v. Kavorkian, 754 P.2d 243 (Alaska 1988); Ogle v. Craig Taylor Equip. Co., 761 P.2d 722 (Alaska 1988); Providence Wash. Ins. Co. v. McGee, 764 P.2d 712 (Alaska 1988); Bohna v. Hughes, 828 P.2d 745 (Alaska 1992).

Unless a settlement is shown to be unreasonable and thereafter set aside, a settling tortfeasor must not be considered in determining the number of pro rata shares available for each remaining tortfeasor's individual liability. Colt Indus. Operating Corp. v. Frank W. Murphy Mfr., Inc., 822 P.2d 925 (Alaska 1991).

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APPENDIX D

ALASKA STATUTE SUPPLEMENT

SPECIAL ACTIONS AND PROCEEDINGS

SECTION 22

SECTION 23

SECTION 24

SECTION 25

SECTION 29

Article 4. Official Bonds, Fines, and Forfeitures.

Sec. 09.55.470. Suits on undertakings.

NOTES TO DECISIONS

Liability of surety. — This section contains implication that the surety is liable under circumstances in which the public official whose conduct is bonded would not be liable. Integrated Resources Equity Corp. v. Fairbanks N. Star Borough, 799 P.2d 295 (Alaska 1990).

Article 5. Malpractice Actions.

NOTES TO DECISIONS

Liability for negligence of emergency room physician. — A general acute care hospital has a nondelegable duty to provide nonnegligent physician care in its emergency room and, therefore, the hospital may be held vicariously liable for negligent health care rendered by an emergency room physician who is not an employee of the hospital, but is, instead, an independent contractor. Jackson v. Power, 743 P.2d 1376 (Alaska 1987).

Sec. 09.55.535. Voluntary arbitration. (a) A patient and any health care provider may execute an agreement to submit to arbitration any dispute, controversy, or issue arising out of care or treatment by the health care provider during the period that the agreement is in force or that has already arisen between the parties. Execution of an agreement under this subsection by a patient may not be made a prerequisite to receipt of care or treatment by the health care provider.

(b) An agreement to arbitrate executed before care or treatment is provided shall clearly provide in bold print on the face of the agreement that execution of the agreement by the patient is not a prerequisite to receiving care or treatment. If this subsection is not complied with by the health care provider, the agreement to arbitrate is void. The form to be used shall be approved in advance by the attorney general of the state to assure it fairly informs both parties to the agreement and properly protects their interests.

(c) The agreement shall provide that the person receiving health care may revoke the agreement within 30 days after execution by notifying the health care provider in writing. The period for revocation shall be tolled during any period that the person receiving health care is physically unable to execute a revocation. The health care provider may not revoke the agreement after its execution.

(d) An arbitration agreement entered into by the parents or legal guardian of a minor person receiving health care is binding upon the minor person.

(e) An agreement to arbitrate between a patient and a hospital must be reexecuted each time a person is admitted to a hospital. The agreement may be extended by written agreement of all parties to apply to care after hospitalization. A person receiving outpatient care from a hospital or clinic or a member of a health maintenance organization may execute an agreement with the hospital which provides for continuation of the agreement for a continuing program of treatment or during continued membership.

(f) Upon the filing of a malpractice claim which is subject to an agreement to arbitrate, the claim shall be submitted to an arbitration board. The arbitration board shall consist of three arbitrators: one arbitrator designated by the claimant or claimants, one arbitrator designated by the health care provider or providers against whom the claim is made, and a third arbitrator designated by mutual agreement who shall serve as chairperson of the board. If the parties cannot agree on the third person, the court will provide a choice of three or more persons who might serve as chairperson of the arbitration board, which shall be from a list of qualified arbitrators furnished by the attorney general. Claimant or claimants together and health care provider or providers together may each strike one or more names so that after each side has done so at least one name remains, providing a basis for the final selection by the court.

(g) The attorney general shall prepare a list of persons consisting of lawyers or other persons qualified to serve as chairperson of an arbitration board. They shall be selected on basis of their technical expertise, judicial temperament, and capability of impartially acting on malpractice claims. The attorney general shall submit a list of at least three names whenever requested to do so by the court along with detailed biographical information on each person listed.

(h) Each member of the arbitration board shall receive reasonable compensation to be paid by the court based on the extent and duration of services rendered. The court shall pay the costs of expert witnesses called by the board and the costs of expert witnesses called by the parties to the arbitration up to a maximum of three witnesses for each side and $150 per day for each expert witness.

(i) The arbitration board may appoint an expert advisory panel, with the powers of the expert advisory panel under AS 09.55.536, to advise the board on the medical facts of the case.

(j) The court shall specify the shortest practical deadline for completion of the work of the arbitration board, taking into account all the circumstances and the nature of the case.

(k) The provisions of the Uniform Arbitration Act, AS 09.43.010 — 09.43.180, apply to arbitrations under this section if they do not con-

flict with the provisions of this section; arbitrations under this section shall be conducted in accordance with procedures established by any rules of court which may be adopted and according to provisions of AS 09.55.540 — 09.55.548 and AS 09.55.554 — 09.55.560, and AS 09.65.090. (§ 33 ch 102 SLA 1976; am § 22 ch 177 SLA 1978; am § 1 ch 105 SLA 1988)

Effect of amendments. — The 1988 amendment inserted "between a patient and a hospital" in the first sentence in subsection (e).

Sec. 09.55.536. Expert advisory panel. (a) In an action for damages due to personal injury or death based upon the provision of professional services by a health care provider when the parties have not agreed to arbitration of the claim under AS 09.55.535, the court shall appoint within 20 days after filing of answer to a summons and complaint a three-person expert advisory panel unless the court decides that an expert advisory opinion is not necessary for a decision in the case. When the action is filed the court shall, by order, determine the professions or specialties to be represented on the expert advisory panel, giving the parties the opportunity to object or make suggestions.

(b) The expert advisory panel may compel the attendance of witnesses, interview the parties, physically examine the injured person if alive, consult with the specialists or learned works they consider appropriate, and compel the production of and examine all relevant hospital, medical, or other records or materials relating to the health care in issue. The panel may meet in camera, but shall maintain a record of any testimony or oral statements of witnesses, and shall keep copies of all written statements it receives.

(c) Not more than 30 days after selection of the panel, it shall make a written report to the parties and to the court, answering the following questions and other questions submitted to the panel by the court:

(1) What was the disorder for which the plaintiff came to medical care?

(2) What would have been the probable outcome without medical care?

(3) Was the treatment selected appropriate for the case?

(4) Did an injury arise from the medical care?

(5) 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?

(8) If a medical injury had not occurred, how would the plaintiff's condition differ from the plaintiff's present condition?

(d) In any case in which the answer to one or more of the questions submitted to the panel depends upon the resolution of factual questions which are not the proper subject of expert opinion, the report

shall so state and may answer questions based upon hypothetical facts that are fully set out in the opinion. The report shall include copies of all written statements, opinions, or records relied upon by the panel and either a transcription or other record of any oral statements or opinions; shall specify any medical or scientific authority relied upon by the panel: and shall include the results of any physical or mental examination performed on the plaintiff. Each member shall sign the report and the signature constitutes the member's adoption of all statements and opinions contained in it; however, a member may, instead of signing the report, submit a concurring or dissenting report which complies with the requirements of this subsection. A member may not attest to any portion of the report as to which the member is not qualified to give expert testimony.

(e) The report of the panel with any dissenting or concurring opinion is admissible in evidence to the same extent as though its contents were orally testified to by the person or persons preparing it. The court shall delete any portion that would not be admissible because of lack of foundation for opinion testimony, or otherwise. Either party may submit testimony to support or refute the report. The jury shall be instructed in general terms that the report shall be considered and evaluated in the same manner as any other expert testimony. Any member of the panel may be called by any party and may be cross-examined as to the contents of the report or of that member's dissenting or concurring opinion.

(f) No discovery may be undertaken in a case until the report of the expert advisory panel is received. 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.

(g) Members of a panel are entitled to travel expenses and per diem in accordance with state law pertaining to members of boards and commissions for all time spent in preparing its report. If a panel member is called upon as a witness at trial or upon deposition, the member is entitled to payment of an expert witness fee, which may not exceed $150 per day. All expenses incurred by the panel shall be paid by the court. However, in any case in which the court determines that a party has made a patently frivolous claim or a patently frivolous denial of liability, it shall order that all costs of the expert advisory panel be borne by the party making that claim or denial.

(h) Parties to the case and their counsel may not initiate communication out of court with members of the panel on the subject matter of its inquiry and report or cause or solicit others to do so, except through ordinary discovery proceedings. (§ 33 ch 102 SLA 1976; am § 23 ch 177 SLA 1978)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

NOTES TO DECISIONS

Lifting ban on discovery before panel report. — Good cause to lift the discovery ban is demonstrated as a matter of law when no report has been issued after 80 days have elapsed from the filing of answer, if the party wishing to begin discovery is not responsible for the delay. Roethler v. Lutheran Hosps. & Homes Soc'y of Am., 709 P.2d 487 (Alaska 1985).

Constitutionality. — This section does not unconstitutionally deprive a litigant of due process of law, does not impair his right to a jury trial, and does not violate separation of powers principles by impermissibly delegating judicial power to members of the panel. Keyes v. Humana Hosp., 750 P.2d 343 (Alaska 1988).

This section does not unconstitutionally deprive medical plaintiffs of their right of access to the courts. Keyes v. Humana Hosp., 750 P.2d 343 (Alaska 1988).

Applied in Kendall v. State, Div. of Cors., 692 P.2d 953 (Alaska 1984).

Quoted in Snyder v. Foote, 822 P.2d 1353 (Alaska 1991).

Sec. 09.55.540. Burden of proof.

NOTES TO DECISIONS

Stated in Yako v. United States, 891 F.2d 738 (9th Cir. 1989).

Sec. 09.55.548. Awards, collateral source. (a) Damages shall be awarded in accordance with principles of the common law. The fact finder in a malpractice action shall render any award for damages by category of loss. The court may enter a judgment that future damages be paid in whole or in part by periodic payments rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions to assure that funds are available as periodic payments become due. Insurance from an authorized insurer as defined in AS 21.90.900 is sufficient assurance that funds will be available. Any part of the award that is paid on a periodic basis shall be adjusted annually according to changes in the consumer price index in the community where the claimant resides. In this subsection, future damages includes damages for future medical treatment, care or custody, loss of future earnings, or loss of bodily function of the claimant.

(b) Except when the collateral source is a federal program which by law must seek subrogation and except death benefits paid under life insurance, a claimant may only recover damages from the defendant which exceed amounts received by the claimant as compensation for the injuries from collateral sources, whether private, group or governmental, and whether contributory or noncontributory. Evidence of collateral sources, other than a federal program which must by law seek subrogation and the death benefit paid under life insurance, is admissible after the fact finder has rendered an award. The court may take into account the value of claimant's rights to coverage exhausted

or depleted by payment of these collateral benefits by adding back a reasonable estimate of their probable value, or by earmarking and holding for possible periodic payment under (a) of this section that amount of the award that would otherwise have been deducted, to see if the impairment of claimant's rights actually takes place in the future. (§ 35 ch 102 SLA 1976; am § 7 ch 30 SLA 1992)

Effect of amendments. — The 1992 amendment, effective May 16, 1992, in subsection (a), deleted "or from the Medical Indemnity Corporation of Alaska" preceding "is sufficient" in the fourth sentence and made a stylistic change in the fifth sentence.

Sec. 09.55.560. Definitions. In AS 09.55.530 — 09.55.560,

(1) "health care provider" means an acupuncturist licensed under AS 08.06; an audiologist licensed under AS 08.11; a chiropractor licensed under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing optician licensed under AS 08.71; a naturopath licensed under AS 08.45; an optometrist licensed under AS 08.72; a pharmacist licensed under AS 08.80; a physical therapist or occupational therapist licensed under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a psychologist and a psychological associate licensed under AS 08.86; and a hospital as defined in AS 18.20.130, including a governmentally owned or operated hospital; and an employee of a health care provider acting within the course and scope of employment;

(2) "board" means an arbitration board established under AS 09.55.535;

(3) "panel" means an expert advisory panel established under AS 09.55.536. (§ 37 ch 102 SLA 1976; am § 24 ch 177 SLA 1978; am § 6 ch 56 SLA 1986; am § 9 ch 131 SLA 1986; § 26 ch 2 FSSLA 1987; am § 9 ch 6 SLA 1990; am § 1 ch 14 SLA 1991)

Effect of amendments. — The first 1986 amendment in paragraph (1) inserted "a naturopath licensed under AS 08.45."

The second 1986 amendment near the beginning of paragraph (1) inserted "an audiologist licensed under AS 08.11."

The 1987 amendment, effective January 1, 1988, inserted "or occupational therapist" in paragraph (1).

The 1990 amendment inserted "an acupuncturist licensed under AS 08.06" near the beginning of paragraph (1).

The 1991 amendment, effective January 1, 1992, in paragraph (1), deleted "a corporate entity covered under AS 21.88.050(b)(11)" following "governmentally owned or operated hospital."

Article 6. Actions by or Against Deceased Persons.

Section
580. Action for wrongful death

Sec. 09.55.570. All causes of action survive.

NOTES TO DECISIONS

Injured party may not recover punitive damages from estate of deceased tortfeasor under this section. Doe ex rel. Doe v. Colligan, 753 P.2d 144 (Alaska 1988).

Cited in Goodlataw v. State, Dep't of Health & Social Servs., 698 P.2d 1190 (Alaska).

Sec. 09.55.580. Action for wrongful death. (a) Except as provided under (f) of this section, when the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had the person lived, against the latter for an injury done by the same act or omission. The action shall be commenced within two years after the death, and the damages therein shall be the damages the court or jury may consider fair and just. The amount recovered, if any, shall be exclusively for the benefit of the decedent's spouse and children when the decedent is survived by a spouse or children, or other dependents. When the decedent is survived by no spouse or children or other dependents, the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss. When the plaintiff prevails, the trial court shall determine the allowable costs and expenses of the action and may, in its discretion, require notice and hearing thereon. The amount recovered shall be distributed only after payment of all costs and expenses of suit and debts and expenses of administration.

(b) The damages recoverable under this section shall be limited to those which are the natural and proximate consequence of the negligent or wrongful act or omission of another.

(c) In fixing the amount of damages to be awarded under this section, the court or jury shall consider all the facts and circumstances and from them fix the award at a sum which will fairly compensate for the injury resulting from the death. In determining the amount of the award, the court or jury shall consider but is not limited to the following:

(1) deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries, without regard to age thereof, that would have resulted from the continued life of the deceased and without regard to probable accumulations or what the deceased may have saved during the lifetime of the deceased

APPENDIX E

ALASKA STATUTES

SPECIAL ACTIONS AND PROCEEDINGS

SECTION 23

SECTION 24

Article 6. Actions by or Against Deceased Persons.

Section
580. Action for wrongful death

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(c) In fixing the amount of damages to be awarded under this section, the court or jury shall consider all the facts and circumstances and from them fix the award at a sum which will fairly compensate for the injury resulting from the death. In determining the amount of the award, the court or jury shall consider but is not limited to the following:

(1) deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries, without regard to age thereof, that would have resulted from the continued life of the deceased and without regard to probable accumulations or what the deceased may have saved during the lifetime of the deceased;

(2) loss of contributions for support;

(3) loss of assistance or services irrespective of age or relationship of decedent to the beneficiary or beneficiaries;

(4) loss of consortium;

(5) loss of prospective training and education;

(6) medical and funeral expenses.

(d) The death of a beneficiary or beneficiaries before judgment does not affect the amount of damages recoverable under this section.

(e) The right of action granted by this section is not abated by the death of a person named or to be named the defendant.

(f) A person whose act or omission constitutes the felonious killing of another person may not recover damages for the death of that person either directly or as a personal representative of that person's estate. In this subsection, a "felonious killing" means a crime defined by AS 11.41.100 — 11.41.140. (§ 4 ch 78 SLA 1972; am §§ 1, 2 ch 164 SLA 1988)

Revisor's notes. — In 1992, "or" was substituted for "of" after "accumulations" in paragraph (c)(1) of this section to correct a typographical error in the 1962 codification of § 61-7-3, ACLA 1949, as amended.

Effect of amendments. — The 1988 amendment added "Except as provided under (f) of this section" at the beginning of the first sentence in subsection (a) and added subsection (f).

NOTES TO DECISIONS

I. GENERAL CONSIDERATION.

Discovery rule tolls, etc.

The discovery rule applies to toll the two-year statute of limitations for wrongful death actions contained in this section. Hanebuth v. Bell Helicopter Int'l, 694 P.2d 143 (Alaska 1984).

Reasonable failure of a plaintiff to discover an element essential to the cause of action tolls the running of the two-year period provided by this section within which to commence an action for wrongful death. Hanebuth v. Bell Helicopter Int'l, 694 P.2d 143 (Alaska 1984).

The "discovery rule," which holds that a statute of limitations does not begin to run until a plaintiff discovers, or reasonably should discover, the existence of all the elements of his cause of action, applies to actions for wrongful death. State v. Welch, 805 P.2d 979 (Alaska 1991).

Bar to action found in Workers' Compensation Act. — An action for wrongful death, filed pursuant to this section, is barred by AS 23.30.055, the exclusive remedy provision of the Alaska Workers' Compensation Act; the fact that the estates of deceased workers leaving dependents are entitled to favored treatment over the estates of workers leaving no dependents reflects a legislative determination that the former require greater compensation, is entirely reasonable and does not deprive the estate of a worker leaving no dependents of equal protection of the law. Taylor v. Southeast-Harrison W. Corp., 694 P.2d 1160 (Alaska 1985).

Applied in Kanayurak v. North Slope Borough, 677 P.2d 893 (Alaska 1984); Goodlataw v. State, Dep't of Health & Social Servs., 698 P.2d 1190 (Alaska 1985).

Stated in Beck v. State, 837 P.2d 105 (Alaska 1992).

Cited in Truesdell v. Halliburton Co., 754 P.2d 236 (Alaska 1988); Palmer v. Borg-Warner Corp., 838 P.2d 1243 (Alaska 1992).

III. PARTIES.

When estate may bring suit. — Only where no statutory beneficiary survives the decedent may the estate bring suit under the Wrongful Death Act. Kulawik v. Era Jet Alaska, 820 P.2d 627 (Alaska 1991).

V. DAMAGES.

Beneficiaries not limited to "actual losses". — Statutory beneficiaries are entitled to recover all of the deceased's probable accumulations, and are not limited to only their "actual losses." Kulawik v. Era Jet Alaska, 820 P.2d 627 (Alaska 1991).

Prospective inheritance. — A designated beneficiary in a wrongful death suit can recover "prospective inheritance," the inheritance he or she would have received if the deceased had not died prematurely. Kulawik v. Era Jet Alaska, 820 P.2d 627 (Alaska 1991).

Calculation of future earnings. — Future earnings in a wrongful death case are calculated by (1) determining the decedent's future gross earnings and (2) subtracting the decedent's personal consumption. Kulawik v. Era Jet Alaska, 820 P.2d 627 (Alaska 1991).

Future tax liability should not be considered in calculating either future gross earnings or future personal consumption. Kulawik v. Era Jet Alaska, 820 P.2d 627 (Alaska 1991).

Where the deceased leaves no wife or children, etc.

In accord with 2nd paragraph in main pamphlet. See Osborne v. Russell, 669 P.2d 550 (Alaska 1983).

Theories for determining loss to estate. — The net earnings theory and the net accumulations theory are alternative measures of the same amount when determining loss to the estate under this section — the probable value of the deceased's estate had he not prematurely expired less the actual value of the estate at death. Osborne v. Russell, 669 P.2d 550 (Alaska 1983).

Mental anguish. — Alaska does not expressly allow a widow and children to recover for their own mental anguish. Ehredt v. DeHavilland Aircraft Co., 705 P.2d 446 (Alaska 1985).

When claim for punitive damages allowed. — The language of this section providing that the court or jury should award the damages it "may consider fair and just" allows a claim for punitive damages when there is clear evidence that the wrongdoer acted maliciously, fraudulently, or with a wanton disregard for the plaintiff's safety. Tommy's Elbow Room, Inc. v. Kavorkian, 727 P.2d 1038 (Alaska 1986).

Right of decedent's estate to seek punitive damages. — The estate of a decedent who dies without statutory beneficiaries is entitled to seek punitive damages. Portwood v. Copper Valley Elec. Ass'n, 785 P.2d 541 (Alaska 1990).

Construction of subsection (c). — Subsection (c) is not to be construed as open invitation to the jury to award damages for any or all injuries or losses resulting from the death. Tommy's Elbow Room, Inc. v. Kavorkian, 727 P.2d 1038 (Alaska 1986).

The trial court should have reserved distribution of some or all of the settlement monies paid by some defendants in a wrongful death action until it could determine the full extent of "costs and expenses of suit" under this section, including costs and fees which foreseeably could have been one of the defendants which did not settle the claims against it, in the event that defendant prevailed in the plaintiffs' remaining action. Southcentral Air, Inc. v. Estate of Breitenfeld ex rel. Breitenfeld, 835 P.2d 1215 (Alaska 1992).

Right of prevailing defendant to trace distributed funds. — A defendant which prevailed in a wrongful death action has the right to trace the distributed funds paid by other defendants in the same action who settled the claims against them through the personal representative to each statutory beneficiary. The judgment on costs and attorney's fees should be entered against the personal representatives in their official capacity and also should specify that the judgment is chargeable only upon the actual beneficiaries of the settlement, as it was distributed. Southcentral Air, Inc. v. Estate of Breitenfeld ex rel. Breitenfeld, 835 P.2d 1215 (Alaska 1992).

Recovery by representatives held for decedents' estate. — Any recovery which personal representatives obtained as a result of wrongful death actions brought by them, they held as trustees for the beneficiaries of the decedents set forth in this section. The flow of this recovery to the beneficiaries thus did not pass through the decedents' estates; the estates had no involvement in the case at all, consequently, the trial court had no basis on which to determine that the estates, through the personal representatives,

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APPENDIX F

ALASKA STATUTE SUPPLEMENT

COSTS

SECTION 26

SECTION 33

Chapter 60. Costs.

Section
10. Costs and attorney fees allowed prevailing party

Sec. 09.60.010. Costs and attorney fees allowed prevailing party. The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death or property damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil action is contested without trial, or fully contested as determined by the court. (§ 5.14 ch 101 SLA 1962; am § 4 ch 139 SLA 1986)

Cross references. — For effect of the 1986 amendment to this section on Alaska Rules of Civil Procedure 82, see § 8, ch. 139, SLA 1986, in the Temporary and Special Acts.

Effect of amendments. — The 1986 amendment rewrote this section.

Editor's notes. — Section 9, ch. 139, SLA 1986 provides that the 1986 amendment to this section applies "to all causes of action accruing after June 11, 1986."

NOTES TO DECISIONS

I. General Consideration.
II. Right to Costs.
A. Generally.
III. Award.
A. Generally.
B. Attorney's Fees.

I. GENERAL CONSIDERATION.

Quoted in Alaska Fed. Sav. & Loan Ass'n v. Bernhardt, 788 P.2d 31 (Alaska 1990); Alaska Pac. Assurance Co. v. Collins, 794 P.2d 936 (Alaska 1990).

Cited in Kimmons v. Heldt, 667 P.2d 1245 (Alaska 1983).

II. RIGHT TO COSTS.

A. Generally.

Federal law. — Resort to state law favoring the award of at least partial attorney's fees to the prevailing party in civil actions in the absence of an express congressional directive was inappropriate in a federal question case when controlling federal common law existed and directly conflicted with the state rule. Home Sav. Bank v. Gillam, 952 F.2d 1152 (9th Cir. 1991).

III. AWARD.

A. Generally.

Expert witness fees. — Administrative Rule 7(c) permits recovery of $25 per hour expert witness fees for time spent testifying. Atlantic Richfield Co. v State, 723 P.2d 1249 (Alaska 1986).

Computer research and paralegal expenses are correctly characterized as costs and, if recoverable, should be requested under Civil Rule 79(b). Atlantic Richfield Co. v. State, 723 P.2d 1249 (Alaska 1986).

B. Attorney's Fees.

Attorney's fees not covered by literal requirements of Civ. R. 79(b).

This chapter uses the term "costs" in the most general sense, so that it encompasses both expenses of litigation and attorney fees. Civil Rule 79 employs a more specific and limited use of the term

outhcentral Air, Inc. v. Estate of reitenfeld ex rel. Breitenfeld, 835 P.2d 215 (Alaska 1992).

In determining a reasonable amount o award for attorney's fees, the court hall consider all relevant factors, includng the nature and value of the services endered, the duration and complexity of he litigation, the novelty of the issues resented, the amount in controversy, and he state's time-keeping procedures. Atantic Richfield Co. v. State, 723 P.2d 1249 (Alaska 1986).

Full reimbursement not automatically to be awarded.

Absent bad faith or vexatious conduct by the losing party, an award of full attorney's fees is manifestly unreasonable, and it constitutes an abuse of discretion. Atlantic Richfield Co. v. State, 723 P.2d 1249 (Alaska 1986).

Public interest plaintiffs.

A prevailing public interest plaintiff is normally entitled to full reasonable attorney's fees. Hunsicker v. Thompson, 717 P.2d 358 (Alaska 1986).

Awards under Civ. R. 82(a)(1). — An award of reasonable attorney's fees to the state under Civ. R. 82(a)(1) is not limited to the hourly salary of the highest paid assistant attorney general times the number of hours worked. Atlantic Richfield Co. v. State, 723 P.2d 1249 (Alaska 1986).

When a money judgment is recovered, a trial court may award attorney's fees according to the schedule provided in Civ. R. 82(a)(1), or it may award a fee "commensurate with the amount and value of legal services rendered" under subsection (a)(2) of that rule. Atlantic Richfield Co. v. State, 723 P.2d 1249 (Alaska 1986).

Attorney's actual travel expenses may be recovered under Civ R. 79(b) if they are necessarily incurred. Atlantic Richfield Co. v. State, 723 P.2d 1249 (Alaska 1986).

Sec. 09.60.040. Costs where party is a representative.

NOTES TO DECISIONS

Extent of individual liability of nonprevailing representative. — The personal representative who fails to prevail in a wrongful death action cannot be held individually liable for costs and fees solely on the basis of representative status, except when the representative is found to have conducted the action with mismanagement or in bad faith. Southcentral Air, Inc. v. Estate of Breitenfeld ex rel. Breitenfeld, 835 P.2d 1215 (Alaska 1992).

The trial court should have reserved distribution of some or all of the settlement monies paid by some defendants in a wrongful death action until it could determine the full extent of "costs and expenses of suit" under AS 09.55.580, including costs and fees which foreseeably could have been one of the defendants which did not settle the claims against it, in the event that defendant prevailed in the plaintiffs' remaining action. Southcentral Air, Inc. v. Estate of Breitenfeld ex rel. Breitenfeld, 835 P.2d 1215 (Alaska 1992).

Disbursement of settlement funds by representatives while action still pending. — Where the personal representatives who brought wrongful death actions against multiple defendants pursued disbursement of the settlement monies obtained from some defendants in the action, while their action against another defendant which did not settle the claims against it remained pending, the representatives were not held individually liable for costs and fees, and were not held to have committed mismanagement or to have acted in bad faith. Southcentral Air, Inc. v. Estate of Breitenfeld ex rel. Breitenfeld, 835 P.2d 1215 (Alaska 1992).

Right of prevailing defendant to trace distributed funds. — A defendant which prevailed in a wrongful death action has the right to trace the distributed funds paid by other defendants in the same action who settled the claims against them through the personal representative to each statutory beneficiary. The judgment on costs and attorney's fees should be entered against the personal representatives in their official capacity and also should specify that the judgment is chargeable only upon the actual beneficiaries of the settlement, as it was distributed. Southcentral Air, Inc. v. Estate of Breitenfeld ex rel. Breitenfeld, 835 P.2d 1215 (Alaska 1992).

Sec. 09.60.060. Security for costs where plaintiff a nonresident or foreign corporation.

NOTES TO DECISIONS

Section held unconstitutional. — This section violates equal protection of law under the Alaska constitution because it unreasonably restricts nonresident access to Alaska courts. Patrick v. Lynden Transp., Inc., 765 P.2d 1375 (Alaska 1988).

Chapter 63. Oath, Acknowledgment and Other Proof.

Sec. 09.63.010. Oath, affirmation, and acknowledgment. The following persons may take an oath, affirmation, or acknowledgment in the state:

(1) a justice, judge, or magistrate of a court of the State of Alaska or of the United States;

(2) a clerk or deputy clerk of a court of the State of Alaska or of the United States;

(3) a notary public;

(4) a United States postmaster;

(5) a commissioned officer under AS 09.63.050(4); or

(6) a municipal clerk carrying out the clerk's duties under AS 29.20.380. (§ 1 ch 37 SLA 1981; am § 1 ch 35 SLA 1989)

Effect of amendments. — The 1989 amendment, effective August 9, 1989, added paragraph (6) and made related grammatical changes.

Sec. 09.63.030. Notarization.

NOTES TO DECISIONS

"Sworn statement." — Notarized statement was a "sworn statement" even without proof of the administration of a verbal oath, where the declarant showed his identification to the notary, knowingly signed the document in her presence, the document stated that the defendant was duly sworn, and the notary actually notarized it. Gargan v. State, 805 P.2d 998 (Alaska Ct. App.), cert. denied, U.S. , 111 S. Ct. 2808, 115 L. Ed. 2d 981 (1991).

Requirements of oath satisfied. — When the notary is present at the signing of a document which purports to be sworn, and when the notary then notarizes the document, the requirements of the oath have been satisfied; the document qualifies as a sworn statement. Gargan v. State, 805 P.2d 998 (Alaska Ct. App.), cert. denied, U.S. , 111 S. Ct. 2808, 115 L. Ed. 2d 981 (1991).

HB 292

APPENDIX G

ALASKA STATUTES

MISCELLANEOUS PROVISIONS

SECTION 27

SECTION 28

SECTION 34

Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

(5) By a public officer, trustee, or personal representative:

State of _____

_____ Judicial District (or County of _____)

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

_____

Signature of Person Taking Acknowledgment

_____

Title or Rank

_____

Serial Number, if any

(b) If a document is acknowledged before a notary public of the state, the notary public shall

(1) endorse after the notary's signature the date of expiration of the notary's commission;

(2) print or emboss the notary's seal on the document;

(3) comply with AS 44.50.060 — 44.50.080 or other law. (§ 1 ch 37 SLA 1981)

Sec. 09.63.110. Uniformity of interpretation. AS 09.63.050 — 09.63.110 shall be interpreted as to make uniform the laws of those states which enact them. (§ 1 ch 37 SLA 1981)

Sec. 09.63.120. Definition. In AS 09.63.010 — 09.63.130, "notarial acts" means acts that the laws and regulations of the state authorize notaries public of the state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgment of instruments, and attesting documents. (§ 1 ch 37 SLA 1981)

Sec. 09.63.130. Title. AS 09.63.050 — 09.63.100 may be cited as the Uniform Recognition of Acknowledgments Act. (§ 1 ch 37 SLA 1981)

Chapter 65. Miscellaneous Provisions.

Secs. 09.65.010 — 09.65.012. Officers authorized to administer oath or affirmation; certification of documents. [Repealed, § 6 ch 37 SLA 1981. For present provisions, see AS 09.63.]

Sec. 09.65.020. Successive actions. Successive actions may be maintained upon the same contract or transaction when a new cause of action arises under the contract. (§ 5.01 ch 101 SLA 1962)

Cross references. — For related court rules, see Civ. R. 13(e) and 15(d).

Sec. 09.65.030. Corporate sureties. When, by the laws of the state or by a charter, ordinance, rule, or regulation of a political subdivision, municipality, public corporation, or by a board, body, organization, court, or judge, a recognizance, stipulation, bond, undertaking, or bail in an action, suit, proceeding, or matter conditioned for the faithful performance of an act or duty or for the doing of an act or thing is permitted or required to be given with one or more sureties, it is sufficient compliance if the instrument is executed by a corporation which has complied with the laws of the state and is authorized by law to act as surety upon instruments and in proceedings, actions, suits, and matters as set out in this section. (§ 5.02 ch 101 SLA 1962)

Cross references. — For similar court rule, see Civ. R. 80(a).

Sec. 09.65.040. Parties exempt from giving bond. (a) In an action or proceeding in a court in which the state or a municipality is a party or in which the state or a municipality is interested, no bond or undertaking is required of the state, a municipality, or an officer of the state or municipality.

(b) No bond for costs on appeal need be filed by a party to an action if a court finds that party to be indigent and the appeal not frivolous; this finding may be made upon an affidavit filed by that party showing that the party is unable to pay for a bond and further stating the grounds for the appeal and the belief that the party is entitled to redress. (§ 5.03 ch 101 SLA 1962; am § 1 ch 82 SLA 1977)

Cross references. — For relationship of 1977 amendments to court rules in effect at that time, see § 4, ch. 82, SLA 1977.

Sec. 09.65.050. Death or disability of a party. In case of the death or disability of a party to an action, the court may at any time within two years after the death or disability, on motion, allow the action to be continued by or against that party's personal representatives or successor in interest. (§ 5.06 ch 101 SLA 1962)

NOTES TO DECISIONS

The substitution of a new party is generally effected by motion, which should ordinarily be made by the party in interest. Nome & Sinook Co. v. Ames Mercantile Co., 187 F. 928 (9th Cir. 1911).

Case continues from point where original party left off. — As a general rule, the substituted party takes up the prosecution or defense at the point where the original party left off, and the pleadings already filed inure to the benefit of the new party. Nome & Sinook Co. v. Ames Mercantile Co., 187 F. 928 (9th Cir. 1911).

Better practice is to direct substituted party to file supplemental pleading. — The substitution having been allowed, probably the better practice would be for the court to direct the substituted party to file a supplemental complaint, showing the transfer and his right to continue the action, or for such party to obtain leave to file such a complaint; but the mere omission to file such a complaint, unless in disobedience of the court's order, does not render the cause subject to judgment on the pleadings. Nor does it furnish grounds for revoking the order of substitution. Nome & Sinook Co. v. Ames Mercantile Co., 187 F. 928 (9th Cir. 1911).

Collateral references. — 1 Am. Jur. 2d Abatement, Survival and Revival, §§ 47 — 112.

1 C.J.S., Abatement and Revival, §§ 114 — 186.

Death of principal defendant as abating or dissolving garnishment or attachment, 21 ALR 272; 131 ALR 1146.

Abatement upon death of cause of action to enforce personal liability of corporate officer, or director, or trustee, 79 ALR 1517.

Effect of death of party to divorce or annulment suit before final decree, 104 ALR 654; 158 ALR 1205.

Tortfeasor's death before death of injured person as precluding action for death, 112 ALR 343.

Death of contestant as affecting contest of will, 120 ALR 324; 124 ALR 751; 127 ALR 868; 150 ALR 819.

Abatement on mortgagee's death after sale of property but before confirmation of sale, 150 ALR 502.

Medical malpractice action as abating upon death of either party, 50 ALR2d 1445.

Sec. 09.65.060. Defense not prejudiced by assignment. If there is an assignment of a thing in action, the action by the assignee is without prejudice to a setoff or other defense existing at the time of, or before notice of the assignment. But this section does not apply to a negotiable promissory note or bill of exchange transferred in good faith and upon valuable consideration before due. (§ 5.07 ch 101 SLA 1962)

NOTES TO DECISIONS

Assignee's rights are coextensive with assignor's. — The rights of an assignee to recover upon choses in action and nonnegotiable contracts is coextensive with that of the party from whom he takes, but no greater. Hugill v. O'Hara Transp. Co., 11 Alaska 420 (1947).

Assignee for benefit of creditors takes subject to all equities and defenses which might be urged against assignor. Rutherford v. Muldoon, 11 Alaska 250 (1946).

And assignee of foreign corporation is barred if corporation failed to comply with statutes. — It is generally, if not universally, held that an assignee from a foreign corporation cannot maintain an action in cases where the foreign corporation, by reason of failure to comply with the laws of the forum, could not maintain the action. Hugill v. O'Hara Transp. Co., 11 Alaska 420 (1947).

Applicability of last sentence of section. — The last sentence of this section has no application where a note has lost its negotiability. Wear v. Farmers & Merchants Bank, Sup. Ct. Op. No. 2009 (File No. 3850), 605 P.2d 27, aff'd on rehearing, Sup. Ct. Op. No. 2030, 606 P.2d 1278 (1980).

Sec. 09.65.070. Suits against incorporated units of local government. (a) Except as provided in this section, an action may be maintained against a municipality in its corporate character and within the scope of its authority.

(b) A municipality may not require a person to post bond as a condition to bringing a cause of action against it.

(c) No action may be maintained against an employee or member of a fire department operated and maintained by a municipality or village if the claim is an action for tort or breach of a contractual duty and is based upon the act or omission of the employee or member of the fire department in the execution of a function for which the department is established.

(d) No action for damages may be brought against a municipality or any of its agents, officers or employees if the claim

(1) is based on a failure of the municipality, or its agents, officers, or employees, when the municipality is neither owner nor lessee of the property involved,

(A) to inspect property for a violation of any statute, regulation or ordinance, or a hazard to health or safety;

(B) to discover a violation of any statute, regulation, or ordinance, or a hazard to health or safety if an inspection of property is made; or

(C) to abate a violation of any statute, regulation or ordinance, or a hazard to health or safety discovered on property inspected;

(2) is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty by a municipality or its agents, officers, or employees, whether or not the discretion involved is abused;

(3) is based upon the grant, issuance, refusal, suspension, delay or denial of a license, permit, appeal, approval, exception, variance, or other entitlement, or a rezoning;

(4) is based on the exercise or performance during the course of gratuitous extension of municipal services on an extraterritorial basis; or

(5) is based upon the exercise or performance of a duty or function upon the request of, or by the terms of an agreement or contract with, the state to meet emergency public safety requirements.

(e) In this section

(1) "municipality" means a home rule borough or city, a general law borough or city of any class, a unified municipality established under AS 29.68.240 — 29.68.440, or a municipality established by merger or consolidation under AS 29.68.030 — 29.68.110; the term includes a public corporation established by a municipality;

(2) "village" means an unincorporated community where at least 25 people reside as a social unit. (§ 5.13 ch 101 SLA 1962; am § 1 ch 23 SLA 1964; am § 1 ch 19 SLA 1975; am § 1 ch 215 SLA 1975; am §§ 1-3 ch 37 SLA 1977)

NOTES TO DECISIONS

For history of section and applicability of Oregon decisions, see City of Fairbanks v. Schaible, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962).

This section is clearly substantive in character, for it creates and defines the rights of persons injured by an act or omission of a city and does not merely provide a rule of procedure for enforcing a right otherwise recognized by substantive law. City of Fairbanks v. Schaible, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962).

This section not only removes any procedural disability to maintain a suit against the municipality but is also substantive in character. Lucas v. City of Juneau, 168 F. Supp. 195 (D. Alas. 1958).

Liability generally. — For comprehensive discussion of municipality's tort liability prior to the 1977 amendment, see City of Fairbanks v. Schaible, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962); Scheele v. City of Anchorage, Sup. Ct. Op. No. 167 (File No. 307), 385 P.2d 582 (1963).

Effect of subsection (d). — The Alaska legislature, in its 1977 enactment of subsection (d) of this section, conferred broad immunity upon municipalities in connection with many governmental functions, including land use regulation. Wilcox Assocs. v. Fairbanks N. Star Borough, Sup. Ct. Op. No. 1984 (File No. 4349), 603 P.2d 903 (1979).

AS 09.50.250 is analogous to subsection (d)(2) of this section. Urethane Specialities, Inc. v. City of Valdez, Sup. Ct. Op. No. 2243 (File No. 4451), 620 P.2d 683 (1980).

Municipal notice of claims requirements. — The provisions of this section do not expressly authorize municipal notice of claims requirements; nor does this section expressly prohibit such conditions to suit. Johnson v. City of Fairbanks, Sup. Ct. Op. No. 1672 (File No. 3444), 583 P.2d 181 (1978).

Municipalities prohibited from requiring shorter notice period for tort claims. — This section, authorizing actions against municipalities, impliedly prohibits municipalities from requiring a potential plaintiff to submit notice of tort claims, as a condition to bringing an action, within a period shorter than the period provided by the statute of limitations. Johnson v. City of Fairbanks, Sup. Ct. Op. No. 1672 (File No. 3444), 583 P.2d 181 (1978); De Husson v. City of Anchorage, Sup. Ct. Op. No. 1673 (File No. 2996), 583 P.2d 791 (1978).

A decision by the city manager to issue a warning pertaining to safety hazards was an exercise of a discretionary function. However, the fact that issuance of the warning was a discretionary function did not automatically extend discretionary immunity to the city in regard to the warning's content. Urethane Specialities, Inc. v. City of Valdez, Sup. Ct. Op. No. 2243 (File No. 4451), 620 P.2d 683 (1980).

A city manager was permitted, if not required, to act in the public interest by taking reasonable action in the form of a public warning to the general populace pertaining to a matter of health and safety to prevent the creation of safety hazards even though such warning was defamatory. Urethane Specialities, Inc. v. City of

Valdez, Sup. Ct. Op. No. 2243 (File No. 4451), 620 P.2d 683 (1980).

When there was no evidence before the superior court suggesting that a city's warning of safety hazards was issued with a knowing or reckless disregard for the truth of the statements if contained that communication was protected by a privilege extended to administrative officers making defamatory communications required or permitted in the performance of official duties even though there was no immunity under this section. Urethane Specialities, Inc. v. City of Valdez, Sup. Ct. Op. No. 2243 (File No. 4451), 620 P.2d 683 (1980).

City's failure to follow own rules governing relations with employees. — This section does not immunize city from liability for damages resulting from its failure to follow its own rules governing its relations with its employees. Stanfill v. City of Fairbanks, Sup. Ct. Op. No. 2624 (File No. 6321), P.2d (1983).

Negligence in operation of ambulance. — The object to be accomplished by ambulance service operated and maintained by a city, that of service to the infirm, was so closely related to hospitalization benefits that it could be said to come within the scope of the opinion in Tuengel v. City of Sitka, 118 F. Supp. 399 (D. Alas. 1954), aff'd. 245 F.2d 61 (9th Cir. 1957), and the city could be held liable for any negligence in the operation of the ambulance. Lucas v. City of Juneau, 168 F. Supp. 195 (D. Alas. 1958).

Negligence of fire department. — For case decided prior to second 1975 amendment holding that a city which maintained a fire department could be held liable for injuries resulting from negligence connected with the department's firefighting activities, see City of Fairbanks v. Shaible, Sup. Ct. Op. No. 97 (File Nos. 112, 113), 375 P.2d 201 (1962). See contra: City of Fairbanks v. Gilbertson, 16 Alaska 590 (1957), aff'd, 262 F.2d 734 (9th Cir. 1959), where § 56-2-2 ACLA 1949 (predecessor to this section) was ignored by both the district court and the court of appeals.

Quoted in Atkinson v. Haldane, Sup. Ct. Op. No. 1495 (File No. 2981), 569 P.2d 151 (1977).

Collateral references. — Fire departments as pertaining to the governmental or to the proprietary branch of municipality, 9 ALR 143; 33 ALR 688; 84 ALR 514.

Necessity of consent to suit against state, 42 ALR 1464; 50 ALR 1408.

Municipal immunity from liability for torts, 120 ALR 1376; 60 ALR2d 1198.

Sec. 09.65.080. Suits by incorporated units of local government. An action may be maintained by an incorporated borough, city, or other public corporation of like character in its corporate name, and upon a cause of action accruing to it in its corporate character

(1) upon a contract made with the public corporation;

(2) upon a liability prescribed by law in favor of the public corporation;

(3) to recover a penalty or forfeiture given to the public corporation;

(4) to recover damages for an injury to the corporate rights or property of the public corporation. (§ 2 ch 23 SLA 1964)

Sec. 09.65.090. Civil liability for emergency aid. (a) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering emergency aid.

(b) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct. (§ 1 ch 32 SLA 1967; am § 1 ch 119 SLA 1971; am § 38 ch 102 SLA 1976)

NOTES TO DECISIONS

Common law. — At common law there is no duty to rescue. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

The law has persistently refused to recognize the moral obligation of common decency and common humanity, to come to the aid of another human being who is in danger. Only in certain limited situations, as for example where the actor was responsible for placing the imperiled person in his endangered position, has a duty been recognized. However, once rescue operations have begun, the rescuer is held to a duty of due care. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

The purpose of this section is to induce voluntary rescue by removing the fear of potential liability which acts as an impediment to such rescue. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

This section is directed at persons who are not under some preexisting duty to rescue. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

A rescuer under a preexisting duty to rescue would not need the added inducement of immunity from civil liability for his ordinary negligence. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

Such as a police officer. — A holding that police officers have no duty to rescue would not comport with public conceptions of their role. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

This section, the Alaska Good Samaritan statute, does not shield a police officer from liability for ordinary negligence. Lee v. State, Sup. Ct. Op. No. 749 (File No. 1395), 490 P.2d 1206 (1971), overruled on other grounds, Munroe v. City Council, Sup. Ct. Op. No. 1236 (File No. 2382), 545 P.2d 165, 547 P.2d 839 (1976).

Sec. 09.65.092. Civil liability for voluntary aircraft safety inspection. An aircraft or power plant technician or mechanic certified by the Federal Aviation Administration who participates without compensation in a voluntary aircraft safety inspection program is not liable for civil damage resulting from an act or omission arising out of an aircraft safety inspection in that program unless the act or omission constitutes gross negligence or reckless or intentional misconduct. (§ 1 ch 3 SLA 1982)

Sec. 09.65.095. Liability for administration of blood test. (a) No civil or criminal action arising out of battery may be brought against a health care provider for the act of taking a blood sample if the sample is taken

(1) at the request of a police officer under the circumstances specified in AS 28.35.035 or when the arresting officer has a search warrant or court order authorizing the taking of the blood sample; and

(2) without the use of excessive or unreasonable force.

(b) In this section,

(1) "health care provider" means a nurse licensed under AS 08.68, a physician licensed under AS 08.64, and a person certified by a hospital as competent to take blood samples;

(2) "hospital" means a hospital as defined in AS 18.20.130(1), including a governmentally owned or operated hospital.

(c) Nothing in this section shall be construed to prohibit recovery of damages incident to the improper or negligent withdrawal of blood. (§ 1 ch 80 SLA 1977; am § 5 ch 117 SLA 1982)

Effect of amendments. — The 1982 amendment inserted "under the circumstances specified in AS 28.35.035 or" in paragraph (1) of subsection (a).

Sec. 09.65.100. Examination and treatment of minors. (a) Except as prohibited under AS 18.16.010(a)(3),

(1) a minor who is living apart from the minor's parents or legal guardian and who is managing the minor's own financial affairs, regardless of the source or extent of income, may give consent for medical and dental services for the minor;

(2) a minor may give consent for medical and dental services if the parent or legal guardian of the minor cannot be contacted or, if contacted, is unwilling either to grant or withhold consent; however, where the parent or legal guardian cannot be contacted or, if contacted, is unwilling either to grant or to withhold consent, the provider of medical or dental services shall counsel the minor keeping in mind not only the valid interests of the minor but also the valid interests of the parent or guardian and the family unit as best the provider presumes them;

(3) a minor who is the parent of a child may give consent to medical and dental services for the minor or the child;

(4) a minor may give consent for diagnosis, prevention or treatment of pregnancy, and for diagnosis and treatment of venereal disease;

(5) the parent or guardian of the minor is relieved of all financial obligation to the provider of the service under this section.

(b) The consent of a minor who represents that the minor may give consent under this section is considered valid if the person rendering the medical or dental service relied in good faith upon the representations of the minor.

(c) Nothing in this section may be construed to remove liability of the person performing the examination or treatment for failure to meet the standards of care common throughout the health professions in the state or for intentional misconduct. (§ 1 ch 204 SLA 1968; am § 1 ch 73 SLA 1974; am § 6 ch 208 SLA 1975)

Cross references. — For age of majority, see AS 25.20.010.

Sec. 09.65.110. Civil liability for shoplifting. (a) A person who has attained the age of 18 years or an emancipated minor who shoplifts merchandise is, in addition to any criminal penalty provided by law, liable in a civil action to the owner or seller of the merchandise for all of the following:

(1) actual damages;

(2) a penalty equal to the retail value of the merchandise or $1,000, whichever is less; and

(3) a penalty of not less than $100 or more than $200.

(b) A person having legal custody of an unemancipated minor who shoplifts merchandise is liable in a civil action to the owner or seller of the merchandise for both of the following:

(1) a penalty equal to the retail value of the merchandise or $500, whichever is less; and

(2) a penalty of not less than $100 or more than $200.

(c) It is a condition precedent to maintaining an action under this section that the owner or seller of the merchandise send a notice demanding the relief authorized to the defendant by first class mail at the defendant's last known address 15 days or more before the action is commenced. The Department of Law may adopt regulations prescribing the form of this notice. It is not a condition precedent to maintaining an action under this section that the person who shoplifted merchandise was charged or convicted under any statute or ordinance.

(d) Judgments, but not claims, arising under this section may be assigned.

(e) For purposes of this section, a person "shoplifts merchandise" if without authority and with intent to deprive the owner of the merchandise,

(1) the person removes the merchandise of a commercial establishment, not purchased by the person, from the premises of the commercial establishment;

(2) the person knowingly conceals on, in or about the person the merchandise of a commercial establishment, not purchased by the person, while still upon the premises of the commercial establishment;

(3) the person knowingly substitutes or alters a price ticket in order to pay less than the indicated retail price.

(f) Merchandise found concealed on or about the person which has not been purchased by the person is prima facie evidence of a knowing concealment for purposes of (e)(2) of this section.

(g) The liability of a person for damages and penalties under this section is in addition to liability for an award of reasonable attorney fees that may be made to the prevailing party in a civil action under Rule 82 of the Rules of Civil Procedure.

(h) In this section, "emancipated minor" means a minor whose disabilities have been removed for general purposes under AS 09.55.590. (§ 1 ch 107 SLA 1974; am §§ 1, 2 ch 53 SLA 1980)

Cross references. — For crime of concealment of merchandise, see AS 11.46.220.

Effect of amendments. — The 1980 amendment rewrote the section.

Sec. 09.65.120. Definition of death. A person is considered medically and legally dead if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64, based on ordinary standards of medical practice, there is no spontaneous respiratory or cardiac function and there is no expectation of recovery of spontaneous respiratory or cardiac function or, in the case when respiratory and cardiac functions are maintained by artificial means, a person is considered medically and legally dead, if, in the opinion of a medical doctor licensed or exempt from licensing under AS 08.64, based on ordinary standards of medical practice, there is no spontaneous brain function. Death may be pronounced in this circumstance before artificial means of maintaining respiratory and cardiac function are terminated. (§ 1 ch 8 SLA 1974)

Sec. 09.65.130. [Renumbered as AS 25.24.310.]

Sec. 09.65.132. Income assignment order for child support. (a) A judgment, court order, or order of the child support enforcement agency (AS 47.23) providing for the support of a minor child shall contain an income assignment order.

(b) An income assignment order shall direct the obligor, the obligor's employer, future employer, and any person, political subdivision, or department of the state to assign money due or to be due the obligor to the obligee or, where the order is issued to the child support enforcement agency (AS 47.23) or collections are being made through the child support enforcement agency, to that agency, in an amount sufficient to meet the support payments imposed by the court or by the child support enforcement agency under AS 47.23.140.

(c) An obligee or person or public agency designated to receive support payments may request an income assignment order to take effect by alleging in a sworn statement that the obligor has failed to make a support payment in full within 45 days of the date the payment was due and by filing that statement with the court.

(d) If an application has been filed with the clerk of court, notice shall be sent by certified mail, return receipt requested, to the last known address of the obligor. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the obligor that the income assignment will take effect 15 days after the date on which the notice was received unless the obligor requests a hearing within the 15 days after the notice was sent. If the

obligor requests a hearing, an income assignment may not take effect until the conclusion of the hearing. The court shall hold a hearing requested under this section within 15 days after the date the obligor requests the hearing. If the obligor pays all support payments due before the hearing, an income assignment order may not take effect.

(e) The obligee or person or public agency that requested the income assignment order shall immediately send a copy of the income assignment order by certified mail to persons who may owe money to an obligor. An income assignment order made under this section is binding upon a person, employer, political subdivision, or department of the state immediately upon receipt of a copy of the income assignment order.

(f) An employer may not discharge an obligor on the basis of an assignment under this section.

(g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.35.080(b)(1) do not apply to income assignments under this section; however, 50 percent of the gross wages of the obligor or $100 a week, whichever is less, is exempt from execution under this section.

(h) The court may order an obligor to pay all court costs involved in an income assignment proceeding under this section. (§ 1 ch 96 SLA 1981; am §§ 16, 17 ch 59 SLA 1982; am § 1 ch 118 SLA 1982)

Effect of amendments. — The first 1982 amendment added "and by filing that statement with the court" at the end of subsection (c) and rewrote subsection (e).

The second 1982 amendment, in subsection (b), substituted "the obligor's" for "his" and inserted "obligee or, where the order is issued to the" and "or collections are being made through the child support enforcement agency, to that agency."

Editor's notes. — Section 12, chapter 96, SLA 1981, provides: "AS 09.65.132 added in sec. 1 of this act has the effect of changing Rule 77 of the Alaska Rules of Civil Procedure by establishing a procedure and time limits for court review of an income assignment order which differ from those generally applicable in civil actions."

AS 09.35.080, referred to in subsection (g), was repealed by § 14, ch. 62, SLA 1982. For present exemption provisions, see AS 09.38.

Sec. 09.65.135. Limitations on claims arising from skiing. (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) In this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of the skier's ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area. (§ 2 ch 80 SLA 1980)

Cross references. — For required snow safety and operation plan, see AS 18.60.822; for legislative intent, see § 1, ch. 80, SLA 1980, in Temporary and Special Acts.

Chapter 70. General Provisions.

Sec. 09.70.010. Applicability of title. This title governs all proceedings in actions brought after January 1, 1963, and all further proceedings in actions then pending, except to the extent that, in the opinion of the court, their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event, the laws in effect before January 1, 1963, apply. (§ 31.03 ch 101 SLA 1962)

NOTES TO DECISIONS

Cited in Turkington v. City of Kachemak, Sup. Ct. Op. No. 141 (File No. 177), 380 P.2d 593 (1963).

HB 292

APPENDIX H

ALASKA STATUTE SUPPLEMENT

JUDGMENTS

SECTION 31

SECTION 32

SECTION 34

(8) "Telecommunications Information Council" means the Telecommunications Information Council established under AS 44.19.502. (§ ch 115 SLA 1967; am § 14 ch 59 SLA 1982; am § 8 ch 200 SLA 1990; am § 104 ch 4 FSSLA 1992)

Effect of amendments. — The 1990 amendment made an internal reference change in the introductory paragraph, added present paragraph (1), renumbered former paragraphs (1)-(3) as paragraphs (2)-(4) while making a minor punctuation change in present paragraph (4), added paragraphs (5) and (6), renumbered former paragraph (4) as paragraph (7), and added paragraph (8).

The 1992 amendment, effective July 1, 1992, deleted the Alaska State Housing Authority from the list at the end of paragraph (5).

Sec. 09.25.230. Privilege relating to domestic violence and sexual assault counseling. Confidential communications between a victim of domestic violence or sexual assault and a victim counselor are privileged under AS 25.35.100 — 25.35.150. (§ 1 ch 95 SLA 1992)

Chapter 30. Judgments.

Article

1. Judgments (§§ 09.30.060 — 09.30.070)
2. Uniform Foreign Money-Judgments Recognition Act (§ 09.30.170)
3. Uniform Enforcement of Foreign Judgments Act (§§ 09.30.200, 09.30.220, 09.30.230)

Article 1. Judgments.

Section

60. Property liable on confession judgments
65. Offers of judgment
70. Interest on judgments

Sec. 09.30.010. Recording copy of judgment as lien.

NOTES TO DECISIONS

Recordable judgment. — Where a judgment was rendered by the United States District Court for the District of Oregon but prior to recording in Alaska, the judgment had not been registered in the District of Alaska pursuant to 28 U.S.C. § 1963, suit had not been brought on the judgment in the District of Alaska, and the Oregon judgment had not been made the subject of proceedings under either the Uniform Foreign Money Judgments Recognition Act (AS 09.30.100 et seq.) nor the Uniform Enforcement of Foreign Judgments Act (AS 09.30.200 et seq.), the judgment was nevertheless "recordable" in Alaska. Oregon Bank v. Young, 72 Bankr. 207 (D. Alaska 1986).

Place of execution. — Execution in the State of Alaska need not be available as a condition to recording a judgment rendered in a federal court in Oregon; it is sufficient if execution may be issued somewhere on the judgment. Oregon Bank v. Young, 72 Bankr. 207 (D. Alaska 1986).

Prohibitions on execution of judgments. — Both AS 13.16.505 and AS 09.35.060 prohibit, at least temporarily, the execution of judgments after the judgment debtor's death. Sheehan v. Estate of Gamberg, 677 P.2d 254 (Alaska 1984).

Sec. 09.30.060. Property liable on confession judgments. When an action upon a contract is pending against one or more defendants jointly liable, judgment may be given on the confession of one or more defendants against all the defendants jointly liable, whether all defendants have been served with the summons or not. However, the judgment may be enforced only against their joint property and against the joint and separate property of the defendant making the confession. (§ 4.06 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the statutory heading.

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 cost 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 reduced by five percent a year;

(2) if the offeree is the party defending against the claim, the interest rate shall be increased by five percent a year. (§ 3 ch 107 SLA 1930; am § 1 ch 48 SLA 1981; am § 2 ch 139 SLA 1986)

Effect of amendments. — The 1986 amendment at the beginning of the section substituted "At any time more than 10 days before the trial begins" for "On or before the 60th day following the filing of an answer in a civil action, and on the fifth day following the day discovery closes as ordered by the court," in the fourth sentence substituted "AS 09.30.070" for "AS 45.45.010(a)," and in paragraphs (1) and (2) substituted "five" for "two."

Editor's notes. — Section 9, ch. 139, SLA 1986 provides that the 1986 amendment to this section applies "to all causes of action accruing after June 11, 1986."

NOTES TO DECISIONS

Case decisions construing Alaska Civ. R. 68 apply also to interpretation of this statute. LaPerriere v. Shrum, 721 P.2d 630 (Alaska 1986).

Costs and attorney's fees. — An offer of judgment made under this statute does not include costs and attorney's fees not expressly mentioned in the offer. LaPerriere v. Shrum, 721 P.2d 630 (Alaska 1986).

An offer of judgment, made under Civil Rule 68 or this statute requires that costs allowable under Rule 79, and attorney's fees on a noncontested or partially contested basis under Rule 82 be awarded in addition to the principal sum specified in the offer. LaPerriere v. Shrum, 721 P.2d 630 (Alaska 1986).

Borrower's interest payments not included in prejudgment interest. — The superior court erred in permitting the jury's damage award to include prejudgment interest on a borrower's interest payments because this effectively compounds interest and results in double recovery. Tookalook Sales & Serv. v. McGahan, 846 P.2d 127 (1993).

Applied in Fairbanks N. Star Borough v. Tundra Tours, Inc., 719 P.2d 1020 (Alaska 1986).

Quoted in Wood v. Collins, 812 P.2d 951 (Alaska 1991).

Sec. 09.30.070. Interest on judgments. (a) The rate of interest on judgments and decrees for the payment of money 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.

(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day process is served on the defendant or the day the defendant received written notification that an injury has occurred and that a claim may be brought against the defendant for that injury, whichever is earlier. The written notification must be of a nature that would lead a prudent person to believe that a claim will be made against the person receiving the notification, for personal injury, death, or damage to property. (§ 4.07 ch 101 SLA 1962; am § 1 ch 69 SLA 1969; am § 1 ch 107 SLA 1980; am § 3 ch 139 SLA 1986)

Cross references. — For provisions requiring judgment for plaintiff to include legal interest, see AS 09.50.280; for legal rate of interest, see AS 45.45.010.

Effect of amendments. — The 1986 amendment added subsection (b).

Editor's notes. — Section 9, ch. 139, SLA 1986 provides that the 1986 amendment to this section applies "to all causes of action accruing after June 11, 1986."

NOTES TO DECISIONS

Rate of interest in condemnation proceedings beginning with declaration of taking. — See notes to AS 09.55.440 under analysis line I, "Constitutionality."

Applicability of 1980 amendment. — The 1980 amendment to this section, raising the interest rate from eight percent to 10.5 percent, did not apply to a judgment previously rendered. Alyeska Pipeline Serv. Co. v. Anderson, 669 P.2d 956 (Alaska 1983).

Compound interest. — This section does not provide for compound interest on

HB
299

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 299 (HES)

Revision Date: February 18, 1994
Title: "...revocation of a driver's license for illegal possession or use of a controlled substance...alcohol..."
Sponsor: Representative Toohey
Requestor: Representative Toohey

Department Affected: Department of Law
BRU: Prosecution
Component: All

COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						
FUNDING:						
1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-
POSITIONS:						
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: February 18, 1994

Richard L. Pegues /FOR

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: February 18, 1994

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ANALYSIS CONTINUATION:

The House HES Committee version of HB 299 adds a new section to AS 28.15 that provides for the revocation of a driver's license of a person that is at least 14 years of age, but not yet 21 years of age, for the possession or use of a controlled substance in violation of AS 11.17, or the possession or use of alcohol in violation of AS 04.16.050.

Revocation would be handled administratively by the Department of Public Safety if a police officer had probable cause based on personal observation that the possession or use occurred. The administrative process includes a provision for an administrative appeals hearing, as well as providing for subsequent judicial review. A police officer would be required to read a notice and to deliver a copy to the person advising that revocation will occur in seven days, unless the person requests an administrative review within the seven days. The written notice would serve as a temporary seven day license or permit, and the police officer would seize the person's license or permit if it is in the person's possession. Revocation would include the person's driver's license, permit, privilege to drive, or privilege to obtain a license or permit. A first revocation would result in a revocation for a period of 90 days; a second revocation would result in a revocation for a period of one year; and a third revocation would result in revocation for a period of three years.

Current statute (AS 28.15.185) contains similar penalties for the same offense; however, the existing statute is limited to youths ages 13 through 17, and the penalties can be invoked only if the person is adjudicated by a juvenile court of misconduct involving a controlled substance or alcohol.

Because the revocation process will be handled administratively within the Department of Public Safety, the bill is unlikely to have a direct fiscal impact on the Department of Law. However, we are concerned that there will be a secondary impact caused by youthful offenders who drive while their license is revoked or who cannot obtain a license or permit during a revocation period. We also expect that there will be a larger number of revocations than now occurs under the existing statute, because the age span covered by the bill is greater and because revocation will not require an adjudication. Thus it appears that the incidence of DWLS offenses will increase. However, data is not available that would give any clear idea on the amount of increase that will result if the bill is approved. Consequently, fiscal impact costs have not been shown. We therefore caution that increasing prosecutor caseload at a time when revenues are decreasing, and at a time when the existing caseload is already increasing, will result in prosecutors being forced to decline prosecution of certain offenses in favor of prosecuting more serious offenses.

Finally, we note that the bill includes well-reasoned findings in respect to the dangers involved in mixing alcohol and driving and the particular danger to youths under the age of 21. However, no findings have been included in respect to controlled substances and the dangers they present to youths under the age of 21.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 299 (HES)

Revision Date: _____ Dept. Affected: Public Safety

Title: An Act relating to revocation of a driver's license ... and providing for an effective date. BRU: Motor Vehicles

Component: Driver Services

Sponsor: Representative Toohey

Requestor: (H) HESS COMPONENT SERIAL NO. 500, 502

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	126.1	126.1	126.1	126.1	126.1	126.1
TRAVEL	1.5	0	0	0	0	0
CONTRACTUAL	17.4	16.1	16.1	16.1	16.1	16.1
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	42.0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	**188.0**	**143.2**	**143.2**	**143.2**	**143.2**	**143.2**
CAPITAL EXPENDITURES	**0**	**0**	**0**	**0**	**0**	**0**
CHANGE IN REVENUES (1005) Revenue Code	**225.0**	**225.0**	**225.0**	**225.0**	**225.0**	**225.0**

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	188.0	143.2	143.2	143.2	143.2	143.2
1006 GF/MHTIA						
Other						
TOTAL	**188.0**	**143.2**	**143.2**	**143.2**	**143.2**	**143.2**

Estimate of current year (FY 94) impact: $ _____

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
See Attached

Prepared By: Juanita M. Hensley Phone: 465-2650

Division: Motor Vehicles Date: 2/16/94

2/16/94

Approved by Commissioner: _____ Date: _____

Agency: Richard L. Burton, Dept. of Public Safety

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This bill will require the Division of Motor Vehicles to administratively revoke the driver's license of any person between the ages of 14 through 20 who has consumed or who is in possession of drugs or alcohol. The Division of Family and Youth Services (DFYS) reports approximately 1,200 youths between the ages of 14 through 17 are referred to their agency by police authorities for alcohol or drug offenses yearly. The Department of Public Safety Uniform Crime Report for 1992 shows approximately 1,300 persons between the ages of 18 through 20 are arrested or charged with drug and alcohol offenses (other than DWI) each year. The total number of youths whose driver's license or privilege to drive would be revoked is approximately 2,500.

In order to handle the additional 2,500 additional license revocations a year, and provide due process for the minor, one full-time Driver Improvement Specialist/Hearing Officer, and two full-time Motor Vehicle Representative I/II's would be required. The cost for personal services for a Driver Improvement Specialist/Hearing officer is 52.8; the cost for two Motor Vehicle Representative I/II's is 73.3. The total for personal services is 126.1. The Driver Improvement Specialist and one Motor Vehicle Representative will be located in the Juneau Driver Services office and will handle the all paperwork and hearings associated with administering the revocation of the driver's license. The second Motor Vehicle Representative will be located in the Anchorage Field Services section and will be used in the Motor Vehicle Field office to handle the reinstatement and issuance of a driver's license.

To revoke 2,600 additional driver's licenses a year takes over 30 processing steps per revoked license. It takes approximately 20 minutes to one hour to conduct an administrative hearing. Each processing step varies in the time it takes to complete. Complete accuracy is essential, as an error of entry onto a record could result in civil liability to the State. It takes approximately 20 minutes per applicant to reinstate a revoked driver's license; this time is exclusive of the time it takes a person to take the required tests; the person must make a new application for the driver's license or permit, take all of the required tests, and if the person is under the age of 18 a parent or legal guardian must give consent for the driver's license or permit, and pay the reinstatement fee. Travel and per-diem requested is to send the hearing officer to the National Judicial College for professional training in the fair hearing process.

Under existing law, each person whose license has been revoked must pay a $100 fee when applying for reinstatement of his or her driver's license. Assuming that 90 percent of the minors who are eligible for reinstatement will comply with the reinstatement requirements, approximately 225.0 will be generated annually as program receipt/general fund revenue.

DETAIL	FY95	FY96
PERSONAL SERVICES 2 Motor Vehicle Representative I/II 1 Driver Improvement Specialist/Hearing Officer	126.1	126.1
TRAVEL Airfare and per-diem to National Judicial College	1.5	
Travel is a one-time expense		
CONTRACTUAL 323 sq. ft. office space lease @$1.95 per sq. ft. 7.6 Postage and tolls 1.7 Telephone charges/conference call and long distance charges 6.8 Tuition for National Judicial College 1.3	17.4	16.1
Tuition is a one-time expense		
SUPPLIES Routine Office Supplies	1.0	1.5
EQUIPMENT 3 Complete workstations 10.0 each Copier 11.0 Telephone Purchase 1.0	42.0	
Equipment is a one-time expense		
TOTAL	188.0	143.2

Alaska State Legislature
HOUSE OF REPRESENTATIVES

Official Business

REPRESENTATIVE CYNTHIA TOOHEY

DISTRICT 13

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT
House Bill 299

"An Act relating to revocation of a driver's license for illegal possession or use of a controlled substance or illegal possession or consumption of alcohol; and providing for an effective date."

This sponsor statement addresses the proposed committee substitute which is referred to as *"Use it-Lose it"* legislation.

There is no doubt that the dangerous association of controlled substances and alcohol with driving begins at an early age. It cannot be stressed enough that usage of alcohol or controlled substances causes a reduction of mental and physical capabilities and can severely impair one's ability to drive in a responsible manner. HB299 would provide the Department of Public Safety with a tool to help discourage youth from starting the dangerous and often fatal association of controlled substances and alcohol with driving.

Driving is a privilege looked forward to by all youngsters. Loss of this privilege can be a powerful deterrent. The intent of this bill is to provide the strongest possible incentive for our children to say "no" to controlled substances or alcohol. It gives youth a reason, that is acceptable to their peers. to say "no," while providing positive reinforcement to alcohol and drug-free teenagers by maintaining their eligibility to drive.

Under HB299. a minor who is old enough to have either a permit or license to drive would lose that license, permit. or privilege if said minor possessed. used. or consumed a controlled substance or alcohol. Revocation would be through an administrative proceeding.

This bill is supported by the Department of Public Safety, the Alaska Medical Association, the Alaska Council on Prevention of Alcohol and Drug Abuse, Alaskans for Drug-Free Youth, the Alaska Association of Chiefs of Police, and others. It has a fiscal note from the Department of Public Safety, but it is anticipated the revenue generated would more than cover the cost of the implementation. It would also enable the State to access additional federal funds. The Department of Law has a zero fiscal note. Your support would be appreciated.

DIVISION OF LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM February 15, 1994

SUBJECT: Sectional Summary of CSHB 299( )
(Work Order No. 8-LS0961\O)

TO: Representative Cynthia Toohey

FROM: Michael F. Ford
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Findings.

Section 2.

Sec. 28.15.183. Requires administrative revocation of a driver's license of a person who is at least 14, but not yet 21 years old, who has illegally consumed or possessed alcohol or a controlled substance. Establishes periods of mandatory revocation. Provides that revocation under this section is consecutive to revocation under another provision of law, except for a revocation under AS 28.15.185. Allows for the Department of Public Safety to grant limited license privileges.

Sec. 28.15.184. Provides for review of the administrative revocation before a hearing officer. If the illegal possession or consumption is proven by a preponderance of the evidence the revocation is required to be sustained. Provides for appeal of the hearing officer's decision to superior court.

Section 3. Applicability.

Section 4. Effective date.

MFF:pl
94-132.plm

Sec. 04.16.050. Possession or consumption by persons under the age of 21. A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b). (§ 3 ch 131 SLA 1980; am § 8 ch 109 SLA 1983)

Effect of amendments. — The 1983 amendment substituted "21" for "19."

NOTES TO DECISIONS

Cited in M.O.W. v. State, Ct. App. Op. No. 95 (File No. 4846), 645 P.2d 1229 (1982).

Sec. 28.20.240. Proof required when driving privilege is restricted. Whenever under a law of this state the license of a person is suspended, revoked, limited under AS 28.15.201, or canceled for any reason, the department may not issue to that person a new or renewal of license until permitted to do so under the motor vehicle laws of this state. A period of suspension, revocation, or cancellation continues until proof of financial responsibility for the future is provided. Upon expiration of a period of limitation, the license remains revoked until proof of financial responsibility for the future is provided. (§ 26 ch 163 SLA 1959; am § 7 ch 78 SLA 1982; am § 12 ch 77 SLA 1983)

NOTES TO DECISIONS

A person convicted of operating a motor vehicle while under the influence of intoxicating liquor is required to furnish proof of his financial responsibility for the future. Paulson v. National Indem. Co., 498 P.2d 731 (Alaska 1972).

Cited in Manderson v. State, 655 P.2d 1320 (Alaska Ct. App. 1983).

Sec. 28.20.250. Action in respect to unlicensed person. (a) If a person does not have a license, but by final order or judgment is convicted of, or forfeits bail or collateral deposited to secure an appearance for trial for an offense requiring the suspension or revocation of license, or for driving a motor vehicle upon the highways without being licensed to do so, or for driving an unregistered vehicle upon the highways, a license may not be issued to the person unless the person gives and thereafter maintains proof of financial responsibility for the future.

(b) Whenever the department suspends or revokes a nonresident's operating privilege for conviction or forfeiture of bail, the privilege remains suspended or revoked unless the person has previously given or immediately gives proof of financial responsibility for the future. (§ 27 ch 163 SLA 1959)

NOTES TO DECISIONS

Effect of application. — AS 28.20.160 and this section provide simply that the unlicensed driver subject to those laws "may not be licensed" until certain conditions are met; they do not use the language of "suspending" or refer to any "privilege" the unlicensed driver may have had. Francis v. Municipality of Anchorage, 641 P.2d 226 (Alaska Ct. App. 1982).

Sec. 28.15.185. Court revocation of a minor's license to drive. (a) A person who is at least 13 years of age but not older than 17 years of age who is adjudicated by a juvenile court of misconduct involving a controlled substance under AS 11.71 or possession or consumption of alcohol under AS 04.16.050 is subject to revocation of the person's driver's license under (b) of this section.

(b) The court shall impose the revocation for an offense described in (a) of this section as follows:

(1) for a first conviction or adjudication, the revocation may be for a period not to exceed 90 days;

(2) for a second or subsequent conviction or adjudication, the revocation may be for a period not to exceed one year.

(c) Upon conviction or adjudication of an offense listed in (a) of this section the court may, upon petition of the person, review the revocation and may restore the driver's license, except a court may not restore the driver's license until

(1) at least one-half of the period of revocation imposed under this section has expired; and

(2) the person has taken and successfully completed a state approved program of drug rehabilitation if convicted of misconduct involving a controlled substance under AS 11.71, or alcohol rehabilitation if convicted of possession or consumption of alcohol under AS 04.16.050; this paragraph does not apply to a person who resides in an area that does not offer a state approved drug or alcohol rehabilitation program or a person that the court determines does not need alcohol or drug rehabilitation.

(d) Notwithstanding the provisions of AS 28.20.240 and 28.20.250, upon conviction of an offense specified in (a) of this section, the department may not require proof of financial responsibility before restoring or issuing the person's driver's license. (§ 1 ch 130 SLA 1988)

Sec. 28.15.201. Limitation of driver's license. (a) A court of competent jurisdiction revoking a person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(b) may, for good cause, impose limitations upon the driver's license of a person that will enable the person to earn a livelihood without excessive risk or danger to the public. A limitation may not be placed upon a driver's license until after a review has been made of the person's driving record and other relevant information, and a limitation may not be imposed when a statute specifically prohibits the limitation of a license for a violation of its provisions.

(b) A court imposing a limitation under (a) of this section shall

(1) require certification of employment;

(2) require proof of enrollment in and compliance with or completion of an alcoholism treatment program when appropriate;

(3) require the surrender of the driver's license; and

(4) issue to the licensee a certificate valid for the duration of the limitation.

(c) After the termination of a limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed is revoked until the person receives a new license meeting the requirements set out in AS 28.15.211.

(d) A court revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c), or the department when revoking a driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant limited license privileges for the final 60 days during which the license is revoked if

(1) the revocation was for a violation of AS 28.15.181(a)(5) and not for a violation of AS 28.15.181(a)(8);

(2) the person has not been previously convicted; in this paragraph, "previously convicted" has the meaning given in AS 28.35.030 and also includes convictions based on laws presuming that the person was under the influence of intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the person's blood;

(3) the court or the department determines that the person's ability to earn a livelihood would be severely impaired without a limited license;

(4) the court or the department determines that a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public; and

(5) the court or the department determines that the person is enrolled in and is in compliance with, or has successfully completed, an alcoholism education and rehabilitation treatment program. (§ 19 ch 178 SLA 1978; am §§ 10, 11 ch 117 SLA 1982; am §§ 8, 9 ch 77 SLA 1983; am §§ 16 — 18 ch 119 SLA 1990; am § 12 ch 3 SLA 1992; am § 4 ch 59 SLA 1993)

Revisor's notes. — In 1990, the word "five" was substituted for "six" in the last sentence of (d) of this section to correct a manifest error in § 18, ch. 119, SLA 1990.

Effect of amendments. — The 1990 amendment, effective January 1, 1991, inserted "or a hearing officer under AS 28.15.165" in the first sentence and added the provision relating to considerations in determining whether to grant limited license privileges in subsection (a); inserted "or hearing officer" in subsection (b); and added subsections (d)-(f).

The 1992 amendment, effective April 1, 1992, rewrote subsection (f).

The 1993 amendment, effective July 1, 1993, rewrote this section.

Editor's notes. — Section 30, ch. 3, SLA 1992 provides that for the purposes of the amendment made to (f) of this section by § 12, ch. 3, SLA 1992, convictions for offenses committed before April 1, 1992 are considered previous convictions.

Section 12(a), ch. 59, SLA 1993 provides that the 1993 amendment of this section "applies to offenses that are committed after July 1, 1993." Section 12(b), ch. 59, SLA 1993 provides that "[s]tatutes amended or added by this Act that refer to previous convictions apply according to the terms of those statutes whether the previous convictions occurred before, on, or after July 1, 1993."

NOTES TO DECISIONS

Issuance of limited licenses. — This section affirmatively vests the courts with ongoing power to issue a limited license, provided that issuance of such license is not prohibited under a provision of law in effect when the limited license is requested. Howell v. State, 834 P.2d 1254 (Alaska Ct. App. 1992).

Although subsections (d) and (e) specifically authorize the issuance of limited licenses to drivers whose license is revoked for DWI/refusal convictions, nothing in subsection (a) restricts the issuance of limited licenses only to such drivers. Howell v. State, 834 P.2d 1254 (Alaska Ct. App. 1992).

Application held not retroactive. — Where defendant, whose driver's license had been revoked, moved for the issuance of a limited license, in reliance on newly amended language in this section, and did so within the time limitations of R. Crim. P. 35(a), it was error for the trial court to rule the issuance of such license was precluded by AS 01.10.101 (relating to effect of repeals or amendments) because defendant had been sentenced prior to the amended provision's effective date. Application of this provision prior to the effective date of the amendment was not a retroactive application of an amendment to the sentencing scheme promulgated under AS 28.15.181(d) and 28.15.291(c). Howell v. State, 834 P.2d 1254 (Alaska Ct. App. 1992).

Sec. 28.05.141. **Hearings and appeals.** (a) Unless otherwise specifically provided, all hearings required under this title or regulations adopted under this title shall be conducted by the department under regulations adopted by the commissioner governing practice and procedure and consistent with due process of law. Hearings must be informal, and technical rules of evidence do not apply. A person who requests a hearing may retain an attorney. The hearing officer shall be appointed by the commissioner and may be appointed from the department. A hearing officer need not be an attorney, but must be impartial and may not have participated in the decision that is under review. The hearing officer does not have to file a full opinion or make formal findings of fact or conclusions of law, but the hearing officer must state the reasons for the determination and indicate the evidence relied upon. The proceedings at the hearing shall be recorded.

(b) A hearing ordered under (a) of this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless the department and the person agree that the hearing is to be held elsewhere. The department shall grant a hearing delay if the person presents good cause for the delay. If a person fails to appear for the hearing at the time and place stated by the department and if a hearing delay has not been granted, the person's failure to appear is considered a waiver of the hearing and the department may take appropriate action with respect to the person.

(c) If at the hearing under (a) of this section it appears that the record of the person sustains suspension, revocation, limitation, denial, or other remedial action, the hearing officer shall so order and the department may suspend, revoke, limit, deny, or take other remedial action against that person's license, registration, or title and, if appropriate, the department shall adjust the person's point total accumulated under AS 28.15.181.

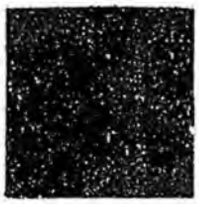
(d) A person aggrieved by the decision of the hearing officer may, within 30 days, initiate a proceeding in district court to rescind the department's action by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. The court shall conduct a hearing de novo. The decision of the department suspending, revoking, canceling, limiting, restricting, or denying a license, registration, title, permit, or privilege is stayed and does not take effect during the pendency of an appeal. (§ 6 ch 178 SLA 1978; am § 2 ch 60 SLA 1986)

Cross references. — For rules of court relating to appeals from administrative proceedings, see App. Rules 601-611.

Effect of amendments. — The 1986 amendment in subsection (c) inserted ", registration, or title."

NOTES TO DECISIONS

This section does not apply to a revocation of a license under AS 28.35.032. Graham v. State, 633 P.2d 211 (Alaska 1981).



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

February 15, 1994

Representative Cynthia Tochey
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Representative Tochey:

On behalf of the Alaska State Medical Association I would like to offer you our organization's strongest support for your committee substitute for House Bill #299. As physicians we are well aware of the trauma alcohol and drugs inflict upon Alaskans. These problems often begin while our youth are in their teens and this bill will serve as a ringing wake-up call that substance abuse has serious consequences and will not be tolerated. This bill is elegant in its simplicity and will be eloquent in its message once under-age drivers realize that substance abuse is incompatible with driving privileges. When enacted, this bill will be a model for other states to deal with this problem.

I thank you and your staff for your hard and thoughful work on this bill. If I can be of any assistance to you in its passage, do not hesitate to contact me. If my testimony would ever be helpful, I would be happy to assist you.

Sincerely yours,

Donald R. Lehmann, M.D., A.B.F.P.
President, Alaska State Medical Association

DRL:bj

Alaska Association Chiefs of Police

February 15, 1994

Representative Cynthia Toohey
Room 104
State Capital Building
Juneau, Alaska, 99801-1182

Dear Representative Toohey:

On behalf of the Alaska Association of Chiefs of Police I would like to offer our support for CSHB 299 (work draft of 2/11/94).

The number of teenagers killed while drinking and driving is an endless and ever increasing tragedy in today's society. In Alaska, where the illegal use of drugs and alcohol by minors is significantly higher than other parts of the country, the number of dysfunctional teens seems to be growing at an alarming rate.

The standard law enforcement approach of arrest and incarceration for possession or consumption has not solved or reduced this growing problem. (In the case of teens under the age of eighteen (18) it is simply a ride home with a later court appearance.) Education and counseling, along with innovative incentives is the only hope for reducing this behavior. Revocation of a minor's drivers license for any illegal possession or consumption, regardless of whether a vehicle was involved, is an extremely innovative approach to a very old problem. Because driving is such a cherished past time with most young people, the threat of losing this privilege may be the catalyst needed for some to finally "just say no".

If we can be of any assistance in the passage of this bill please let me know.

Very truly yours,

Ronald L. Otte
President

RLO/lp

Alaskans For Drug-Free Youth

Statewide Headquarters

2417 Tongass, Suite #114, Ketchikan, Alaska 99901
Phone: 907-247-2273, 1-800-478-2273, fax 907-247-2232

February 15, 1994

The Honorable Cynthia Toohey
State Capitol
Juneau, AK 99801-1182

Dear Representative Toohey:

Thank you for sending us the latest draft of HB 299. Our organization fully supports the "Use It - Lose It" administrative revocation of minors' permits and licenses. We believe this will be a very cost effective tool for law enforcement and more importantly, will provide our young people with a reason not to drink and use other drugs.

If there is one thing teenagers have in common, it is that they are all anxious to have a drivers license. The threat of losing it should make them think twice about taking a drink.

We are also interested in incorporating a .00 BAC for those under 21 years old. If it is possible to amend this bill to include that provision, we would appreciate it. We will continue to advocate for it in any case.

Thank you for being responsive to our suggestions for changes to your bill. If there is anything else we can do to help, please let us know. Lynda Adams will be back in the office next week and will be happy to answer any questions you may have.

Sincerely,

Cheri Davis,
Development Director

ALASKA COUNCIL ON
PREVENTION
OF ALCOHOL AND DRUG ABUSE, INC.
Founded 1967

February 15, 1994

Representative Cynthia Toohey
House of Representatives
State Capitol, Room 104
Juneau, AK 99801-1182

Dear Representative Toohey,

Thank you for informing me about C.S. House Bill 299 draft dated February 11, 1994. The data you are about to read comes from the Robert Wood Johnson Foundation report dated October 1993. Prepared by the Institute for Health Policy, Brandeis University entitled ***Substance Abuse the Nations Number One Health Problem, Key Indicators for Policy.*** I am in support of this bill for the following reasons:

- Adolescent is a period of experimentation with substance use and teenagers are particularly at risk for being involved with alcohol and drug related vehicle injuries.

- Traffic crashes remain the single greatest cause of death among American youth and young adults and almost half of all traffic fatalities are alcohol-related.

- Diverse efforts under way in communities across the country including prompt license suspension, sobriety police checks, zero tolerance for underage drivers and public education have had an impact on alcohol impaired driving decline.

- The public supports stringent sanctions against driving while intoxicated and according to a national poll would like to see tougher enforcement of drinking age laws (64%) automatic license suspension for the first offense (89%) and automatic confiscation of plates for the second offense (89%).

NCADD
3333 DENALI STREET, SUITE 201 • ANCHORAGE, ALASKA 99503
(907) 258-6021 • FAX (907) 258-6052 • (000) 478-PREV

- Alcohol in any quantity is a risk factor for young drivers and nearly 40% of 16 to 19 year old drivers in alcohol involved fatal crashes had a B.A.C. level under 0.10%.

- Early use is related to later problems. By the eighth grade 70% of adolescents have consumed alcohol.

The above statistics show that any intervention we create as a community for young people will save many lives. Tougher laws and higher prices on alcohol and tobacco have proven to be effective deterrents for substance use and abuse among young people.

I wish you success in getting House Bill 299 approved. If there is anything that I can do to help, please feel free to call me.

Sincerely,

Joseph DiMatteo
Executive Director

/JDM

SCOTT & WESLEY GERRISH MEMORIAL

MADD

ANCHORAGE, ALASKA CHAPTER

MAILING ADDRESS:
130 W. International Airport Rd., Suite J
Anchorage AK 99518

(907) 258-MADD

BUSINESS ADDRESS
130 W. International Airport Rd., Suite J
Anchorage AK 99518

March 3, 1994

Rep. Tooney
State Capitol
Rm #104
Juneau, AK 99801-1182

RE: "Bill #299 - Use It - Lose It"

Dear Representative Tooney:

The Anchorage Chapter of Mothers Against Drunk Driving supports the legislation to establish immediate license revocation for those juveniles who use controlled substances or consume alcohol.

Administrative license revocation has proven effective in reducing Driving Under the Influence offenses. It is constitutional, the U. S. Supreme Court, in "Mackey vs. Montrym: 2612,2620-21 (1979), has recognized that suspension of a drivers license prior to an administrative hearing is not a violation of due process so long as provisions are made for a swift post-suspension hearing.

MADD notes that an overloaded court system too often delays the judicial response to juvenile consumption or possession of a controlled substance. While awaiting their court date, many continue their actions with sometimes fatal results. On Labor Day, 1986, three (3) young people in Worcester County, Massachusetts, were killed by a 19-year old drunk driver who had been allowed to keep his license, even though he had more than .10% on a breath test a few days before. MADD chapters in Massachusetts united to help write a tough drunk driving bill in Massachusetts which became effective the following year.

The NHTSA, 1993 report on Drinking, Driving and other Drugs states that moe than 43% of all 16- to -20 year-old deaths result from motor vehicle crashes. About half of these fatalaties were alcohol-related crashes. Estimates are that 2,314 teenagers 16-20 years old died in alcohol related crashes in 1992.

NHTSA, 1993 report states that approximately 60% of pedestrians 16 years and older killed in nighttime crashes had a BAC of .10 or greater. The statistics are alarming. Youthful drinking in Alaska and drug usage is not the exception, it is so ordinary that students I have personally spoken with, have advised me that our area high schools are actually the easiest place to buy drugs in the state. They report that they not only buy drugs in plain view, but they use in plain view.

As a retired police officer from the State of Florida and now the Executive Director of the Anchorage Chapter of MADD, I strongly urge the passage of this "Use It-Lose It" legislation. More stringent laws are needed to reduce the numbers of youthful consumption of alcohol and drugs. If we say it's illegal to possess it, we need a counter-measure which will effectively reduce the incidence. We must do more to prevent such needless loss of life and health. I sincerely believe that this law would constitute the strongest deterrent available to youthful drivers in Alaska. The best payoff is the contribution this legislation will make to our safety as we drive from place to place within Alaska.

Sincerely,

Sandra Allise Ray,
Executive Director
Scott & Wesley Gerrish Memorial Chapter
Mothers Against Drunk Driving
Anchorage, Alaska

HOUSE COMMITTEE REPORT

(9)

Date Referred: May 6, 1993 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/17/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 299

HOUSE BILL NO. 299 DRIVER'S LIC REVOCATION/ALCOHOL PROGRAMS

"An Act relating to education programs on consumption of alcohol and to revocation of a driver's license for illegal consumption of alcohol; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 299(HESS)

[ ] the same title
[X] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[X] fiscal impact Public Safety
[X] zero fiscal note Law

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
	✓				
	✓				
	✓				
	✓				
	✓				
	✓				

Dan Brooks
CHAIRMAN'S SIGNATURE

BACKUP

ALASKA PEACE OFFICERS ASSOCIATION

State APOA Office • P.O. Box 240106 • Anchorage, Alaska 99524-0106 • (907) 277-0515

February 23, 1994

MAR 2 1994

Representative Cynthia Toohey
State Capitol
Juneau, AK 99801-1182

Dear Representative Toohey,

The Alaska Peace Officers Association supports HB 299. We feel that drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. People have come to understand and realize the high price we pay for such excesses. Finally, attitudes toward underage drinking and driving are becoming more critical. It is no longer a "rite of passage" for a young person to consume alcohol.

We agree with the intent of this legislation--to thwart underage drinking by limiting their privilege to drive if they possess or consume alcohol. The loss of this privilege will act as a strong deterrent to such acts.

Sincerely,

Michael A. Grimes
Statewide President
Alaska Peace Officers Association

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

M E M O R A N D U M February 18, 1994

SUBJECT: Revocation of drivers license - (CSHB 299(HES))

TO: Representative Cynthia Toohey

FROM: Michael F. Ford
Legislative Counsel

I wanted to alert you that CSHB 299(HES) contains a provision that should be changed in order to avoid confusion. In new sec. 28.15.183(g), a person whose driver's license is revoked is required to comply with the provisions of AS 28.15.-211(d) in order to receive a new license. However, the provisions of AS 28.15.211(d) are not readily applicable, at least not without considerable interpretation. This matter should be cleared up by amending AS 28.15.183(g) to clearly indicate which provisions of AS 28.15.211(d) are required to be met.

If you have further questions please contact me.

MFF:pl
94-140.plm

POSITION PAPER - Department of Public Safety

BILL NO: CSHB 299(HES)

DATE: February 15, 1994

TITLE: Driver's License Revocation; Alcohol/Drugs

CONTACT: Lorn M. Campbell
Executive Director
Highway Safety
Planning Agency

"An Act relating to revocation of a youth under 21 years of age driver's license for illegal possession or use of a controlled substance or illegal possession or consumption of alcohol."

Under Alaska Statute 28.15.011 the exercise to drive or have any degree of control over a motor vehicle upon a highway is a privilege and not a right guaranteed by law. Impaired driving and impaired-related crashes involving young drivers constitute a major problem in every motorized country in the world. In the United States, drivers age 16-19 have the highest crash rate--20.1 crashes per million miles driven in 1990--compared with a rate of 5.3 for all other ages combined.

Alaska is no exception to this problem as alcohol/drugs continue to be a major contributor in youthful traffic accidents and deaths in the State of Alaska. Statistics for 1992 showed 44.4 percent of youths under the age of 21 were impaired at the time of their deaths. Autopsy results disclosed that all of the youth who were impaired had blood alcohol levels well over 0.10.

As consumption or possession of alcohol or a controlled substance is unlawful by all persons under the age of 21 years, license revocation is a particularly appropriate penalty for young drivers for a number of reasons. First of all, mile for mile the teenage driver is a high-risk operator, especially when drinking. Every mile that this high-risk driving can be reduced by significant safety dividends for the individual and the public. Since the privilege to drive is important to a teenager, loss of the driver's license is particularly relevant in motivating the young driver to avoid alcohol or drug related offenses.

The Department of Public Safety strongly supports passage of CSHB 299(HES) or similar legislation that saves the lives of our State's most valuable resource--our youth.

Richard L. Burton,
Commissioner

POSITION

AMENDMENT

TO: CSHB 299(HES)

Page 3, lines 21 - 22:

Delete "demonstrates compliance with the provisions of AS 28.15.211(d)"

Insert "is enrolled in and is in compliance with, or has successfully completed

(1) an alcoholism education and rehabilitation treatment program, if the revocation resulted from possession or consumption of alcohol in violation of AS 04.16.050; or

(2) a drug rehabilitation treatment program, if the revocation resulted from possession or use of a controlled substance in violation of AS 11.71"

AMENDMENT

Amendment to proposed House Health and Social Services Committee work draft 8-LS0961\O, dated 2/11/94

Page 3, after line 18, create new subsection (g) and insert:

In this section, if a person's driver's license, permit, or privilege to drive, or privilege to obtain a license is revoked under this section, the person's license may not be issued or reinstated until the person demonstrates compliance with the terms of A.S. 28.15.211 (d).

Mike, here is the proposed language. If technical changes are necessary, proceed.

HB
300

FISCAL NOTE

No. 1
Bill Version: CSHB 300(L&C)
(H) Publish Date: 2/28/94

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date:
Title: "An Act relating to civil liability for commercial recreational activities. . . ."
Sponsor: House Labor and Commerce Committee
Requestor: House Labor and Commerce Committee

Department Affected: Administration
BRU: Risk Management
Component: Risk Management

COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

Estimate of any current year (FY 94) cost: $ 0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: J. Brad Thompson, Director
Division: Risk Management
Phone: 465-5723
Date:

Approved by Commissioner: Nancy Bear Usera
Agency: Department of Administration
Date: 2/17/94

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FISCAL NOTES

Alaska State Legislature

Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT
CS HB 300(L&C)
An Act Relating to Civil Liability for Commercial Recreational Activities

The Adventure Travel Society estimates that adventure travel and ecotourism segments of the travel industry are growing at a rate of 20% a year. The economic contributions of Alaska's wilderness based tourism, while undocumented, are undoubtedly important. AWRTA estimates that there are over 2,000 natural resource dependent tourism businesses in Alaska. Although few of these businesses employ upwards of 50 people, many are small, supporting or contributing to the income of only a few families. They are, however, Alaskan-based and vital to local employment. Unlike larger recreational outfits, these businesses keep their dollars in Alaska. They purchase their goods here, employ local residents, remain in-state, and spend the dollars they make here, thus providing both economic diversity and stability to many communities.

Many of these small businesses, however, are facing an uncertain future due to the high costs associated with insurance premiums and operation of such businesses. In order to encourage the continuance and survival of increasingly popular outdoor recreational activities, some kind of structure is needed to assure that both operators and participants become knowledgeable of, and assume, responsibility for inherent risks. House Bill 300 was introduced to establish the responsibilities of persons who operate and participate in commercial recreational activities. HB 300 in no way relieves recreational businesses/operators from liability. It simply establishes a framework that may help in the litigation process by stating that the state has recognized your responsibilities and sends the message that steps have been taken to educate both the operator and participant as to these responsibilities. While insurance premiums are based on many factors, including one's history of claims, similar legislation in Colorado has had the effect of lowering insurance premiums 15 to 20 percent.

HB 300 establishes a balance of responsibility between operators and participants, without diminishing the responsibility of either party.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM February 16, 1994

SUBJECT: Sectional Summary of HB 300

TO: Representative Bill Hudson

FROM: Michael F. Ford
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Purpose.

Section 2.
Sec. 05.45.010. Establishes that participation in a commercial recreational activity constitutes acceptance of that activity's inherent risks that are apparent to an ordinarily prudent person.

Sec. 05.45.020. Provides that a person who accepts an inherent risk of a recreational activity is contributorily negligent to the extent the inherent risk causes injury, death, or property damage. Requires a reduction in compensatory damages for any contributory negligence.

Sec. 05.45.030. Establishes the responsibilities of participants in a recreational activities.

Sec. 05.45.040. Establishes responsibilities of operators of recreational activities.

Sec. 05.45.050. Provides that AS 05.45 does not affect immunity provided under AS 09.45.795 or AS 09.65.135.

Sec. 05.45.100. Definitions.

Section 3. Applicability section.

Section 4. Effective date.

MFF:lmb
94-058.lmb

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM February 23, 1994

SUBJECT: Civil liability for commercial recreational activities - (HB 300)

TO: Representative Bill Hudson

FROM: Michael F. Ford MF
Legislative Counsel

You have asked for a general explanation of the effects of HB 300. The bill would, in my opinion, have its most significant effect in fixing the responsibilities of participants in recreational activities and operators of recreational activities. In sec. 05.45.030 and sec. 05.45.040 the bill lists these responsibilities. This should in some measure reduce the uncertainty regarding the legal responsibility for injuries resulting from recreational activities. While the bill also addresses inherent risks (in sec. 05.45.010) and contributory negligence (in sec. 05.45.020) these provisions are not significantly different from the existing system for allocating fault described under AS 09.17.

This bill will not immunize operators of recreational activities or eliminate litigation over injuries or property damage that occurs during a recreational activity. However, this bill may reduce the time spent in litigation by clearly indicating the responsibilities of each party when an accident occurs during a recreational activity.

Please contact me if you have further questions.

MFF:gc:pl
94-154.glc

BACK-UP MATERIALS

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

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

MEMORANDUM February 25, 1994

SUBJECT: Civil liability for commercial recreational activities - (CSHB 300(L&C))

TO: Representative Bill Hudson

FROM: Michael F. Ford
Legislative Counsel

I wanted to point out a definition in the CS that will need further attention. The definition of "recreational activity" in the CS is intended to specify that only certain commercial and recreational activities should be covered by the bill. As written however, it could be interpreted as describing an activity in which the person participating in the activity is doing so for commercial purposes. I would suggest that the definitions be changed to read as follows:

> (2) "commercial recreational activity" means a recreational activity for which the participants pay compensation;
>
> (3) "recreational activity" means an outdoor activity undertaken for the purpose of exercise, relaxation, pleasure, sport, or as a hobby and includes hunting, or sportfishing.

This will avoid an inference that the participant is acting in a commercial manner and will clearly separate the specific categories from the generic provision in the definition. This would also require that "commercial" be added before "recreational activity" in sec. 05.45.020, 05.45.030 and 05.45.040.

If you have any questions on this matter please contact me.

MFF:pl
94-160.plm

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 6, 1993 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/24

The LABOR AND COMMERCE Committee considered: HB 300

HOUSE BILL NO. 300 LIABILITY: COMMERCIAL RECREATION ACTIVITY

"An Act relating to civil liability for commercial recreational activities; and providing for an effective date."

RECOMMENDATIONS:
be replaced with CS HB 300 L+C
[X] the same title
[ ] a new title
[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[X] zero fiscal note Admin.

APPROVES PREVIOUS: (Dept/Date)
[ ] fiscal note(s) _____
[ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brent Porter	✓				
[illegible]	✓				
[illegible]	✓				
Bill Hudson	✓				

Bill Hudson
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 6, 1993 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/24

The LABOR AND COMMERCE Committee considered: HB 300

HOUSE BILL NO. 300 LIABILITY: COMMERCIAL RECREATION ACTIVITY

"An Act relating to civil liability for commercial recreational activities; and providing for an effective date."

RECOMMENDATIONS: [X] the same title
be replaced with CSHB 300 L+C [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[X] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal impact _____ [ ] fiscal note(s) _____

[X] zero fiscal note Admin. [ ] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
Brent Hooster	✓				
[illegible]	✓				
[illegible]	✓				
Bill Hudson	✓				

Bill Hudson
CHAIRMAN'S SIGNATURE

Marine Adventure Sailing Tours

Representative Bill Hudson
Chair, Labor and Commerce Committee
Alaska State Legislature
State Capital Building
Juneau, Alaska 99801-1182

February 16, 1994

Dear Bill:

There are, this session, a few bills floating around the legislature in which I am interested. As one of your constituents, I though you would like to know my thoughts on them. I offer also whatever help I can give to you and your staff regarding these actions.

HB 300 "An Act relating to civil liability for commercial recreational activities; and providing for an effective date."

This bill may be uninteresting to many in the times of such fiscal distress, but to me and many other operators of commercial outdoor businesses, this is a desirable action. I do not believe that it will reduce our insurance costs much, but it will offer more protection to us in the case of some legal action. I have been operating for 12 years and have never had an accident, but the possibility always exists.

In my business, I use an informational form which reads very much like HB 300. It simply advises my clients that Alaska can offer some difficult challenges and that if there is any doubt about anything, ask. As a concessionaire for the Glacier Bay National Park, I am advised by NPS to have clients sign a release (enclosed) which reads again like HB 300. The U.S. Forest service also requires guiding insurance and since most of Southeast is in the Tongass, HB 300 could be quite influential on the USFS regulations.

I won't go on about this, but instead urge you to hear the bill and move it out of committee before the rush of other matters befalls you. I don't see any opposition to the bill as it is currently written and I expect a zero fiscal note. This is not a tort reform bill, but rather the recognition that Alaska still has a wild and wonderful outdoors.

945 Fritz Cove Road, Juneau, Alaska 99801 (907) 789-0919

HB 238/SB215 Funding for the Oil and Hazardous Substance Release Response Fund (470 Fund)

I'm sure you know my sentiments on these actions, but I will ask your assistance in keeping the "470 Fund" intact. During my time as the manager of the ADEC Oil Pollution Control Program, I found that small oil spills are by far a more serious problem than is recognized by the public and their representatives. When the *Exxon Valdez* hit the skids, I was introduced to the devastation of both the natural environment, and the very fabric which holds together our local communities. Any defunding and de-emphasis on the prevention and control of oil pollution is a false economy. Take a minute and recall some of the telephone calls you got during the *Exxon Valdez* disaster. I shudder when I do.

Finally as I write this infrequent letter, I must address again a defunding issue; the ATMC. You know that I am a small operator, but that I live and participate in my local community. I spend just about everything here and believe that I help make Alaska a better place. There are many others like me, but because we are small, spending $5,000 for an ad in a national magazine is a heavy burden. There is little out there to help us compete in a very competitive market, but one thing that does help is the ATMC. I get more business from the "Alaska Planner" than from any other source. Please do not defund us any more. At least, see if we can maintain programs that keep our businesses here rather than favor large, foreign flag operations. If the Governor want's to find some money, maybe he can sell the road to Cordova or perhaps save a little aviation gas and stop the wolf kill. I'm feeling the pinch from the wolf kill boycott so I don't need to take another blow by way of a defunded ATMC. I've said enough.

Thank you for your attention and patience. I will come in to talk to Linda about HB 300 and perhaps we can meet as well. In the mean time, my best to you and your staff. Say hello to Lucy and keep up the good work.

Sincerely yours,

Andrew M. Spear

– NO NEED TO ANSWER, Bill.

Copy AWARTA

Alaska State Legislature

REPRESENTATIVE BILL HUDSON

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COMMITTEES
CHAIR
Labor & Commerce
VICE CHAIR
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MEMBER:
Transportation
Regulation Review
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Task Force

MEMORANDUM

February 28, 1994

TO: Representative Brian Porter, Chair
House Judiciary Committee

FROM: Representative Bill Hudson, Chair
House Labor and Commerce Committee

SUBJECT: CSHB 300(L&C), civil liability for commercial recreational activities

I would appreciate your scheduling a hearing for CSHB 300(L&C) at your earliest convenience. CSHB 300(L&C) passed the House Labor and Commerce Committee on February 24, with four "do pass" recommendations.

As we discussed, the bill will need further amendment in the House Judiciary Committee. Attached is a memorandum from legal counsel with two suggested amendments. With the new definition for commercial recreational activity, as suggested in the memo, I believe it preferable to go back to the broad definition of recreational activity without listing any specific activities, such as hunting or sport fishing. If a participant pays compensation for this activity, does it for exercise, relaxation, pleasure, sport or as a hobby, then I believe we've covered hunting and sportfishing, as well as the myriad activities this bill should affect.

Therefore, I would appreciate your considering two amendments in your committee, which I have attached to this memo, along with the memo from legal counsel.

If you have any questions, please contact me or my aide, Lynda Giguere.

Attachments