

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8405 SENATE LABOR & COMMERCE

No data available for 1979

Total number of MICA lawsuits: 8

- Number (and percentage) settled without payment: 5 (63%)
- Number (and percentage) settled with payment: 3 (37%)
- Average settlement: \$112,917
- Average cost of defense in cases resulting in no payment: \$18,144
- Average cost of defense in cases resulting in payment: \$36,186

Total number of MICA claims: 6

- Number (and percentage) settled without payment: 3 (50%)
- Number (and percentage) settled with payment: 3 (50%)
- Average settlement: \$33,904
- Average cost of defense in cases resulting in no payment: \$871
- Average cost of defense in cases resulting in payment: \$2,351

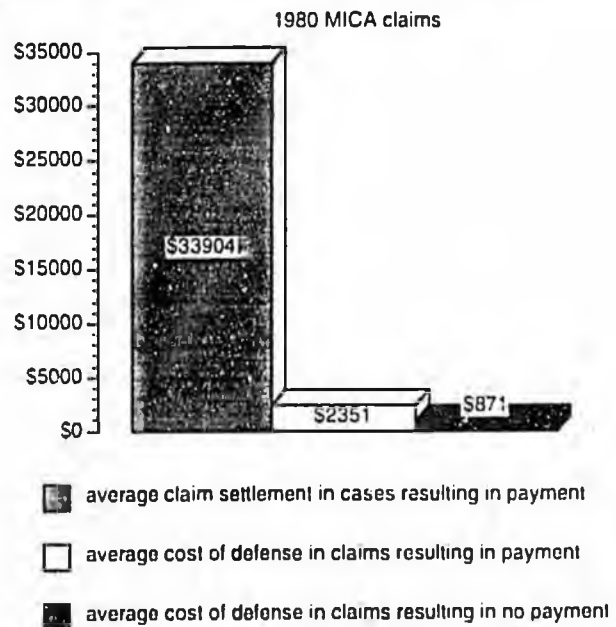
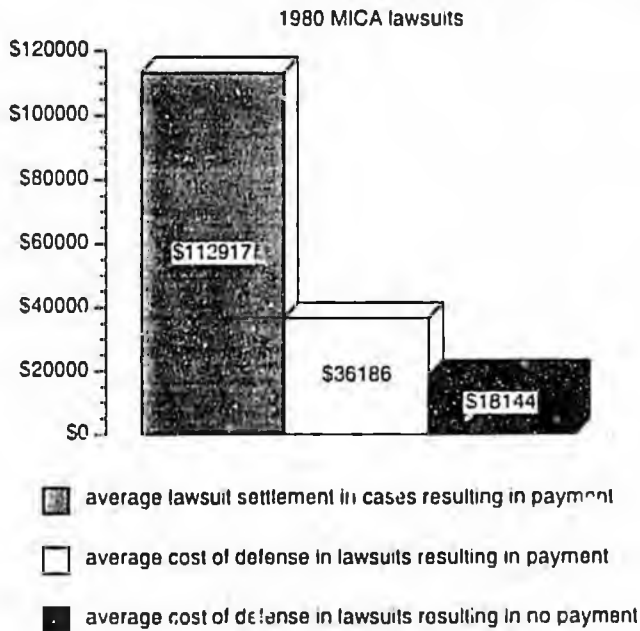
63% of all 1980 MICA lawsuits settled without payment



50% of all 1980 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



MIEC CLAIMS

1980

Total number of MIEC claims: 3

Number (and percentage) settled without payment: 3 (100%)

Number (and percentage) settled with payment: 0 (0%)

Average settlement: \$0

Average cost of defense in cases resulting in no payment: \$1,150

Average cost of defense in cases resulting in payment: \$0

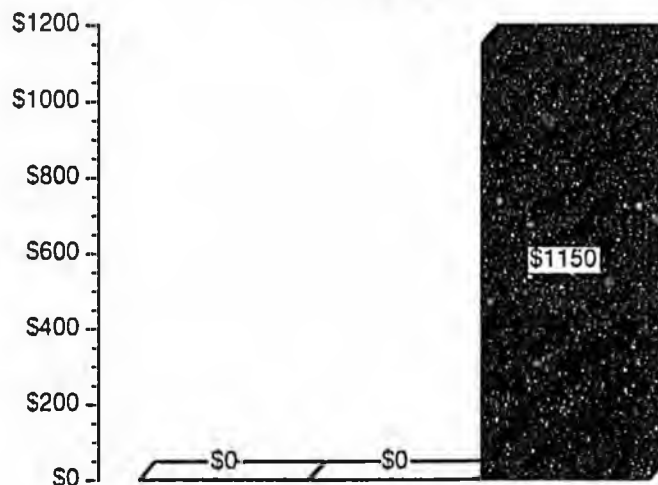
100% of all 1980 MIEC claims settled without payment



claims settled without payment

Cost of defending claims as compared to settlements

1980 MIEC claims



- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

Total number of MICA lawsuits: 7

Number (and percentage) settled without payment: 3 (43%)
 Number (and percentage) settled with payment: 4 (57%)
 Average settlement: \$62,500
 Average cost of defense in cases resulting in no payment: \$3,842
 Average cost of defense in cases resulting in payment: \$40,892

Total number of MICA claims: 7

Number (and percentage) settled without payment: 1 (14%)
 Number (and percentage) settled with payment: 6 (86%)
 Average settlement: \$2,500
 Average cost of defense in cases resulting in no payment: \$2,295
 Average cost of defense in cases resulting in payment: \$204

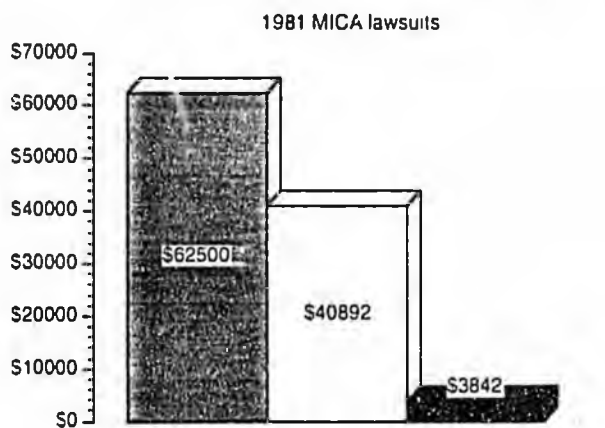
43% of all 1981 MICA lawsuits settled without payment



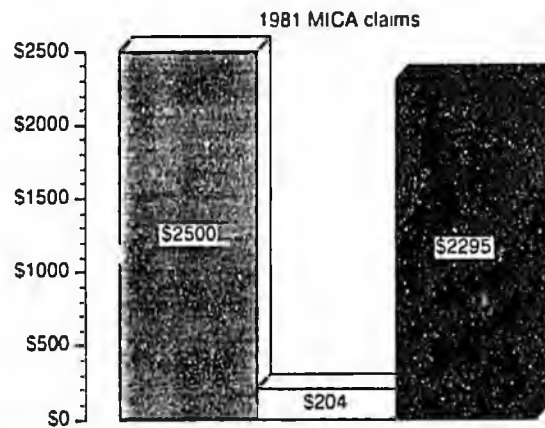
14% of all 1981 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment



- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

MIEC CLAIMS

1981

Total number of MIEC claims: 6

Number (and percentage) settled without payment: 5 (83%)

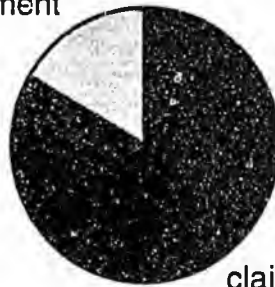
Number (and percentage) settled with payment: 1 (17%)

Average settlement: \$125,000

Average cost of defense in cases resulting in no payment: \$0

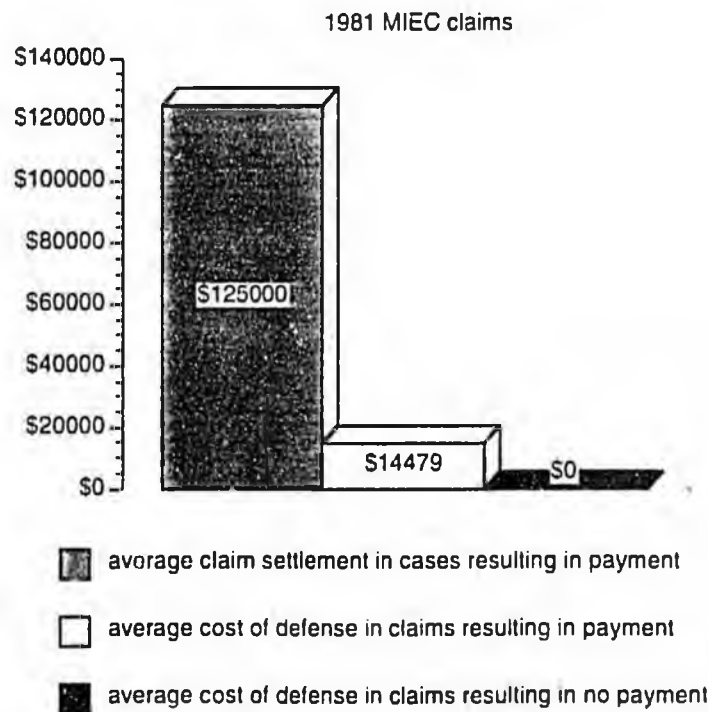
Average cost of defense in cases resulting in payment: \$14,479

83% of all 1981 MIEC claims settled without payment
claims settled with payment



claims settled without payment

Cost of defending claims as compared to settlements



Total number of MICA lawsuits: 20

Number (and percentage) settled without payment: 8 (40%)

Number (and percentage) settled with payment: 12 (60%)

Average settlement: \$82,469

Average cost of defense in cases resulting in no payment: \$4,695

Average cost of defense in cases resulting in payment: \$15,620

Total number of MICA claims: 5

Number (and percentage) settled without payment: 2 (40%)

Number (and percentage) settled with payment: 3 (60%)

Average settlement: \$63,722

Average cost of defense in cases resulting in no payment: \$3,588

Average cost of defense in cases resulting in payment: \$2,306

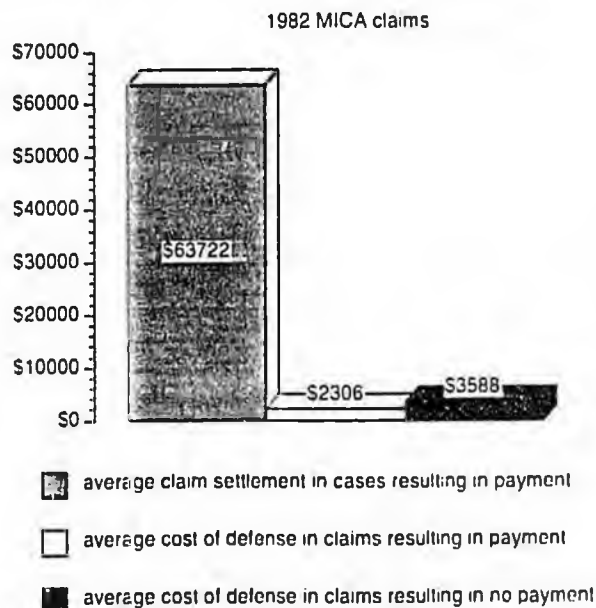
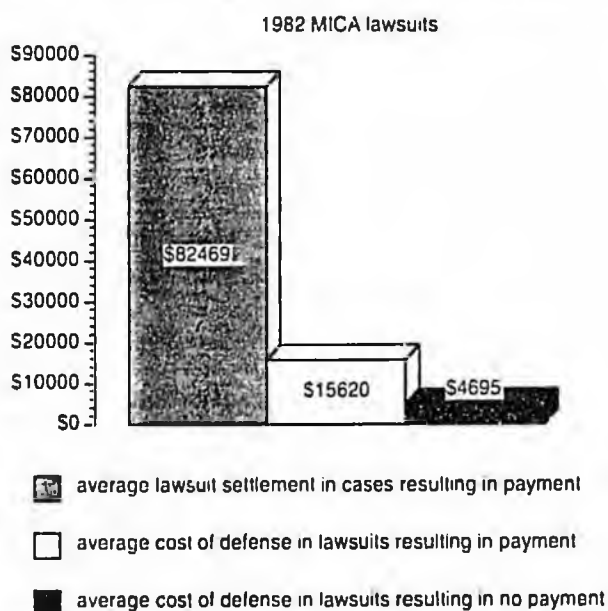
40% of all 1982 MICA lawsuits settled without payment



40% of all 1982 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



MIEC CLAIMS

1982

Total number of MIEC claims: 11

Number (and percentage) settled without payment: 5 (45%)

Number (and percentage) settled with payment: 6 (55%)

Average settlement: \$518,652

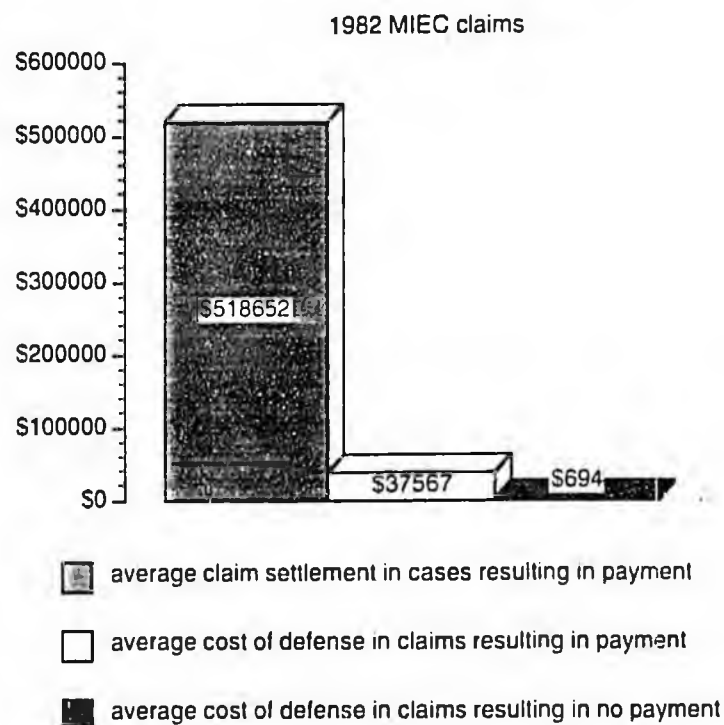
Average cost of defense in cases resulting in no payment: \$694

Average cost of defense in cases resulting in payment: \$37,567

45% of all 1982 MIEC claims settled without payment:



Cost of defending claims as compared to settlements



Total number of MICA lawsuits: 18

Number (and percentage) settled without payment: 10 (55%)

Number (and percentage) settled with payment: 8 (45%)

Average settlement: \$230,938

Average cost of defense in cases resulting in no payment: \$26,252

Average cost of defense in cases resulting in payment: \$28,538

Total number of MICA claims: 7

Number (and percentage) settled without payment: 4 (57%)

Number (and percentage) settled with payment: 3 (43%)

Average settlement: \$38,767

Average cost of defense in cases resulting in no payment: \$5,875

Average cost of defense in cases resulting in payment: \$4,244

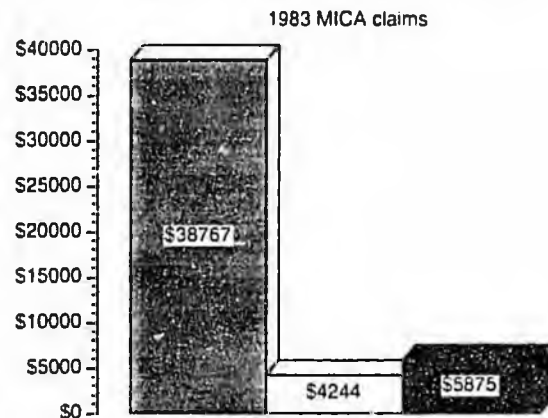
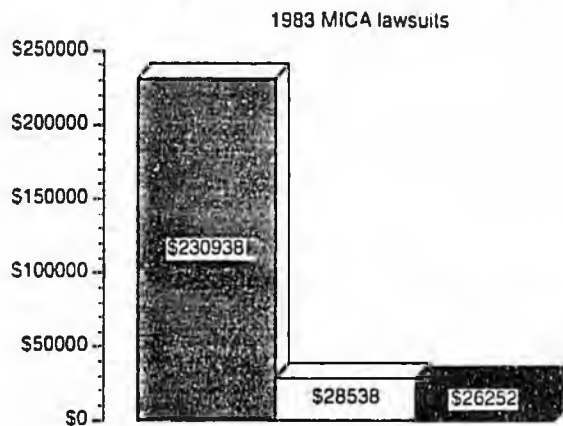
55% of all 1983 MICA lawsuits settled without payment



57% of all 1983 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment

- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

MIEC CLAIMS

1983

Total number of MIEC claims: 8

Number (and percentage) settled without payment: 6 (75%)

Number (and percentage) settled with payment: 2 (25%)

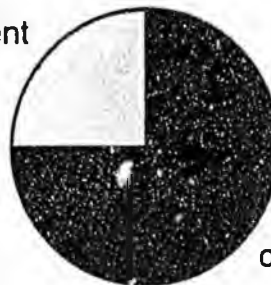
Average settlement: \$3,750

Average cost of defense in cases resulting in no payment: \$47,055

Average cost of defense in cases resulting in payment: \$5,973

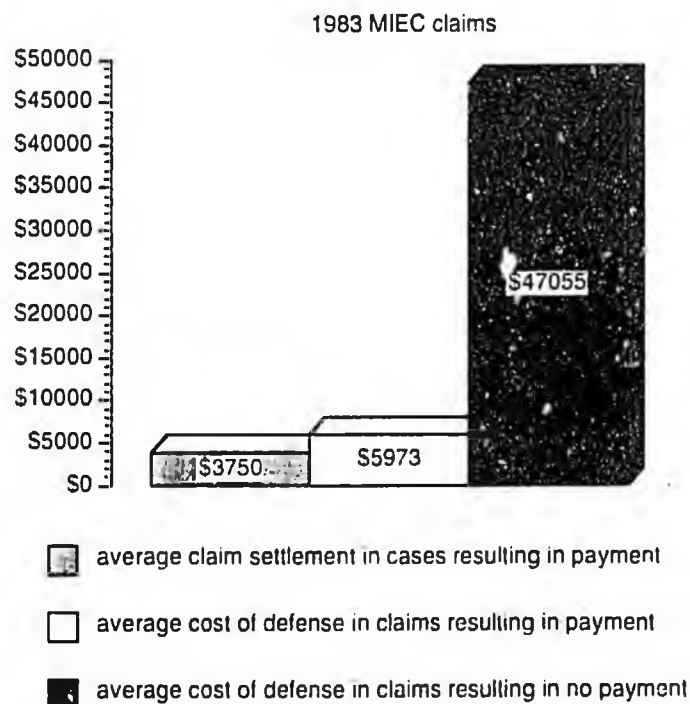
75% of all 1983 MIEC claims settled without payment

claims settled with payment



claims settled without payment

Cost of defending claims as compared to settlements



Total number of MICA lawsuits: 32

Number (and percentage) settled without payment: 17 (53%)

Number (and percentage) settled with payment: 15 (47%)

Average settlement: \$326,607

Average cost of defense in cases resulting in no payment: \$18,393

Average cost of defense in cases resulting in payment: \$68,101

Total number of MICA claims: 10

Number (and percentage) settled without payment: 2 (20%)

Number (and percentage) settled with payment: 8 (80%)

Average settlement: \$68,981

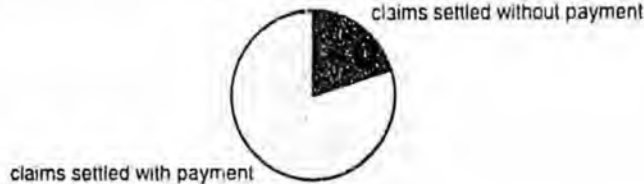
Average cost of defense in cases resulting in no payment: \$740

Average cost of defense in cases resulting in payment: \$1,973

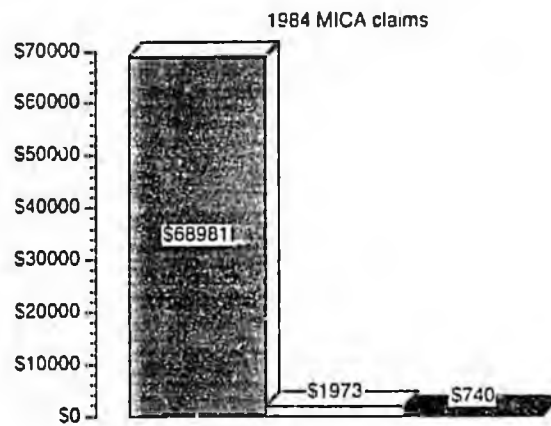
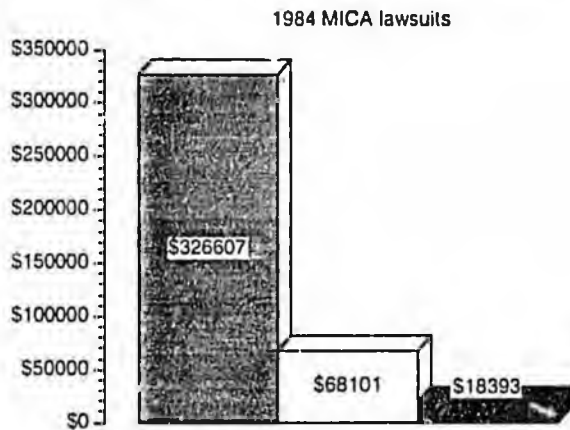
53% of all 1984 MICA lawsuits settled without payment



20% of all 1984 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment

- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

MIEC CLAIMS

1984

Total number of MIEC claims: 13

Number (and percentage) settled without payment: 9 (69%)

Number (and percentage) settled with payment: 4 (31%)

Average settlement: \$133,337

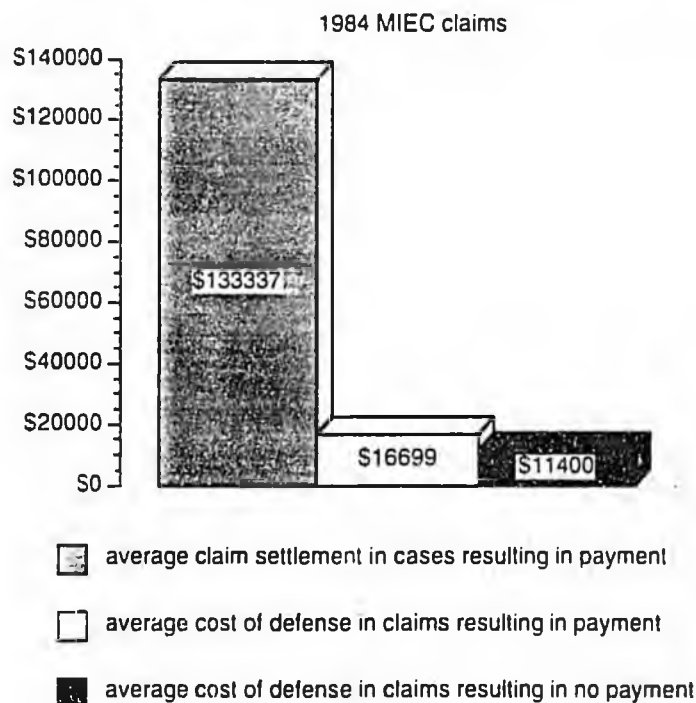
Average cost of defense in cases resulting in no payment: \$11,400

Average cost of defense in cases resulting in payment: \$16,699

69% of all 1984 MIEC claims settled without payment



Cost of defending claims as compared to settlements



Total number of MICA lawsuits: 32

Number (and percentage) settled without payment: 20 (63%)

Number (and percentage) settled with payment: 12 (37%)

Average settlement: \$499,950

Average cost of defense in cases resulting in no payment: \$4,449

Average cost of defense in cases resulting in payment: \$39,950

Total number of MICA claims: 29

Number (and percentage) settled without payment: 21 (72%)

Number (and percentage) settled with payment: 8 (28%)

Average settlement: \$126,672

Average cost of defense in cases resulting in no payment: \$705

Average cost of defense in cases resulting in payment: \$1,757

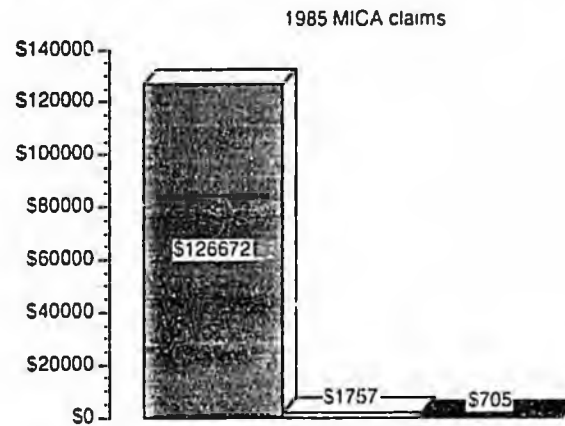
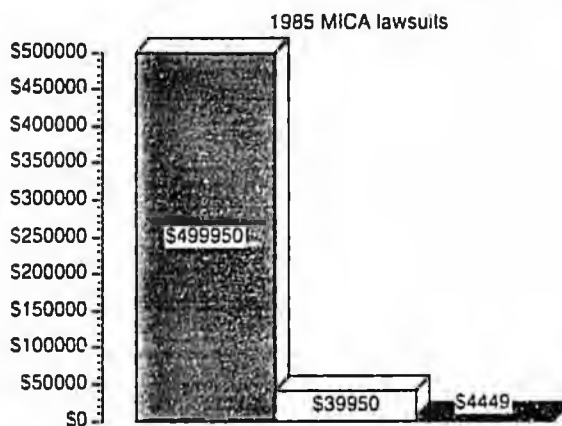
63% of all 1985 MICA lawsuits settled without payment



72% of all 1985 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment

- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

Total number of MIEC claims: 60

Number (and percentage) settled without payment: 57 (95%)

Number (and percentage) settled with payment: 3 (5%)

Average settlement: \$58,831

Average cost of defense in cases resulting in no payment: \$867

Average cost of defense in cases resulting in payment: \$18,350

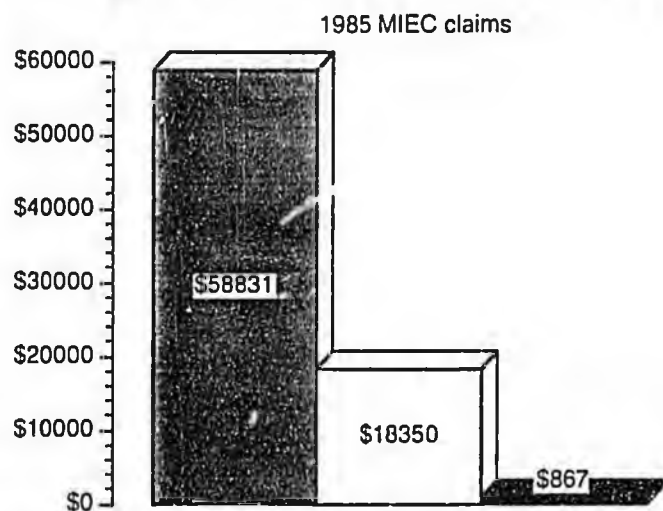
95% of all 1985 MIEC claims settled without payment

claims settled with payment



claims settled without payment

Cost of defending claims as compared to settlements



 average claim settlement in cases resulting in payment

 average cost of defense in claims resulting in payment

 average cost of defense in claims resulting in no payment

Total number of MICA lawsuits: 22

- Number (and percentage) settled without payment: 12 (55%)
- Number (and percentage) settled with payment: 10 (45%)
- Average settlement: \$195,994
- Average cost of defense in cases resulting in no payment: \$3,904
- Average cost of defense in cases resulting in payment: \$46,737

Total number of MICA claims: 16

- Number (and percentage) settled without payment: 7 (44%)
- Number (and percentage) settled with payment: 9 (56%)
- Average settlement: \$71,822
- Average cost of defense in cases resulting in no payment: \$283
- Average cost of defense in cases resulting in payment: \$2,167

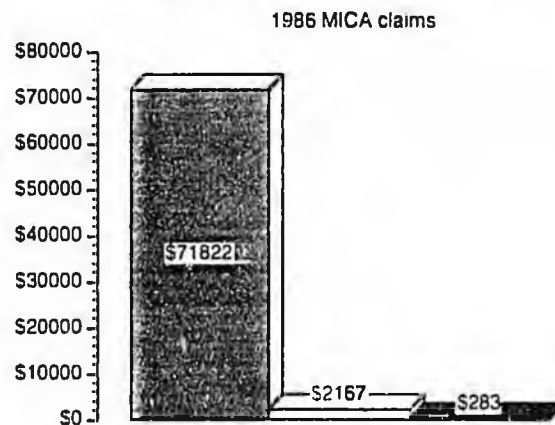
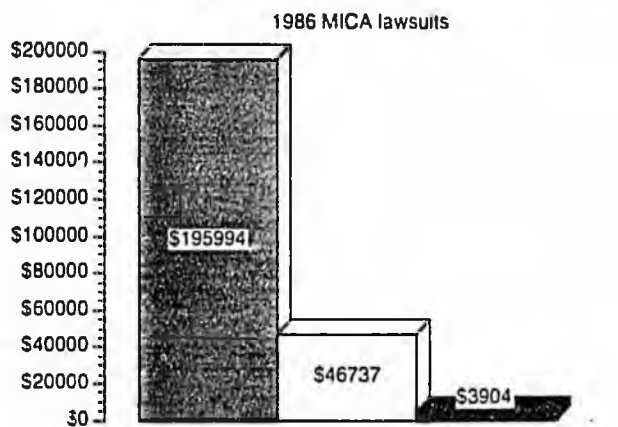
55% of all 1986 MICA lawsuits settled without payment



44% of all 1986 MICA claims settled without payment



Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment

- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

MIEC CLAIMS

1986

Total number of MIEC claims: 60

Number (and percentage) settled without payment: 58 (97%)

Number (and percentage) settled with payment: 2 (3%)

Average settlement: \$234,346

Average cost of defense in cases resulting in no payment: \$380

Average cost of defense in cases resulting in payment: \$73,133

97% of all 1986 MIEC claims settled without payment

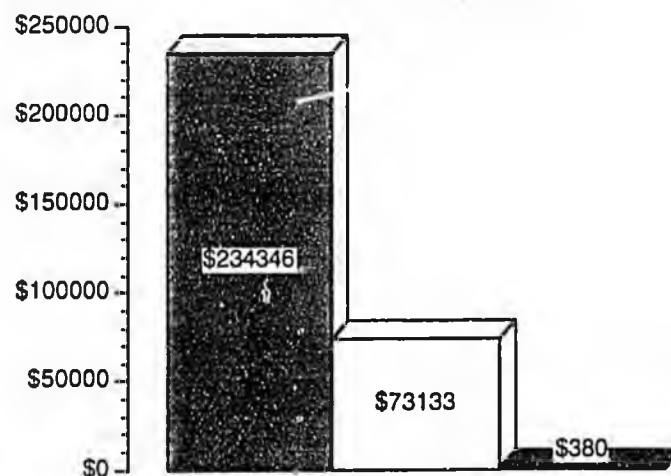
claims settled with payment



claims settled without payment

Cost of defending claims as compared to settlements

1986 MIEC claims



- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

Total number of MICA lawsuits: 11

Number (and percentage) settled without payment: 8 (73%)

Number (and percentage) settled with payment: 3 (27%)

Average settlement: \$39,607

Average cost of defense in cases resulting in no payment: \$187

Average cost of defense in cases resulting in payment: \$12,781

Total number of MICA claims: 15

Number (and percentage) settled without payment: 11 (73%)

Number (and percentage) settled with payment: 4 (27%)

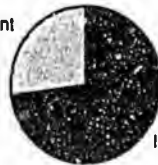
Average settlement: \$50,517

Average cost of defense in cases resulting in no payment: \$378

Average cost of defense in cases resulting in payment: \$5,435

73% of all 1987 MICA lawsuits settled without payment

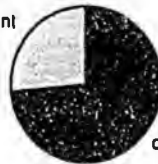
lawsuits settled with payment



lawsuits settled without payment

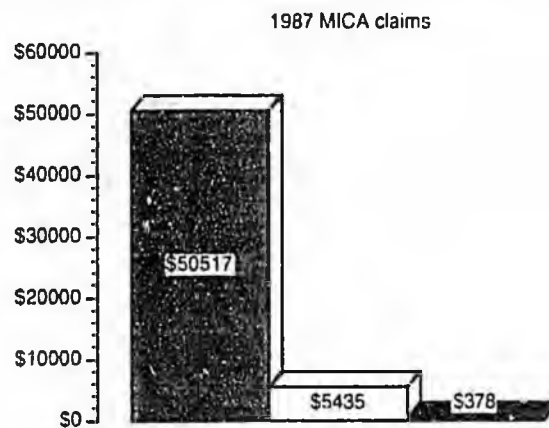
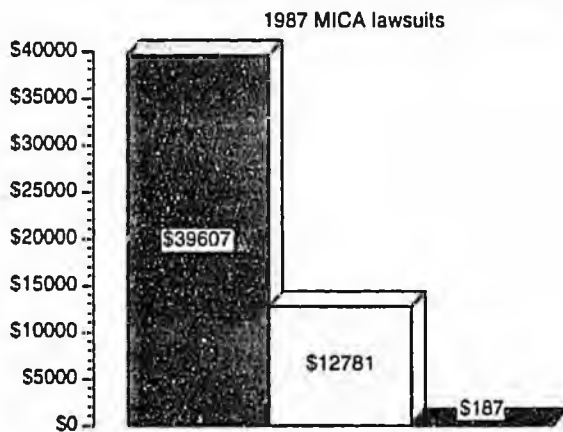
73% of all 1987 MICA claims settled without payment

claims settled with payment



claims settled without payment

Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment

- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

Total number of MIEC claims: 17

Number (and percentage) settled without payment: 15 (88%)

Number (and percentage) settled with payment: 2 (12%)

Average settlement: \$213,175

Average cost of defense in cases resulting in no payment: \$402

Average cost of defense in cases resulting in payment: \$4,280

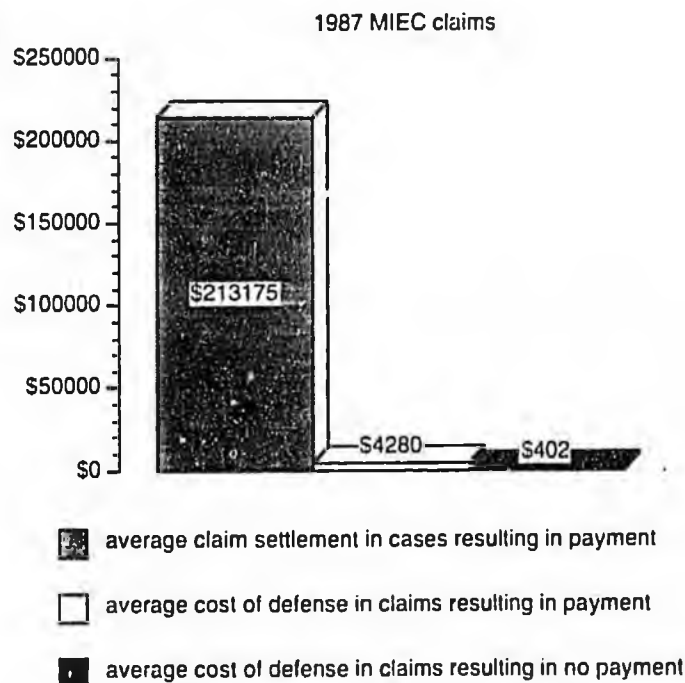
88% of all 1987 MIEC claims settled without payment

claims settled with payment



claims settled without payment

Cost of defending claims as compared to settlements



1988

MICA LAWSUITS & CLAIMS

Total number of MICA lawsuits: 2

Number (and percentage) settled without payment: 2 (100%)

Number (and percentage) settled with payment: 0 (0%)

Average settlement: \$0

Average cost of defense in cases resulting in no payment: \$1,609

Average cost of defense in cases resulting in payment: \$0

Total number of MICA claims: 11

Number (and percentage) settled without payment: 8 (73%)

Number (and percentage) settled with payment: 3 (27%)

Average settlement: \$17,104

Average cost of defense in cases resulting in no payment: \$39

Average cost of defense in cases resulting in payment: \$1,586

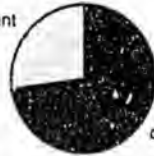
100% of all 1988 MICA lawsuits settled without payment



lawsuits settled without payment

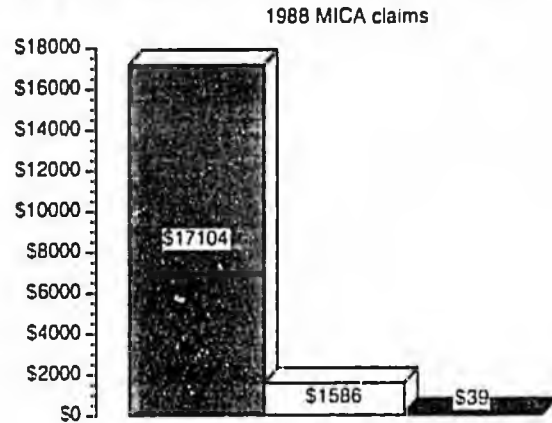
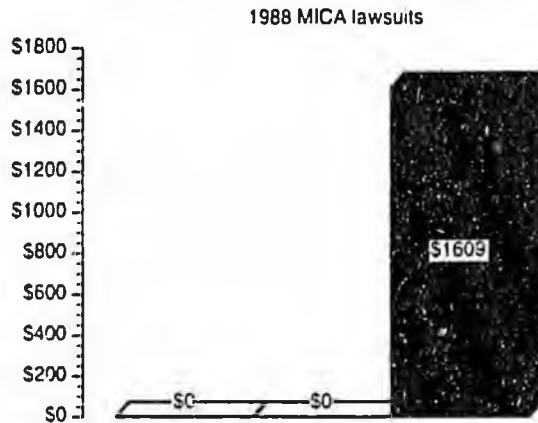
73% of all 1988 MICA claims settled without payment

claims settled with payment



claims settled without payment

Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment

- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

MIEC CLAIMS

1988

Total number of MIEC claims: 3

Number (and percentage) settled without payment: 2 (67%)

Number (and percentage) settled with payment: 1 (33%)

Average settlement: \$5,000

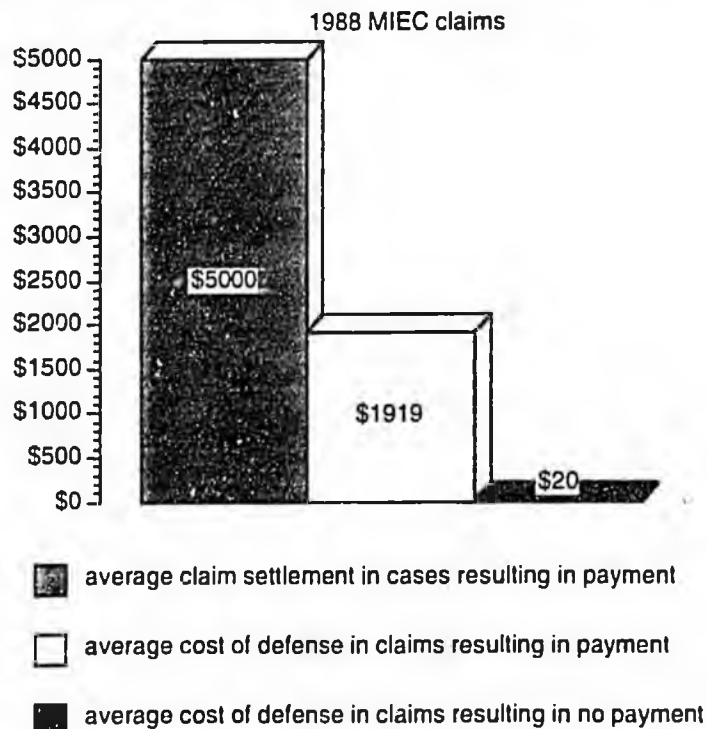
Average cost of defense in cases resulting in no payment: \$20

Average cost of defense in cases resulting in payment: \$1,191

67% of all 1988 MIEC claims settled without payment



Cost of defending claims as compared to settlements



Total number of MICA lawsuits: 0

Number (and percentage) settled without payment:

Number (and percentage) settled with payment:

Average settlement:

Average cost of defense in cases resulting in no payment:

Average cost of defense in cases resulting in payment:

Total number of MICA claims: 3

Number (and percentage) settled without payment: 0 (0%)

Number (and percentage) settled with payment: 3 (100%)

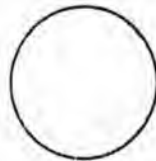
Average settlement: \$3,459

Average cost of defense in cases resulting in no payment: \$0

Average cost of defense in cases resulting in payment: \$479

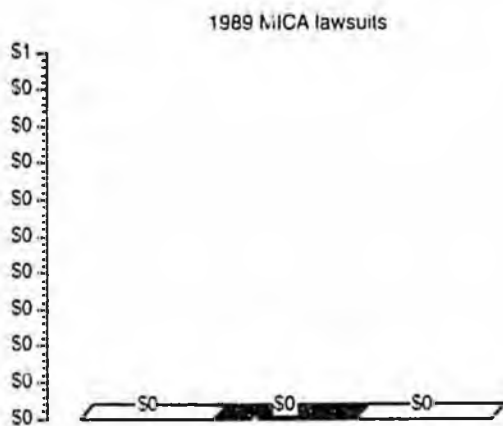
There were no 1989 MICA lawsuits reported settled

0% of all 1989 MICA claims settled without payment

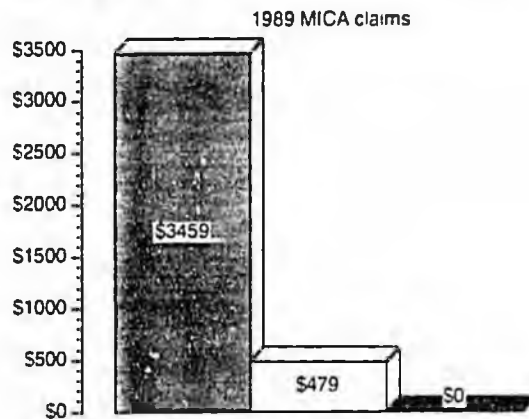


claims settled with payment

Cost of defending suits & claims as compared to settlements



- average lawsuit settlement in cases resulting in payment
- average cost of defense in lawsuits resulting in payment
- average cost of defense in lawsuits resulting in no payment



- average claim settlement in cases resulting in payment
- average cost of defense in claims resulting in payment
- average cost of defense in claims resulting in no payment

MIEC CLAIMS

1989

Total number of MIEC claims: 0 claims closed

No MIEC claims were closed in 1989.

Alaskans For Liability Reform

January 24, 1994

TO: All Alaska Legislators

FROM: Alaskans for Liability Reform

Enclosed herein are some data reports that should be very helpful for you in supporting the General Public Civil Liability Reform of 1993-1994. They are as follows:

1. Highlights From: "The Effect of 1980s Tort Reform Legislation on General Liability and Medical Malpractice Insurance", read the report from the Division of Insurance, which substantiates the actions and results.
2. "NFIB Alaska Civil Liability 1994 Survey Results".
3. Highlights From: "Product Liability News"
4. Highlights From: "American Consulting Engineers Council Liability Report", and please note the percentage of claims settled without any payment to Claimant.
5. "Tort Cost Trends: An International Perspective", Excerpts from the Tillinghast Report.

HIGHLIGHTS FROM:

The Effect of 1980s Tort Reform Legislation on General Liability and Medical Malpractice Insurance

by:

W. KIP VISCUSI
Department of Economics, Duke University, Durham, NC 27708

RICHARD J. ZECKHAUSER
Kennedy School of Government, Harvard University, Cambridge, MA 02138

PATRICIA BORN
Department of Economics, Duke University, Durham, NC 27708

GLENN BLACKMON
Delta Pacific, Olympia, WA 98501

Distributed by Alaskans For Liability Reform
P.O. Box 201668
Anchorage, AK 99520
Phone: 561-6250

Abstract

"A large number of states adopted tort reforms in the mid-1980s to limit the dramatic surge in insurance losses and premiums. Evidence based on liability insurance data by state indicates that these reforms substantially influenced general liability insurance. The levels of losses, premiums, and loss ratios (a measure of insurance profitability) all reflected the impact of the reform. The large-scale reform efforts in 1986 were particularly influential. Medical malpractice insurance was much less sensitive to the reform efforts."

"Liability insurance markets in the mid-1980s were in disarray, with rapidly escalating awards and significant company losses. Substantial pressures were exerted on state legislatures to ease the burdens imposed by liability costs, and the policy process responded in many states. In this article, we examine the effect of those reforms. In particular, we seek to discover whether the tort reforms enacted in the mid-1980s had any effect on the claims paid by insurance companies or the premiums paid by consumers.

This inquiry in to the effects of the tort reforms indicates that the performance of general liability insurance was quite sensitive to the liability regime. States that adopted general reforms experienced increases in insurance profitability, decreased levels of losses, and lower premiums. Although some specific reforms, such as modifications of joint and several liability, appear to be particularly influential, the general change in the liability climate that accompanies the reform effort also appears to be of consequence. The effects of tort reform on medical malpractice insurance proved less pronounced."

Liability reforms, 1985-1987

"Following the explosion in liability premiums in 1985, states became much more interested in liability reforming 1986 [see table]. The most prominent of the 1986 measures were the modifications of joint and several liability rules adopted by 16 states, which composed more than half of all premiums for general liability and medical malpractice. Three other reform measures were adopted in at least ten states: limits on liability, limits on non economic damages, and our catch-all "other reform" measure. Of all the years we will consider in this analysis, 1986 is the most prominent in terms of the extent of liability reform measures."

Liability reforms in 1986

Type of reform	Number of states	Percentage of liability premiums affected		State list
		General liability	Medical mal-practice	
Modify joint and several liability	16	53%	55%	Alaska, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Michigan, Minnesota, Missouri, New Hampshire, New York, Utah, Washington, West Virginia, Wyoming ^a
Limits on liability	13	11%	14%	Alabama, Alaska, Colorado, Connecticut, Delaware, Hawaii, Indiana, Maine, Maryland, New Hampshire, Tennessee, Utah, Wyoming
Limits on non economic damages	10	14%	12%	Alaska, Colorado, Florida, Kansas, Maryland, Minnesota, New Hampshire, New Mexico, Oklahoma, Washington
Limits on punitive damages	6	9%	7%	Colorado, Florida, Minnesota, New Hampshire, New Mexico, Oklahoma
Other reforms in 1986:				
Modify collateral source rule	5	13%	9%	Colorado, Connecticut, Indiana, Michigan, Minnesota
Provide for structured or periodic payments	7	12%	10%	Alaska, Connecticut, Iowa, Maine, Michigan, Utah, Washington
Modify dram shop rules	11	17%	18%	Arizona, Colorado, Connecticut, Indiana, Maryland, Michigan, Montana, New Hampshire, Tennessee, Utah, Wyoming
Modify statute of limitations	4	5%	5%	Colorado, Connecticut, Maine, Washington
Limit attorney contingency fees	4	5%	3%	Connecticut, Maine, New Hampshire, Wisconsin

^a Colorado, Utah, and Wyoming abrogated joint and several liability in 1986. The remaining states modified the doctrine.

Change in real total annual insurer loss and premiums, by line 1985-1988
(in \$ millions)

	Losses	Premiums	Loss Ratio 85	Loss Ratio 88
General liability	\$-4871	\$ 5678	1.12	0.62
Medical malpractice	\$ - 531	\$ 1256	1.22	0.79
Automobile	\$ 7924	\$14201	0.75	0.71

Conclusion

“Wholly apart from the concern with whether the stringency of the present liability system is optimal, it is, however, clear that the liability reform efforts in the mid-1980s did serve a constructive function. Before these reform efforts were enacted, liability markets were in substantial disarray. Insurance was too unprofitable to be offered at these rates over the long run. Many insurance companies denied coverage to parties seeking insurance. During this disruptive period, motels closed swimming pools, municipalities shut down playgrounds, and many firms withheld innovative but potentially risky products from the market.”

“Insurance, like any other factor of production, should have a ready supply sold at a price that reflects its long-run cost. The liability reform efforts of the mid-1980s did more than constrain the spiraling costs of insurance. They stabilized insurance markets, and thereby fostered the sound functioning of the economy.”

NFIB Alaska

National Federation of
Independent Business

Resa Jerrel, State Director

Civil Liability 1994 Survey Results



NFIB

National Federation of
Independent Business

Distributed by:
Alaskans For Liability Reform
P.O. Box 201668, Anchorage, AK 99520

The following questions and answers concerning tort reform are the results from the NFIB Alaska (National Federation of Independent Business) 1994 state ballot. Those surveyed were asked:

Should the legislature reform the Alaska tort law system by making the following changes?:

a.) Require construction and product liability actions involving personal injury, death, or property damage to be filed within six years of the accident?

YES 89% NO 4% UNDECIDED 7%

b.) Prevent injury claimants from naming only those businesses and individuals who have the deepest pockets?

YES 79% NO 9% UNDECIDED 12%

c.) Limit punitive damages to not more than three times that awarded for actual loss, or \$200,000, whichever is greater?

YES 83% NO 8% UNDECIDED 9%

d.) Limit award for economic loss to \$50,000 when the deceased is not survived by children, spouse or other dependent?

YES 78% NO 14% UNDECIDED 8%

e.) Make the courts and juries aware of any other awards the claimants may have received and deduct that amount from judgments?

YES 84% NO 10% UNDECIDED 6%

f.) Prohibit suits for damages if the injury or death occurred while the plaintiff was committing a crime?

YES 96% NO 3% UNDECIDED 1%

HIGHLIGHTS FROM:

Product Liability News

Issue No. 7, 1993

A Publication of The Product Liability Coordinating Committee

1001 19th St. N., #800
Arlington, VA 22209
703-276-5045

Distributed by Alaskans For Liability Reform
P.O. Box 201668
Anchorage, AK 99520
Phone: 561-6250

Senate Committee Passes S. 687 by Wide Margin, Sets Stage for Victory in '94

"The (U.S.) Senate Commerce Committee recently approved the Product Liability Fairness Act, S. 687, by an unprecedented 16-4 vote."

Said Bill Fay, executive director Product Liability Coordinating Committee...

"This extremely strong vote is a testament to the leadership of the senators who are spearheading the Senate movement to change our current product liability system.

For the first time, a majority of the democrats on the Commerce Committee voted in favor of product liability legislation. The 'aye' vote on November 9 included all of the committee's nine republicans and seven of the 11 committee democrats. In past efforts in the Commerce Committee, the bill has never received more than five out of eleven democratic votes."

Sound Bites

"In 1985, I opposed the legislation then being considered because I thought that it was skewed too much in favor of business. But sensible changes have been made over time to help consumers and promote fairness. Because of these changes, I now strongly support his product liability legislation."

*Sen. John D. Rockefeller (D-WV)
in his opening statement at the
Senate hearings on product
liability in September*

"If a manufacturer could not count on limiting its liability to risks that were known or knowable at the time of manufacture or distribution, it would be discouraged from developing new and improved products for fear that later significant advances in scientific knowledge would increase its liability."

*Supreme Court of California
Anderson v. Owens-Corning
Fiberglass June 4, 1991*

"We are the only country in the world in which, if you improve a product, it can be used against you."

*Bill Fay, executive director of PLCC
quoted in CoalVoice,
Sept./Oct., 1993*

Litigation Taxes: The Hidden Cost

How much do American consumers pay in hidden "litigation taxes" every year? Author Philip J. Hermann went directly to manufacturers, trade associations, insurance consultants, and others to find out. The results can be found in his book *The 96 Billion Dollar Game: You Are Losing*. Here are his findings:

Product/Service	Retail Amount	Litigation Cost	Percentage
Baseball	\$ 6.00	\$ 0.18	3.0%
Lawn Mower, Riding Rotary	700.00	42.00	6.0%
Ski Lift Ticket	40.00	2.00	5.0%
Step Ladder, 8-foot aluminum	119.00	23.86	20.0%
Maternity Delivery	1,200.00	399.50	33.0%
Hospital, 2 days for maternity	3,000.00	500.00	17.0%
DTP Vaccine	11.50	2.40	20.9%
Wheel Chair, Motorized	1,000.00	170.00	17.0%

HIGHLIGHTS FROM:

American Consulting Engineers Council
LIABILITY REPORT

Fourteenth Annual Professional Liability Survey Result 1992

ACEC is a Washington, D.C. based national professional association representing over 5,000 private-practice consulting engineering firms. For more information, contact J. Laing Bowles at 202-347-7474

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Phone: 561-6250

Claims

<u>Year</u>	<u>Claims Made Per 100 Firms</u>	<u>Claims Pending Per 100 Firms</u>
1992	45	82
1991	44	77
1990	40	60
1989	43	79
1988	47	84
1987	46	75

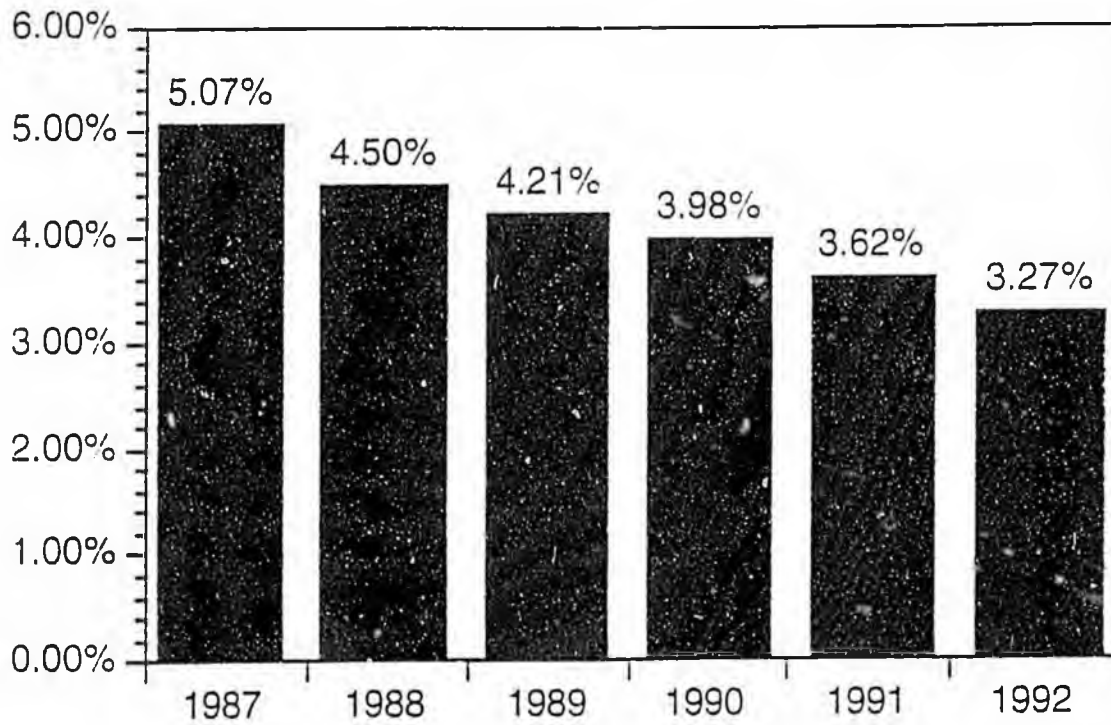
<u>Method of Resolution: 1992</u>	<u>Percent</u>
Negotiation	48 %
ADR: Mediation	10 %
Arbitration	2 %
Other ADR	3 %
Litigation	
Settled Prior to Court Award	20 %
Settled by Court Award	7 %
Other	10 %
Total	100 %

Cost of Claims Settled

	<u>Defense</u>	<u>Award/Settlement</u>
By Firm	\$14,791	\$20,007
By Insurer	\$ 7,421	\$46,943

**Percentage of Claims Settled Without Any
Payment to Claimant: 37%**

Insurance Cost As A Percentage of Billings



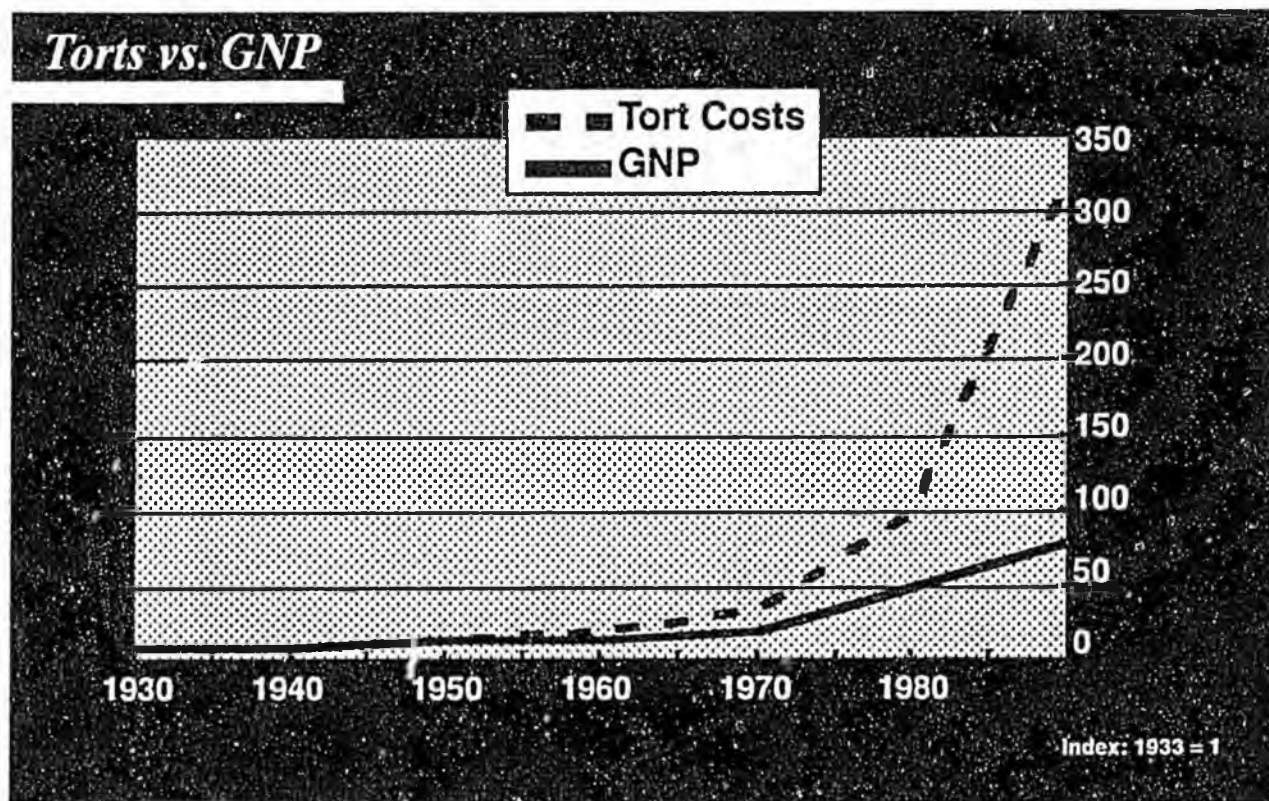
Tort Cost Trends: An International Perspective

Excerpts from the Tillinghast Report

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Distributed by:
Alaskans for Liability Refc.m
Post Office Box 201668
Anchorage, Alaska 99520
(907) 561-6250

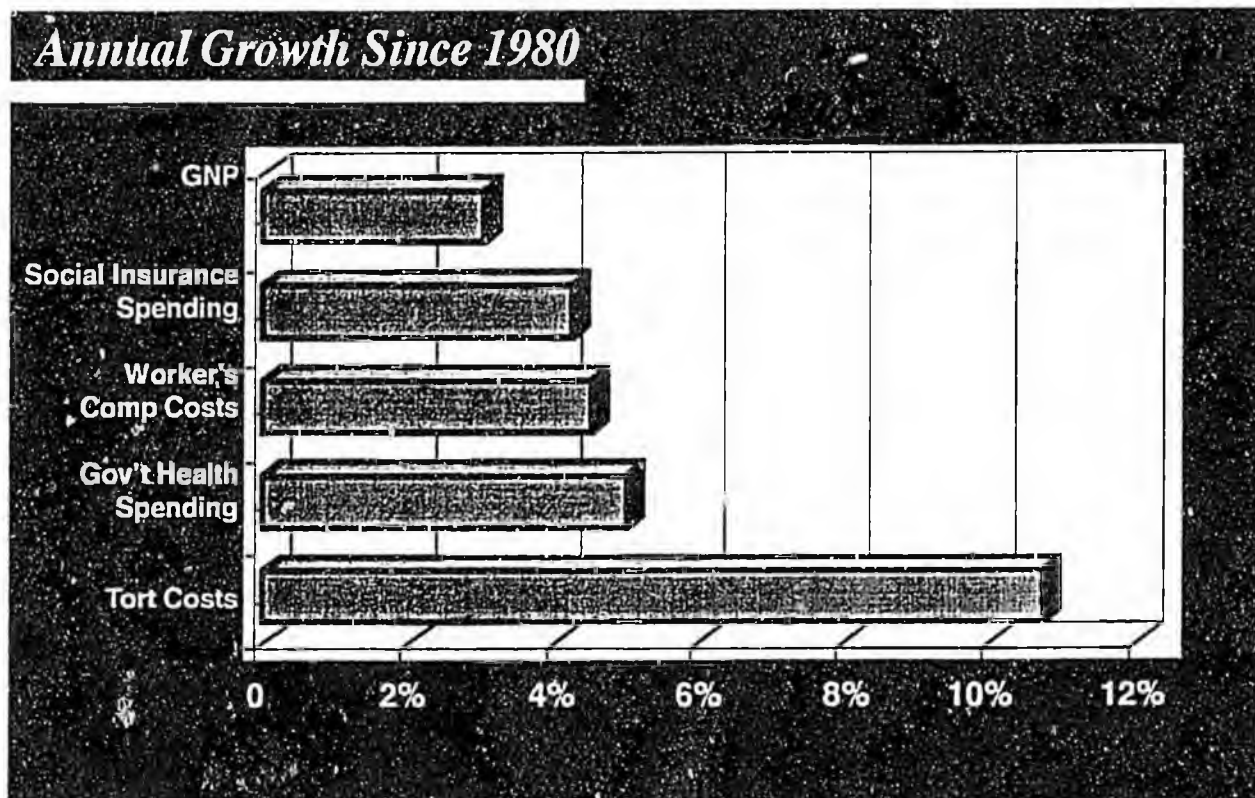
How Does Tort Cost Escalation Compare With GNP Growth?



■ Tort cost growth far outstripped GNP growth since 1930, increasing 300 times over this 57-year period, compared with a 50-fold increase for GNP.

■ Until shortly after World War II, growth in both tort costs and the GNP ran fairly parallel. Only in the late 1940s and early 1950s did the two diverge, with tort costs consistently outpacing GNP growth.

Since 1980, Cost Increases Have Leveled Off for All Social Systems Save Torts

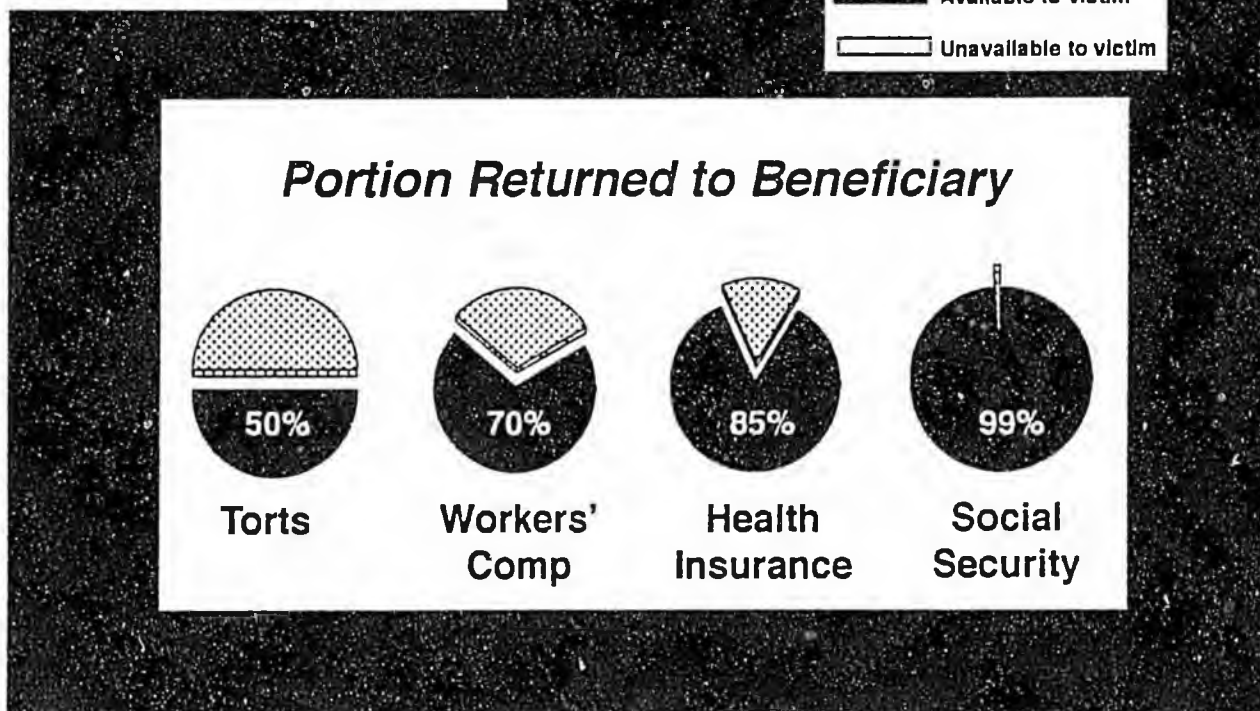


■ As noted, cost escalation has moderated for all social systems but torts. Between 1980 and 1987, for example, tort costs rose at an annual rate of 16%, or 10.6% when adjusted for inflation. This compares with the following annual increases (also adjusted for inflation) of:

- 5% for government health expenditures
- 4.5% for workers' compensation costs
- 4.2% for Social Security expenditures
- 2.7% for GNP.

In the Final Analysis, the Tort System Does Not Effectively Serve Victims' Needs

Efficiency Comparisons



■ If the tort system is judged as a method of compensating accident victims for their losses, it is both inefficient and unfair. Inefficient, because only half – or less – of the cost goes toward any form of compensation for victims. Unfair, because many victims receive no compensation at all.

State of Alaska

Department of Commerce
and Economic Development

Division of Insurance

Division of Insurance
P.O. Box 110805
Juneau, AK 99811-0805
Phone (907) 465-2~~027~~573

Ninth Floor, State Office Building
333 Willoughby Avenue
Juneau, Alaska 99801
FAX (908) 465-3422

FAX Transmittal

From: Barbara Thurston

Date: January 14, 1994

To: Resa Jerrel

Company:

Fax Number: 789-3433

Number of Pages: 2

Hard Copy to Follow: No

Here is the information you requested on General Liability rate changes. This is a history of the rate changes filed by the Insurance Services Office (ISO) which files on behalf of most of the companies selling General Liability Insurance in Alaska.

As you can see, there are several different types of policies here...I've marked with Xs the type of filing (basic limits versus excess limits) and the type of form (professional, premises, or products liability) for each rate change.

This information was taken off a special report generated by ISO in response to my request for historical information. While I believe that it is all correct, I have not verified all the details myself, so can't guarantee that this information is free of any errors.

Let me know if you have any questions as to how to interpret this chart.

History of ISO General Liability Rate Changes In Alaska

Approval Date	Rate Change (%)	Basic Limits	Increased Limits	Products			Premises		Professional Liability
				All	Manufacturers & Contractors	Owners, Landlords, & Tenants	Physicians, Surgeons, and Dentists	Hospitals	
1/7/84	7.3	x	x	x					
2/1/84	128.8	x	x				x		
2/17/84	40.1		x					x	
10/4/84	21	x				x			
10/31/84	20	x		x					
11/29/84	5.6		x				x		
2/2/85	1.3	x			x				
2/6/85	10.7		x		x		x		
7/10/85	23.1	x					x		
11/1/85	43.8	x	x	x					
2/26/86	50	x					x		
4/14/86	7.6	x			x				
6/13/86	15.4		x					x	
7/3/86	8.9		x				x		
9/5/86	3.3		x		x				
2/27/87	12.1	x					x		
3/2/87	30.8	x	x	x					
4/3/87	35	x						x	
6/15/87	31.6	x			x				
8/4/87	9.7		x					x	
3/30/88	-4.3	x		x					
7/19/89	-20		x	x					
1/11/90	-13.7	x		x					
1/12/90	1.1	x	x				x		
2/18/92	6.1	x			x		x		
2/19/92	-12		x		x		x		
4/1/92	14	x					x		
11/13/92	-3.2		x		x		x		
1/7/93	0		x					x	
4/16/93	-2.5	x			x		x		
9/24/93	0	x						x	

Notes:

- 1 The effective date of an ISO filing is generally 3 to 6 months after the approval date
- 2 The rate change is the overall average, different "classes" (e.g. neurosurgeon vs general practitioner) will probably have different changes apply to them
- 3 "Basic" and "Increased" refer to the limits of liability under the policy. Basic limits are about \$25,000; everything else is an increased limit. People who only purchase basic limits won't be affected by an increased limit rate change. People who purchase increased limits are affected by both basic and increased limit changes.
- 4 "Products", "Premises", and "Professional Liability" are different types of policies. Products includes completed operations (such as a construction project); Premises is what is purchased by most small businesses for risks occurring on their premises.
- 5 The filing approved on 4/1/92 only applied to governmental subdivisions.

LIMITATIONS ON AWARDS OF
NON-ECONOMIC DAMAGES

1986

Alaska

\$500,000 cap (except for physical impairment or disfigurement)

Colorado

\$250,000 cap (unless court finds justification by "clear and convincing evidence" for a larger award which cannot exceed \$500,000)

Hawaii

\$375,000 cap but cap applies only to actual physical pain and suffering; other non-economic damages have no limit

Maryland

\$350,000 cap

Minnesota

\$400,000 cap on all awards based on loss of consortium, emotional distress, or embarrassment (not pain and suffering)

1987

Idaho

\$400,000 cap - adjusted for annual wage increase

Kansas

\$250,000 cap on pain and suffering (not other non-economic losses)

Oregon

\$500,000 cap on non-economic damages

8

Josh,

re: Tort Reform folks who want to testify.

reaction

Roger Holmes, partner at Biss & Holmes. By teleconference from Anchorage. Is tort reform's legal expert and "lead hitter".

5 MIN.

walk thru hill

Al Tamagni (pronounced "Toemany"), works for Diversified Structured Settlement. By teleconference from Anchorage. Is tort reform's administrative & insurance expert.

3 MIN

either last

Dr. David McGuire, surgeon. He will be present in Juneau. He is tort reform's medical expert.

3 MIN.

And on 3rd speaks first

lost

Harry Sjoberg (pronounced "Showberg"), risk manager for Municipality of Anchorage. By teleconference from Anchorage.

STERHANIE GALBREATH Dept. of Law

3 MIN

Bruster Jameson, attorney with Lane, Powell, Spears, and Lubersky. By teleconference from Anchorage.

3 MIN

Dr. Don Lehmann, family practioner from Sitka. By teleconference from Sitka.

3 MIN

Sam Scaggs, businessman from Stroller-Pack. He will be present in Juneau.

Mark Wilkerson, attorney with Guess & Rudd. By teleconference from Anchorage.

3 MIN.

Post-It telephone message pad 7660

To Josh

Date _____ Time _____

WHILE YOU WERE OUT

M. Deborah Shand

of _____

Phone No. _____

TELEPHONED	PLEASE CALL
WAS IN TO SEE YOU	WILL CALL BACK
WANTS TO SEE YOU	URGENT
RETURNED YOUR CALL	

Message Eric Sanders will be testifying in Juneau for them. Shall be in office in a.m. if you need anything more.

Operator

Sponsor Statement

This bill embodies a generally accepted fact that a person who has been injured or suffered damages as a result of negligence on the part of another has the right to be made whole. This bill ensures that victims maintain their right to just compensation.

Unfortunately, today's court system is sometimes perceived as capricious and arbitrary. Occasionally victims receive less compensation or the negligent are required to reimburse more than common sense dictates. This bill will assure that those situations become unusual.

While ensuring that victims are justly compensated for their damages, this bill makes the following changes to Alaska's civil code:

- Legal actions involving personal injury, death, or property damage must be brought within six years from the date the product in question was purchased, construction was completed, or the last act that allegedly cause the harm. The six year statute of limitation would not apply if the injury, death, or property damage was caused by an intentional act or if there was an intentional concealment of the facts.
- Limits the time within which a person can bring an action for professional negligence against a health care provider to two years, unless the person is less than six years old on the date of injury, in which case the person has until their eighth birthday.
- Limits the time within which a person can bring an action for personal injury, death, or property damage to two years after the date the claimant could reasonably believe they had a claim.
- Extends the definition for noneconomic loss to include claims for wrongful death. Noneconomic loss is further defined to include the loss of consortium.
- Prevents someone from filing multiple claims over the same incident to claim multiple awards over a single incident.
- Defines the standard a plaintiff must show to establish "clear and convincing evidence" when trying to secure punitive damages.

- Defines punitive damages to be three times the amount of compensatory damages awarded or \$200 thousand whichever is greater.
- Prohibits a person from recovering damages if the person suffers the damages while committing a felony.
- Subtracts from the award the amount of state and federal taxes that would have been owed if the person had suffered no damage. The victim is restored to their original state, not overcompensated. IRS code 104(A)(2) allows income from awards involving personal injury or death to be tax exempt.
- Allows either party in the suit to require future damages to be paid by periodic payment instead of a lump sum. Attorney contingency fees would be reduced to present value and paid as a lump sum. Periodic payments would include increases for anticipated inflation.
- Juries are made aware of other awards and collateral payments made to plaintiffs. The damages awarded have collateral payments deducted. This restores victims to their whole status and prevents unfair overcompensation.
- Provides for the reduction of the claim against other parties when one person in a multiparty suit settles. The percentage of claim paid by the offending party is proportioned by the percentage of fault.
- Provides financial motivations for pretrial settlements.
- Ties the interest rate charged on judgments and decrees to 3% above the federal discount rate.
- Stipulates that an award for economic loss is limited to \$10,000 when the deceased is not survived by a spouse, children, or other dependents.
- Prohibits the award of attorney fees in a civil action for personal injury, death, or property damage.
- Limits the civil liability of a hospital for an act or omission of a health care provider who is not an employee of the hospital when the claim is only based on the actions of the health care provider and the hospital publishes which health care providers are independent contractors.

This bill is supported by the following organizations:

Alaska Bankers Association
Alaska Coal Association
Alaska Peace Officers Association
Alaska Professional Design Council
Alaska Refuse Utilities Association
Alaska Underground Tank Owners
Alaska Truckers Association
Anchorage Chamber of Commerce
Anchorage Nurses Association
Association of Refined Oil Producers
Associated General Contractors
Building Industry Association of Alaska
Highway Users Federation
Insurance Association of Alaska
Juneau Medical Society
National Electrical Contractors Association
National Federation of Independent Businesses

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 254

Revision Date: January 24, 1994
Title: Amendments to civil actions: amending...Rules of Civil Procedure 49, 58 and 30...
Sponsor: Senator Pearce
Requestor: Senator Pearce

Department Affected: Department of Law
SRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

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.

Prepared by: Richard I. Peques, Director
Division: Administrative Services Division
Approved by Commissioner: Richard I. Peques / RRP
Agency: Department of Law

Phone: 465-3672
Date: January 24, 1994
Date: January 24, 1994

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. SB 154

ANALYSIS CONTINUATION:

This bill amends Title 9, the Alaska Code of Civil Procedure, to provide various changes that are intended to bring about reforms in the manner in which the state's civil justice system handles personal injury claims. The bill seeks to reduce costs associated with the civil justice system, and the bill seeks to create a more equitable distribution of the cost and risk of injury. The bill does this by changing the existing balance between claimants and defendants, and their respective, competing economic interests, by limiting the time in which certain claims can be filed, and by setting and reducing claims limits. As a result, the existing balance is tilted less in favor of claimants and more in favor of defendants. Consequently, the state's claims exposure and the amount it ultimately pays would be reduced. However, because the total number of claims would probably not be reduced, the impact on the department's defense of personal injury claims will be negligible.

SENATE BILL NO. 254

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR PEARCE

Introduced: 1/18/94
Referred: L&C, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49,
2 68, and 82; and providing for an effective date."

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

4 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

5 (1) civil justice in this state has generally been developed by the courts on a
6 case-by-case basis; this process has resulted in some significant changes in the law, and the
7 legislature has periodically intervened to bring about needed reforms;

8 (2) the level of malpractice insurance premiums discourage physicians,
9 architects, engineers, attorneys, and other professionals from initiating or continuing their
10 practice or offering needed services to the public;

11 (3) society as a whole cannot afford the price of lawsuits years after
12 construction, manufacture, the delivery of services and other actions; the widespread use of
13 claims made insurance policies makes it impossible to adequately and economically insure
14 against actions for an unlimited period of time; likewise it is extremely difficult to defend

1 against a claim that has become stale after information and witnesses have disappeared:

2 (4) on the whole society is better served with a statute of repose even though
3 in a few limited instances injuries may go without compensation;

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

7 (6) the issues in the Act were intended to be addressed in a comprehensive
8 way in 1986; however, the legislation passed in 1986 fell short of accomplishing the goals of
9 the legislature and the problems that existed in 1986 still exist in 1993.

10 (b) It is the purpose of this Act to

11 (1) enact further reforms that create a more equitable distribution of the cost
12 and risk of injury;

13 (2) reduce costs associated with the civil justice system, while ensuring that
14 adequate and appropriate compensation for persons injured through the fault of others is
15 available;

16 (3) help match losses with compensation by helping to

17 (A) ensure that money paid to an injured person is available when
18 anticipated expenses or losses occur;

19 (B) ensure that a claimant with substantial injury requiring long-term
20 treatment will have money available for future medical care;

21 (C) reduce reparation system costs by eliminating those portions of
22 awards that are not needed to compensate the claimant;

23 (D) eliminate duplicate recoveries; and

24 (E) reduce the costs of litigation;

25 (4) ensure that in actions involving the fault of more than one person, the fault
26 of each claimant, defendant, third-party defendant, person who has been released from
27 liability, or other person responsible for the damages be determined and awards be allocated
28 in accordance with their fault;

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

1 (6) accumulate additional information concerning the costs to society of the
2 civil justice system as it is presently constituted by having the attorney general compile useful
3 information and present an annual report to the legislature; this information is necessary to
4 determine whether the civil justice, health care, and insurance systems as they are presently
5 constituted are fairly serving victims and whether a disproportionate amount of compensation
6 dollars is absorbed by the system;

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

9 (8) clarify the circumstances in which hospitals are held directly liable for the
10 actions of health care providers not employed by the hospital.

11 * Sec. 2. AS 09.10 is amended by adding a new section to read:

12 Sec. 09.10.052. CERTAIN ACTIONS THAT MUST BE BROUGHT IN SIX
13 YEARS. (a) Notwithstanding AS 09.10.140(a), a person may not bring an action for
14 personal injury, death, or property damage unless the action is brought within six years
15 of the earlier of the date

16 (1) a product alleged to have caused the personal injury, death, or
17 property damage was purchased;

18 (2) of substantial completion of the construction alleged to have caused
19 the personal injury, death, or property damage; or

20 (3) of the last act alleged to have caused the personal injury, death, or
21 property damage.

22 (b) This section does not apply if

23 (1) the personal injury, death, or property damage was caused
24 intentionally;

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

27 (3) a shorter period of time for bringing the action is provided under
28 another provision of law.

29 (c) This section does not preclude application of the provisions of
30 AS 09.10.140(b).

31 (d) In this section, "substantial completion" means the date when construction

1 is sufficiently completed to allow the owner or a person authorized by the owner to
2 occupy the improvement or to use the improvement in the manner for which it was
3 intended.

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

5 Sec. 09.10.065. LIMITATION ON ACTIONS AGAINST HEALTH CARE
6 PROVIDERS. (a) Notwithstanding AS 09.10.140(a), an action based on professional
7 negligence may not be brought against a health care provider unless

8 (1) the action is brought within two years from the date of the alleged
9 negligent act or omission; or

10 (2) if the injured person is, on the date of the alleged negligent act or
11 omission less than six years of age, the action is brought before the person's eighth
12 birthday.

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

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

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

20 (3) the undiscovered presence of a foreign body, that has no therapeutic
21 or diagnostic purpose or effect, in the body of the injured person and the action is
22 based on the presence of the foreign body.

23 (c) This section does not preclude the application of the provisions of
24 AS 09.10.140(b).

25 (d) In this section,

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

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

29 (3) "professional services" means services provided by a health care
30 provider that are within the scope of services for which the health care provider is
31 licensed, and that are not prohibited under the health care provider's license or by a

1 hospital in which the health care provider practices.

2 * Sec. 4. AS 09.10.070 is amended to read:

3 Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO]
4 person may not bring an action (1) for libel, slander, assault, battery, seduction, or
5 false imprisonment [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF
6 ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY
7 PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or penalty to the state;
8 or (3) upon a liability created by statute, other than a penalty or forfeiture: unless
9 commenced within two years.

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

11 Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO
12 PERSON OR PROPERTY. (a) Notwithstanding AS 09.10.140(a), a person may not
13 bring an action for personal injury, death, or property damage unless the action is
14 brought within two years of the accrual of the action.

15 (b) This section does not apply if a shorter period of time for bringing the
16 action is imposed under another provision of law.

17 (c) This section does not preclude application of the provisions of
18 AS 09.10.140(b).

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

20 (a) In an action to recover damages for personal injury or wrongful death
21 [BASED ON NEGLIGENCE], damages for noneconomic losses shall be limited to
22 compensation for pain, suffering, inconvenience, physical impairment, disfigurement,
23 loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

24 * Sec. 7. AS 09.17.010(b) is amended to read:

25 (b) The amount of damages awarded by a court or a jury under (a) of this
26 section may not exceed \$500,000 for all claims, including a loss of consortium
27 claim, arising out of a single injury or death [EACH CLAIM BASED ON A
28 SEPARATE INCIDENT OR INJURY].

29 * Sec. 8. AS 09.17.020 is amended to read:

30 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
31 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear

1 and convincing evidence of malice and conscious acts showing deliberate disregard
2 of another person by the person from whom the punitive damages are sought.

3 * Sec. 9. AS 09.17.020 is amended by adding a new subsection to read:

4 (b) The amount of punitive damages awarded by a court or jury under (a) of
5 this section may not exceed three times the amount of compensatory damages awarded
6 or \$200,000, whichever amount is greater.

7 * Sec. 10. AS 09.17.030 is amended to read:

8 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A
9 CRIME. A person who suffers personal injury or death may not recover damages for
10 the personal injury or death if the injuries or death occurred while the person was
11 attempting to commit or committing a felony, or fleeing from [ENGAGED IN] the
12 commission of a felony, [THE PERSON HAS BEEN CONVICTED OF THE
13 FELONY, INCLUDING CONVICTION BASED ON A GUILTY PLEA OR PLEA
14 OF NOLO CONTENDERE.] and the action [FELONY] substantially contributed to
15 the injury or death. [THIS SECTION DOES NOT AFFECT A RIGHT OF ACTION
16 UNDER 42 U.S.C. 1983.]

convicted of

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

18 (a) In every case where damages for personal injury or death are awarded by
19 the court or jury [.]

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

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

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

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

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

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

27 (2) the amount of economic damages awarded for past or future
28 gross earnings shall be reduced by the amount of federal and state income tax
29 that would be paid on the earnings under tax rates in effect on the date of the
30 injury or death.

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

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

7 * Sec. 13. AS 09.17.040(f) is amended to read:

8 (f) A judgment ordering payment of future damages for personal injury or
9 death by periodic payment shall specify the recipient, the dollar amount of the pay-
10 ments, including any increases in future payments for anticipated inflation, the
11 interval between payments, and the number of payments or the period of time over
12 which payments shall be made. Payments may be modified only in the event of the
13 death of the judgment creditor, in which case payments may not be reduced or
14 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
15 of support, as provided by law, immediately before death. In the event the judgment
16 creditor owed no duty of support to dependents at the time of the judgment creditor's
17 death, the money remaining shall be distributed in accordance with a will of the
18 deceased judgment creditor accepted into probate or under the intestate laws of the
19 state if the deceased had no will.

20 * Sec. 14. AS 09.17.070 is repealed and reenacted to read:

21 Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the collateral
22 source is a federally funded program that by law must seek subrogation and except for
23 death benefits paid under life insurance, a claimant in an action for personal injury or
24 death may only recover damages that exceed amounts received by the claimant, or that
25 with reasonable probability will be received in the future by the claimant, as
26 compensation for the injuries from collateral sources, whether private, group, or
27 governmental, and whether contributory or noncontributory.

28 (b) In an action for personal injury or death, a person defending a claim may
29 introduce into evidence an amount paid or payable as a benefit to the claimant as a
30 result of the personal injury or death under 42 U.S.C. 301 - 1397 (Social Security Act);
31 a state or federal disability or workers' compensation act; health, sickness, disability,

1 accident, or income-disability insurance; insurance that provides health benefits or
2 income-disability coverage; and a contract or agreement of a group, organization,
3 partnership, or corporation, or other collateral source, to provide, pay for, or reimburse
4 the cost of medical, hospital, dental, or other health care services, disability, or lost
5 wages. If a person defending a claim elects to introduce evidence described in this
6 subsection, the claimant may introduce evidence of the amount that the claimant has
7 paid or contributed to secure the claimant's right to an insurance or contractual benefit
8 introduced by the person defending the claim as evidence.

9 (c) Unless evidence of a collateral source has already been introduced under
10 (b) of this section, evidence of a collateral source, other than a federal program that
11 by law must seek subrogation and a death benefit paid under life insurance, is only
12 admissible after the fact finder has rendered an award. The court may take into
13 account the value of the claimant's rights to coverage exhausted or depleted by
14 payment of the collateral benefit by adding back a reasonable estimate of their
15 probable value, or by designating and holding for possible periodic payment under
16 AS 09.17.040 that amount of the award that would otherwise have been deducted, to
17 determine if the impairment of the claimant's rights actually takes place in the future.

18 (d) A person who provides a collateral benefit admissible under (a) or (b) of
19 this section may not recover any amount against the claimant as reimbursement for
20 those benefits and may not be subrogated to the rights of a claimant against a person
21 defending a claim.

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

23 (a) In all actions involving fault of more than one person [PARTY TO THE
24 ACTION], including third-party defendants and persons who have been released under
25 AS 09.17.091 [AS 09.16.040], the court, unless otherwise agreed by all parties, shall
26 instruct the jury to answer special interrogatories or, if there is no jury, shall make
27 findings, indicating

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

30 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
31 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,

1 ~~[AND] person who has been released from liability under AS 09.17.091, or other~~
2 ~~person responsible for the damages to each claimant regardless of whether the~~
3 ~~other person is or could have been named as a party to the action [AS 09.16.040].~~

4 * Sec. 16. AS 09.17.080(c) is amended to read:

5 (c) The court shall determine the award of damages to each claimant in
6 accordance with the findings, subject to a reduction under AS 09.17.091
7 [AS 09.16.040], and enter judgment against each party liable. The court also shall
8 determine and state in the judgment each party's equitable share of the obligation to
9 each claimant in accordance with the respective percentages of fault as determined
10 under (a) of this section. An assessment of a percentage of fault against a person
11 who is not a party may only be used as a measure for accurately determining the
12 percentages of fault of a named party. Assessment of a percentage of fault
13 against a person who is not a party does not subject that person to civil liability
14 in this or another action and may not be used as evidence of civil liability in
15 another action.

16 * Sec. 17. AS 09.17 is amended by adding a new section to read:

17 Sec. 09.17.091. EFFECT OF RELEASE. When a release or covenant not to
18 sue or not to enforce judgment is given in good faith to one of two or more persons
19 civilly liable for the same injury or the same wrongful death

20 (1) it does not discharge any of the other persons from liability for the
21 injury or wrongful death unless its terms so provide; but it reduces the claim against
22 the others to the extent of any amount stipulated by the release or the covenant, or in
23 the amount of the consideration paid for it, whichever is the greater; and

24 (2) it discharges the person to whom it is given from all liability for
25 contribution to any other person.

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

27 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days
28 before the trial begins either the party making a claim or the party defending against
29 a claim may serve upon the adverse party an offer to allow judgment to be entered in
30 complete satisfaction of the claim for the money or property or to the effect specified
31 in the offer, with cost then accrued. If within 10 days after the service of the offer the

1 adverse party serves written notice that the offer is accepted, either party may then file
2 the offer and notice of acceptance together with proof of service, and the clerk shall
3 enter judgment. An offer not accepted within 10 days is considered withdrawn and
4 evidence of that offer is not admissible except in a proceeding to determine the form
5 of judgment after verdict. If the judgment finally entered on the claim as to which an
6 offer has been made under this section is not more favorable to the offeree than the
7 offer, the offeree shall pay the actual costs and attorney fees incurred by the
8 offeror from the date the offer was made [THE INTEREST AWARDED UNDER
9 AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED
10 SHALL BE ADJUSTED AS FOLLOWS:

11 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE
12 INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR;

13 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE
14 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
15 YEAR].

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

17 (a) The rate of interest on judgments and decrees for the payment of money
18 is three percent above the 12th Federal Reserve District discount rate in effect on
19 January 2 of the year in which the judgment or decree is entered [10.5 PERCENT
20 A YEAR], except that a judgment or decree founded on a contract in writing,
21 providing for the payment of interest until paid at a specified rate not exceeding the
22 legal rate of interest for that type of contract, bears interest at the rate specified in the
23 contract if the interest rate is set out in the judgment or decree.

24 * Sec. 20. AS 09.30.070 is amended by adding a new subsection to read:

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

27 * Sec. 21. AS 09.55.535(k) is amended to read:

28 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180,
29 apply to arbitrations under this section if they do not conflict with the provisions of
30 this section; arbitrations under this section shall be conducted in accordance with
31 procedures established by any rules of court which may be adopted and according to

1 provisions of AS 09.55.540 - 09.55.547 [AS 09.55.540 - 09.55.548] and AS 09.55.554
2 - 09.55.560, and AS 09.65.090.

3 * Sec. 22. AS 09.55.580(c) is amended to read:

4 (c) Except as provided in AS 09.17.010 and (g) of this section, in [IN]
5 fixing the amount of damages to be awarded under this section, the court or jury shall
6 consider all the facts and circumstances and from them fix the award at a sum which
7 will fairly compensate for the injury resulting from the death. In determining the
8 amount of the award, the court or jury shall consider but is not limited to the
9 following:

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

14 (2) loss of contributions for support;

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

17 (4) loss of consortium;

18 (5) loss of prospective training and education;

19 (6) medical and funeral expenses.

20 * Sec. 23. AS 09.55.580 is amended by adding a new subsection to read:

21 (g) The amount awarded by the court or jury under this section for pecuniary
22 damages may not exceed \$10,000 if the deceased is not survived by a spouse, minor
23 child, or dependent. In this subsection, "dependent" means a father, mother, child,
24 grandchild, or sibling who was dependent on the deceased at the time of death.

25 * Sec. 24. AS 09.60.010 is repealed and reenacted to read:

26 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
27 PARTY. The supreme court shall determine by rule or order the costs, if any, that
28 may be allowed a prevailing party in a civil action. Unless specifically authorized by
29 statute or by agreement between the parties, attorney fees may not be awarded to a
30 party in a civil action for personal injury, death, or property damage related to or
31 arising out of fault. In this section, "fault" has the meaning given in AS 09.17.900.

1 * Sec. 25. AS 09.65 is amended by adding a new section to read:

2 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.

3 (a) A hospital is not liable for civil damages as a result of an act or omission by a
4 health care provider who is not an employee or actual agent of the hospital if the
5 hospital provides notice that the health care provider is an independent contractor. The
6 notice required by this subsection must be posted conspicuously in all admitting areas
7 of the hospital, published at least annually in a newspaper of general circulation in the
8 area, and must be in substantially the following form:

9 Notice of Limited Liability

10 The following health care providers are independent contractors
11 and are not employees of the hospital:

12 (List specific health care providers)

13 The hospital is responsible for exercising reasonable care in granting staff privileges
14 to practice in the hospital, for reviewing those privileges on a regular basis, and for
15 taking appropriate steps to revoke or restrict privileges in appropriate circumstances.
16 The hospital is not otherwise liable for the acts or omissions of a health care provider
17 who is an independent contractor.

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

20 (c) In this section,

21 (1) "health care provider" has the meaning given in AS 18.23.070,
22 except that it does not include a hospital or an employee of the hospital;

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

25 * Sec. 26. AS 09.17.010(c), 09.17.040(c) and AS 09.55.548 are repealed.

26 * Sec. 27. AS 09.17.080(a), as amended in sec. 15 of this Act, has the effect of amending
27 Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatory
28 listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated among the
29 parties.

30 * Sec. 28. AS 09.30.06, as amended by sec. 18 of this Act, has the effect of amending
31 Alaska Rule of Civil Procedure 68 by providing that if a judgment is not more favorable to

1 the offeree than the offer, the offeree shall pay actual costs and attorney fees incurred by the
2 offeror.

3 * Sec. 29. AS 09.30.070(c), added by sec. 20 of this Act, has the effect of amending
4 Alaska Rule of Civil Procedure 68 by providing that prejudgment interest may not be awarded
5 for future economic or noneconomic damages.

6 * Sec. 30. AS 09.60.010, as repealed and reenacted by sec. 24 of this Act, has the effect
7 of amending Alaska Rule of Civil Procedure 82 by providing that attorney fees may not be
8 awarded in a civil action for personal injury, death, or property damage, unless authorized by
9 statute or by agreement of the parties.

10 * Sec. 31. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
11 application of a provision of this Act to any person or circumstance is held invalid, the
12 remainder of this Act and the application to other persons shall not be affected.

13 * Sec. 32. APPLICABILITY. This Act applies to all causes of action accruing on or after
14 the effective date of this Act.

15 * Sec. 33. This Act takes effect July 1, 1994.

SB

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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October 29, 1993

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF CERTIFIED DIRECT-ENTRY MIDWIVES

October 29, 1993

Audit Control Number

08-1416-94

The objective of the audit was to determine whether the Board of Certified Direct-Entry Midwives (the board) should continue its existence. Currently Alaska Statute 08.03.010 has the board scheduled for termination on June 30, 1994. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved on June 30, 1995. We recommend that the legislature extend the board's termination date to June 30, 1998.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

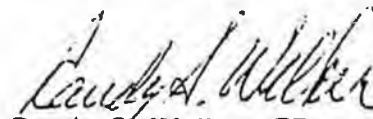

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Certified Direct-Entry Midwives (the board) to determine if it should continue in existence.

As required by statute, the legislative committee of reference is to consider this report as part of the oversight process in determining whether this board should be reestablished. The law currently specifies that the board will terminate on June 30, 1994 and will have one year from that date to conclude its affairs.

The major areas of our examination were board proceedings, licensing, complaint, and affirmative action functions of the board. During the course of our examination, we reviewed, tested, and evaluated the following:

1. Applicable statutes and proposed regulations.
2. Tests of files and documents of licensees.
3. Interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing.
4. Minutes of board meetings, annual reports, and budget documents.
5. Complaints filed with the Division of Occupational Licensing, Equal Employment Opportunity Office, Human Rights Commission, the Ombudsman's Office closed case files, and the Department of Law.
6. Discussions with board members.

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ORGANIZATION AND FUNCTION

Chapter 130, SLA 1992 established the Board of Certified Direct-Entry Midwives (the board) effective June 26, 1992. While there was no intent statement attached to the legislation, the prime sponsor of the bill testified during committee meetings as to his intention in sponsoring the bill. He said the bill was intended to protect the health and safety of the public by separating midwives who choose to take training and become licensed from those who choose not to meet the stricter qualifications. According to the sponsor, insurance companies cover midwife services only if they are properly licensed and certified. He said a board is needed to *"develop strict regulations and monitor professional practice by peer review and education. Certified, licensed, high-quality care would be available to Alaskans who either prefer home births or are denied financial or geographic access to physicians' care."* The sponsor also identified midwife care as one way to reduce health care cost and thus health insurance premiums.

Membership on board

Per Alaska Statute (AS) 08.65.010, the board is composed of five members (see inset at right). Membership consists of two direct-entry midwives certified in Alaska, one physician who has an obstetrical practice or has specialized training in obstetrics and is licensed by the State Medical Board in Alaska, one certified nurse midwife licensed by the

Members of Board of Certified Direct-Entry Midwives

Kaye Kanne, Certified Direct-Entry Midwife, Chairperson
Dr. Peggy A. Downing, Physician, Secretary
Paula Korn, Certified Nurse Midwife
Pam Weaver, Certified Direct-Entry Midwife
Sydney Flint, Public Member

Board of Nursing in Alaska, and one public member. The members are appointed by the governor subject to confirmation by the legislature in joint session. Once appointed, the members serve staggered terms of four years and until a successor is appointed and qualified.

Duties of the board

The board responsibilities per AS 08.65.030 include:

1. Examining applicants and issuing certificates to those applicants it finds qualified;
2. Adopting regulations establishing certification and certificate renewal requirements;
3. Issuing permits to apprentice direct-entry midwives;
4. Holding hearings and ordering the disciplinary sanction of a person who violates statute or regulations regarding direct-entry midwives;

5. Supplying forms for applications, licenses, permits, certificates, and other papers and records;
6. Reporting annually to the governor and the Department of Commerce and Economic Development (DCED) on the board's proceedings during the year;
7. Approving curricula and adopting standards for basic education, training, and apprentice programs; and
8. Approving education, training, and apprentice programs that meet the requirements of statute and the board, and denying, revoking, or suspending approval of programs that fail to meet the requirements.

Duties of DCED

DCED provides administrative and investigatory assistance to the board. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, DCED may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which DCED has authority. DCED can issue an order that the person stop the practice, bring an action in superior court to enjoin the act, examine the books and records of a person, and issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In accordance with Alaska Statute 08.03.010, the Board of Certified Direct-Entry Midwives (the board) is presently scheduled for termination on June 30, 1994. The board has one year in which to conclude its affairs if the legislature does not enact legislation for the continuance of the board. We recommend the board be reestablished. The board is providing the service of protecting the public's health and safety by addressing licensing, training, and continuing education requirements for people practicing as direct-entry midwives.

Prior to the creation of the board, the Department of Health and Social Services (DHSS) had the responsibility for registering lay midwives, which was the terminology used at that time for direct-entry midwives. DHSS was to work with a Lay Midwives Working Group to develop regulations for the registration, training and education requirements, and disciplinary measures for lay midwives. The regulations proposed by the Lay Midwives Working Group were to be presented by DHSS to the legislature by the tenth day of the Second Session of the Fourteenth Legislature. DHSS missed the reporting date to the legislature. Lay midwives practicing in Alaska on May 24, 1985 was allowed to continue practicing until the regulations were adopted. Six years later, due to lack of consensus between the Lay Midwives Working Group and staff at DHSS, regulations had still not been adopted and midwives were practicing without the benefit of regulations. In addition, DHSS never did develop a register of lay midwives.

Advantages associated with the creation of the board have been that there is a means to make people practicing midwifery aware of the level of experience and education expected of them. Also, by having a board, individuals in the midwifery practice can now be held accountable to a standard of care if they practice dangerous medicine.

Elimination of the board would likely result in the same lack of oversight that existed prior to the creation of the board in 1992. Although relatively new, the board has displayed its ability to conduct its business in a professional, competent, and efficient manner.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should extend the termination date of the Board of Certified Direct-Entry Midwives (the board) to June 30, 1998.

The board has been given the responsibilities in statute to adopt regulations establishing certification and certificate renewal requirements and examine applicants and issue certificates to those applicants it finds qualified. The regulation and licensing of qualified direct-entry midwives is necessary to protect the public's health, safety, and welfare.

Since being appointed in July 1992, the board has expended considerable effort in developing regulations and in reviewing applications for licensure. The regulations approved by the board are currently being reviewed by the Department of Law. As of the end of FY 93, the board had licensed 11 individuals and approved two apprentice permits.

The board's membership has been dedicated and responsible to its mission; its representation has been well balanced in serving its purpose. The board has displayed a strong desire to enhance the public perception of the direct-entry midwifery profession by maintaining high, but not restrictive, standards.

Recommendation No. 2

The Division of Occupational Licensing (OL) should, in conjunction with the Equal Employment Opportunity Office (EEO), review the Direct-Entry Midwife licensure application forms used by OL to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The direct-entry midwife application requires a photograph of the candidate and states that answers to height, weight, sex, and eye and hair color questions are optional, but are requested for identification purposes. EEO within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on sex, height, weight, and hair and eye color, even if that information is optional. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The direct-entry midwife application form used by OL should be reviewed with EEO to make sure that a photograph is pertinent to the licensure of direct-entry midwives candidates. OL indicated that one of the reasons photographs are required is to prevent fraud when a licensee moves from one state to another. If a photograph is considered necessary for identification, to prevent fraud or for other reasons, it should be separated from the application prior to review of the application for licensure. If a photograph is not necessary,

the request for one should be removed from the application.

Recommendation No. 3

OL should continue their efforts to provide adequate public notice of board meetings.

OL has not consistently provided adequate public notice of board meetings. Alaska Statute 08.01.050 requires the department to publish notice of examinations and meetings. Alaska Statute 44.62.310 requires reasonable notice for all meetings required to be open. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. The Attorney General (AG) has defined adequate public notice as three business days prior to the meeting and, when possible, ten days. OL's public notice policies are even more restrictive in that they require public notice at least two weeks prior to a scheduled meeting and one week prior to an unscheduled teleconference. OL did not provide adequate public notice for one of the teleconferences held by the Board of Certified Direct-Entry Midwives under AG guidelines. In addition, OL would not have provided adequate public notice for two teleconferences and one scheduled board meeting under their own guidelines.

OL has a large volume of public notices and the division's public notice process is very labor intensive. OL is in the process of initiating a system to automate the public notices. OL should continue their efforts to automate the public notice process in order to ensure adequate public notice.

Recommendation No. 4

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding of a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

For example, the licensing examiner is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

Recommendation No. 5

OL should develop and implement written policies and procedures for timely reporting of any board members' potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act, as does Law. Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition, division personnel have indicated that there is some confusion as to what should be reported. While staff at Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute (AS) 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

The Board of Certified Direct-Entry Midwives (the board) has made a good effort at operating in the public interest. The board has spent a considerable amount of time in developing regulations for basic education, training, and apprentice programs and establishing certification and certificate renewal requirements. The regulations developed by the board are currently under review by Department of Law (Law).

The board has licensed applicants it found qualified into the profession based on transitional regulations that are still under review by Law. It has not been necessary for the board to hold any hearings or issue disciplinary sanctions to date. The required annual report was submitted to the governor and the Department of Commerce and Economic Development (DCED) on the board's proceedings for FY 93.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

As of yet, the board has not been impeded because of existing statutes, procedures, or practices. However, during their review, the Department of Law questioned whether the board has authority to develop regulations regarding the administration of medications since statutes did not specifically mention this responsibility. The board felt that this authority had been granted by the legislature and was included in the definition statute, AS 08.65.190. The statute says that the practice of midwifery includes "*the execution of emergency measures in the absence of medical assistance, as specified in regulations adopted by the board*" (Emphasis added.)

Since the medications listed in regulation can only be administered by a direct-entry midwife as part of emergency measures, the board felt they were within the realm of their authority. Midwives have stated they cannot practice safely without the ability to administer certain medications during emergency situations. If law determines the board does not currently have the authority to adopt regulations governing the administration of medications, then a statute change will be needed to specifically grant the board this regulatory authority.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

The board has not recommended any statutory changes; however, the board recommended in its FY 93 annual report that the legislature continue the board.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The location, date and time of board meetings are published in newspapers around the State so that interested public members can attend the meetings. However, we found that for one teleconference adequate public notice was not given (see Recommendation No. 3). The Attorney General's Office defines adequate public notice as advertising at least three days, excluding weekends and holidays, and ten days when possible, prior to a meeting. The board has been responsive to public participants by setting a public comment time period during board meetings.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The board encouraged public participation in the making of its regulations and decisions. Proposed regulations were made available for public comment. Responses received from the public did not require the board to make any changes to the regulations. Some responses were in support of the regulations as written, while other concerns had already been addressed in statute. After the public comment period had closed, the board forwarded the proposed regulations to Law for their review.

While the proposed regulations were still being reviewed at Law, two interested people came forward and asked the board to reopen regulation 12 AAC 14.210 (c)(1). This regulation stated,

As part of the supervised clinical experiences required in (b) of this section, an applicant must have provided continuous care to at least 20 clients. "Continuous care" means, for the same client, the applicant (1) performed at least eight prenatal visits.

The two people said eight prenatal visits was extremely difficult to attain. After much discussion, the board agreed their concern for continuous care would not be seriously impacted if the regulation were changed to six prenatal visits to at least 20 clients. The board unanimously voted to change the proposed regulation. The board is going to withdraw this regulation from Law's review and advertise the proposed change for 30 days so that they can receive additional public comment.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

There have not been any public complaints regarding midwives filed with the Office of the Ombudsman since the inception of the board. There had been two complaints filed with the Office of the Ombudsman when the Department of Health and Social Services had the responsibility for overseeing the profession.

There have not been any ethics complaints against board members filed with Law. No board decisions have been appealed to the Division of Occupational Licensing (OL) hearing officers.

OL investigated five cases regarding the midwife profession. Some cases were in regards to individuals not licensed: other cases were instigated by DCED based on an applicant's response to certain items on their application. At the end of FY 93, investigation was still ongoing for four of these cases.

The extent to which the board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.

As of the end of FY 93, the board licensed 11 individuals and issued two apprentice permits. We reviewed these application files and also the files of those people whose applications were denied. We found no errors in OL's licensing procedures. In addition, we believe that the licensing criteria established by the board is reasonable and appropriate.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We found no evidence that the board was not complying with state personnel practices, including affirmative action, in qualifying applicants. Each time the board has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. However, the certified direct-entry midwife application requests information questioned by EEO (see Recommendation No. 2).

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

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APPENDIX A
Department of Commerce and Economic Development
Board of Certified Direct-Entry Midwives
Application, License, and Other Fees¹

Application and Other Fees²

Type of Fee	Amount
Application	\$50
Examination fee	100

License Fees

License Category	Initial and Biennial Renewal Fee ³
Direct-Entry Midwife Certification	\$350
Apprentice Direct-Entry Midwife Permit	150

¹The licensing fees charged by the Division of Occupational Licensing for the Board of Certified Direct-Entry Midwives are set out in the Alaska Administrative Code at § 12 AAC 02.145. The fees for this new licensing board became effective January 22, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

²The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include: duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

³The biennial renewal period for the Board of Certified Direct-Entry Midwives is December 31, 1994.

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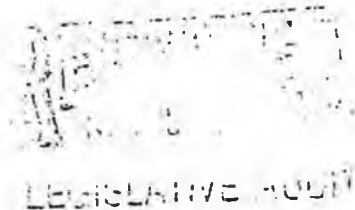
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

November 29, 1993

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Mr. Randy Welker
Legislative Auditor
Legislative Budget & Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811



Dear Mr. Welker:

This is written in response to the Audit Division's (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Certified Direct-Entry Midwives (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

The Legislature should extend the termination date of the Board of Certified Direct-Entry Midwives (the board) to June 30, 1998.

The Department concurs that the Board should be continued until June 30, 1998.

Response to Recommendation No. 2

The Division of Occupational Licensing (OL) should, in conjunction with the Equal Employment Office (EEO), review the Direct-Entry Midwife licensure application to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The Department has been working toward updating all of its licensing applications with emphasis toward the Americans with Disabilities Act and also EEO concerns. Because of the many considerations involved in revising our applications and the number of professions affected, the Department is not rushing through this project to satisfy immediate concerns, but rather making a concerted effort to give this review the quality of thoroughness it deserves.

EEO's concerns that it may be difficult to prove that discrimination was not a factor in the denial of licensure (because the board had been provided a picture of an applicant) may be unnecessary. Specifically, license denials must be based

upon a provision in the board's statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints. Further, your suggestion of separating the photo from an application prior to board review is questionable since licensing applications are public documents and we believe it would be inappropriate for division staff to withhold public information from the board.

Response to Recommendation No. 3

OL should continue their efforts to provide adequate public notice of board meetings.

The Department partly concurs with Audit regarding the public notice of board meetings. It is true that the public notice policy is labor intensive and the Department has been diligently trying to streamline this process to meet our obligation to public notice while at the same time developing a public notice procedure that is fiscally responsible. It is true that one teleconference was public noticed two days before an event (the teleconference occurred on October 13, 1993 and the public notice appeared October 11, 1993) however, this type of notice is not the norm and the Department maintains it is responsible in its public notice procedure. Further, events such as the need for immediate discipline proceedings may make it impossible to "adequately" public notice an event. An exception is provided in statute for such a situation albeit we still attempt to provide some notice, if possible.

We take exception that the Audit has cited an Attorney General Opinion written in December, 1992 to the Department of Education in response to that department's request for public notice clarification. This Department was not carbon copied on that opinion and, therefore, not privy to that legal advice. This Department has relied on its own internal policies and our AAG's advice for adequate public notice. The Department will continue to comply with the public notice requirements as defined by our AAG.

Response to Recommendation No. 4

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

The Department concurs with Recommendation No. 4. A rewrite of AS 08.01 makes numerous revisions including amendments to the statutes cited in this recommendation. The rewrite includes revisions which make drafting minutes a Department responsibility. It also provides for annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

The Department strongly disagrees that the annual report authority should be amended to make annual report submission a Department responsibility. We recognize that Division staff are instrumental in assisting boards when completing reports. Staff provide statistical and clerical assistance, however, this report must be reflective of the board's position on various matters involving the profession regulated including legislative and regulatory needs, budget requests, and upcoming goals. These are areas which the board is solely responsible for developing.

Response to Recommendation No. 5

OL should develop and implement written policies and procedures for timely reporting of any board members' potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Department agrees and will comply with this recommendation. A written procedure developed by staff will be limited to include directives for staff follow-up at each meeting with collection of ethic reports as well as clarifying dates which quarterly reports must be compiled and forwarded to the Attorney General's Office. We concur that staff is responsible for the timely submission to the Department of Law. This is the limit of responsibility recognized on behalf of the Department.

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCEd staff expertise. Consequently, the Department disagrees with the statement in the text of recommendation no. 5 which states "Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act"

The Department has asked for a written directive from the Department of Law, in layman's terms, which clarifies these matters. Any forthcoming directives from the Department of Law will be distributed to board members.

Thank you for this opportunity to respond. If my department can assist you in any other way please let me know.

Sincerely,


Paul Fuhs
Commissioner

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112993b

cc: Karl Luck, Director, Division of Occupational Licensing