

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 00/2

9557 SENATE JUDICIARY

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

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

5 (1) was outrageous;

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

7 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 judgment.

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

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

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

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

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

11 (3) action

12 (A) is a class action;

13 (B) seeks equitable or declaratory relief;

14 (C) concerns the title to real property;

15 (D) is a probate action;

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

17 (F) involves divorce or domestic relations;

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

19 (H) is subject to the alternative dispute resolution procedure  
20 under AS 09.43.320.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (1) divorce and dissolution;

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

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

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

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

27 (6) small claims under AS 22.15.040.

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

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

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

1 cost of insurance in the state; and

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

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

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

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

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

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

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

1 that is appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (4) whether a scheduling conference is unnecessary;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 award shall be increased by 50 percent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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

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

## MEMORANDUM

March 12, 1997

**SUBJECT:** Civil actions - (CSSB 15(JUD))

**TO:** Senator Robin Taylor  
Attn: Laura

**FROM:** Michael F. Ford *M.F.*  
Legislative Counsel

The amendments you requested are attached. As to amendments B.1, B.3, B.4, B.5, and B.6 there exists a constitutional problem. Specifically, the inclusion of these amendments would violate Article II, section 13, of the Alaska Constitution, which requires that each bill be confined to one subject. These amendments are an effort to change provisions of law relating to insurance and interest rates applicable to contracts and loans. It has consistently been the position of our office that "civil actions" constitutes a subject that does not include insurance or interest rates applicable to contracts and loans. Given the time constraints, we have not amended other sections of law affected by amendment B.6. Those sections should be reviewed before amendment B.6 is adopted by the committee.

Please contact me if you have further questions.

MFF:jdr  
97-169.jdr

Attachments

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 15(JUD) ("B" Version, Dated 3/11/97)

1 Page 1, line 1, following "actions;":

2 Insert "relating to uninsured and underinsured motor vehicle insurance and bonds;"

3 Page 14, following line 29:

4 Insert a new bill section to read:

5 **\*\* Sec. 21.** AS 28.22.201(a) is amended to read:

6 'a) The uninsured and underinsured motorists coverage required under this  
7 chapter

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

15 (2) must be a single combined coverage; and

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

20 Page 19, following line 26:

21 Insert a new bill section to read:

22 **\*\* Sec. 32.** AS 28.20.445(c), 28.20.445(h); AS 28.22.211; and AS 28.40.100(a)(22) are  
23 repealed."

1 Page 20, line 19:

2 Delete "20 - 22, 24 - 28, 30, and 31"

3 Insert "20, 22, 23, 25 - 29, 31, and 33"

4 Page 20, line 26:

5 Delete "23, and 29"

6 Insert "24, and 30"

7 Page 21, line 6:

8 Delete "sec. 32"

9 Insert "sec. 34"

10 Page 21, line 9:

11 Delete "sec. 34"

12 Insert "sec. 36"

13 Page 21, line 14:

14 Delete "sec. 21"

15 Insert "sec. 22"

16 Page 21, line 16:

17 Delete "sec. 22"

18 Insert "sec. 23"

19 Page 21, line 18:

20 Delete "sec. 31"

21 Insert "sec. 33"

22 Page 21, lines 20 - 21:

23 Delete "secs. 23 and 29"

24 Insert "secs. 24 and 30"

1 Page 21, line 23:

2 Delete "23, and 29"

3 Insert "24, and 30"

4 Page 21, line 24:

5 Delete "sec. 41"

6 Insert "sec. 43"

A M E N D M E N T

OFFERED IN THE SENATE

TO: Draft CSSB 15(JUD) ("B" Version)

1 Page 13, following line 17:

2 Insert a new bill section to read:

3 **"\* Sec. 19.** AS 21.36 is amended by adding a new section to read:

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

10 (b) Before filing a civil action under (a) of this section, the person filing the  
11 action shall give at least 60 days written notice to the person who committed the  
12 violation. Notice required under this subsection must include

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

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

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

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

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

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

1 an action under (a) of this section.

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

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

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

11 (1) costs and reasonable attorney fees; and

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

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

17 (1) wilful, wanton, or malicious; or

18 (2) in reckless disregard of the rights of the person filing the civil  
19 action.

20 (h) The rights provided under this section are in addition to other rights  
21 provided by law."

22 Renumber the following bill sections accordingly.

23 Page 20, line 19:

24 Delete "20 - 22, 24 - 28, 30, and 31"

25 Insert "21 - 23, 25 - 29, 31, and 32"

26 Page 20, line 21:

27 Delete "and 19"

28 Insert "19, and 20"

1 Page 20, line 26:

2 Delete "23, and 29"

3 Insert "24, and 30"

4 Page 21, line 6:

5 Delete "sec. 32"

6 Insert "sec. 33"

7 Page 21, line 9:

8 Delete "sec. 34"

9 Insert "sec. 35"

10 Page 21, line 14:

11 Delete "sec. 21"

12 Insert "sec. 22"

13 Page 21, line 16:

14 Delete "sec. 22"

15 Insert "sec. 23"

16 Page 21, line 18:

17 Delete "sec. 31"

18 Insert "sec. 32"

19 Page 21, lines 20 - 21:

20 Delete "secs. 23 and 29"

21 Insert "secs. 24 and 30"

22 Page 21, line 23:

23 Delete "23, and 29"

24 Insert "24, and 30"

- 1 Page 21, line 24:
- 2       Delete "sec. 41"
- 3       Insert "sec. 42"

A M E N D M E N T

OFFERED IN THE SENATE

TO: Draft CSSB 15(JUD) ("B" Version)

1 Page 1, line 1, following "actions;":

2 Insert "relating to motor vehicle liability insurance;"

3 Page 14, following line 29:

4 Insert a new bill section to read:

5 **"\* Sec. 21.** AS 28.22 is amended by adding a new section to read:

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

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

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

16 Renumber the following bill sections accordingly.

17 Page 20, following line 18:

18 Insert a new bill section to read:

19 **"\* Sec. 38.** AS 28.22.150(2), enacted by sec. 21 of this Act, amends Rule 82(b), Alaska  
20 Rules of Civil Procedure, by providing for attorney fee awards in certain cases that may differ  
21 from those awarded under Rule 82(b)."

- 1 Renumber the following bill sections accordingly.
  
- 2 Page 20, line 19:
  - 3 Delete "20 - 22, 24 - 28, 30, and 31"
  - 4 Insert "20, 22, 23, 25 - 29, 31, and 32"
  
- 5 Page 20, line 21:
  - 6 Delete "and 19"
  - 7 Insert "19, and 21"
  
- 8 Page 20, line 26:
  - 9 Delete "23, and 29"
  - 10 Insert "24, and 30"
  
- 11 Page 21, line 6:
  - 12 Delete "sec. 32"
  - 13 Insert "sec. 33"
  
- 14 Page 21, line 9:
  - 15 Delete "sec. 34"
  - 16 Insert "sec. 35"
  
- 17 Page 21, line 14:
  - 18 Delete "sec. 21"
  - 19 Insert "sec. 22"
  
- 20 Page 21, line 16:
  - 21 Delete "sec. 22"
  - 22 Insert "sec. 23"
  
- 23 Page 21, line 18:
  - 24 Delete "sec. 31"

- 1           Insert "sec. 32"
  
- 2   Page 21, lines 20 - 21:
- 3           Delete "secs. 23 and 29"
- 4           Insert "secs. 24 and 30"
  
- 5   Page 21, line 23:
- 6           Delete "23, and 29"
- 7           Insert "24, and 30"
  
- 8   Page 21, line 24:
- 9           Delete "sec. 41"
- 10          Insert "sec. 43"

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 15(JUD) ("B" Version)

1 Page 1, line 1, following "actions;":

2 Insert "relating to workers' compensation insurance;"

3 Page 14, following line 29:

4 Insert new bill sections to read:

5 **"\* Sec. 21.** AS 23.30.015(e) is amended to read:

6 (e) Except for actual costs and attorney fees, an employer shall distribute  
7 to the employee all amounts recovered under a third-party assignment if a violation  
8 of an applicable provision of law or contractual provision relating to employee  
9 safety was a substantial factor in causing the employee's injury for which  
10 compensation was paid. In all other cases an [AN] amount recovered by the employer  
11 under an assignment, whether by action or compromise, shall be distributed as follows:

12 (1) the employer shall retain an amount equal to

13 (A) the expenses incurred by the employer in respect to the action  
14 or compromise, including a reasonable attorney fee determined by the board;

15 (B) the cost of all benefits actually furnished by the employer  
16 under this chapter;

17 (C) all amounts paid as compensation and second-injury fund  
18 payments;

19 (D) the present value of all amounts payable later as  
20 compensation (present value to be computed from a schedule prepared by the  
21 board), and the present value of the cost of all benefits to be furnished later under  
22 AS 23.30.095 (as estimated by the board), the amounts so computed and  
23 estimated to be retained by the employer as a trust fund to pay compensation and  
24 the cost of benefits as they become due and to pay any finally remaining excess

1 sum to the person entitled to compensation or to the representative; and

2 (2) the employer shall pay any excess to the person entitled to  
3 compensation or to the representative of that person.

4 \* Sec. 22. AS 23.30.015(g) is amended to read:

5 (g) All amounts recovered by an employee or a representative of an  
6 employee from a third party shall be retained by the employee if a violation of an  
7 applicable provision of law or contractual provision relating to employee safety was  
8 a substantial factor in causing the employee's injury for which compensation was  
9 paid. In all other cases, if [IF] the employee or the employee's representative recovers  
10 damages from the third person, the employee or representative shall promptly pay to the  
11 employer the total amounts paid by the employer under ~~(e)(1)(A) - (C)~~ [(e)(1)(A), (B),  
12 AND (C)] of this section, insofar as the recovery is sufficient after deducting all  
13 litigation costs and expenses. Any excess recovery by the employee or representative  
14 shall be credited against any amount payable by the employer thereafter."

15 Renumber the following bill sections accordingly.

16 Page 20, line 19:

17 Delete "20 - 22, 24 - 28, 30, and 31"

18 Insert "20, 23, 24, 26 - 30, 32, and 33"

19 Page 20, line 21:

20 Delete "and 19"

21 Insert "19, 21, and 22"

22 Page 20, line 26:

23 Delete "23, and 29"

24 Insert "25, and 31"

25 Page 21, line 6:

26 Delete "sec. 32"

27 Insert "sec. 34"

1 Page 21, line 9:

2 Delete "sec. 34"

3 Insert "sec. 36"

4 Page 21, line 14:

5 Delete "sec. 21"

6 Insert "sec. 23"

7 Page 21, line 16:

8 Delete "sec. 22"

9 Insert "sec. 24"

10 Page 21, line 18:

11 Delete "sec. 31"

12 Insert "sec. 33"

13 Page 21, lines 20 - 21:

14 Delete "secs. 23 and 29"

15 Insert "secs. 25 and 31"

16 Page 21, line 23:

17 Delete "23, and 29"

18 Insert "25, and 31"

19 Page 21, line 24:

20 Delete "sec. 41"

21 Insert "sec. 43"

AMENDMENT

OFFERED IN THE SENATE

TO: Draft CSSB 15(JUD) ("B" Version)

1 Page 1, line 1, following "actions;":

2 Insert "relating to insurance premium rates;"

3 Page 13, following line 17:

4 Insert a new bill section to read:

5 **"\* Sec. 19.** AS 21.39.040 is amended by adding new subsections to read:

6 (l) Notwithstanding the other provisions of this section, a rate filing that imposes  
7 a higher premium rate may not take effect until after the director conducts a public  
8 hearing on the proposed rate increase. The director shall provide notice of the hearing  
9 required under this subsection by publication in at least one newspaper of general  
10 circulation and by publication in the periodical published by the Alaska Bar Association.  
11 Notice must be published at least 60 days prior to the scheduled hearing, must contain  
12 the date, place, and time of the hearing, and shall summarize the rate filing request. The  
13 director may require the insurer filing the rate increase to pay the costs of conducting the  
14 hearing.

15 (m) Upon request, the director shall allow a person to intervene in the rate  
16 review process. The director may order discovery as allowed under Alaska Rules of  
17 Civil Procedure. A hearing required under (l) of this section may not occur until  
18 discovery is complete.

19 (n) The director shall disapprove a rate filing that imposes a higher premium rate  
20 if the director determines that the rate filing is not in the public interest. The burden of  
21 proof that a rate filing is in the public interest rests with the insurer who files the rate.  
22 If the rate filing results in the insurer earning a rate of return that equals or exceeds the  
23 prejudgment interest rate under AS 09.30.070(a), the rate filing shall be presumed not  
24 to be in the public interest.

1           (o) A person who intervenes in a rate proceeding under (m) of this section shall  
2           be considered a public interest litigant. If the intervenor is successful in opposing the  
3           rate increase, the intervenor shall receive actual reasonable attorney fees and costs  
4           incurred in the rate proceeding from the insurer. If the insurer is granted the rate  
5           increase and the director determines that the efforts of the intervenor were in good faith,  
6           not frivolous, or substantially advanced the public interest, the intervenor shall receive  
7           actual reasonable attorney fees and costs incurred in the rate proceeding."

8           Renumber the following bill sections accordingly.

9           Page 20, following line 18:

10           Insert a new bill section to read:

11           "\* Sec. 38. REQUIRED INSURANCE RATE REDUCTION. Except for wet marine  
12           insurance rates, all insurance rates filed with the division of insurance shall be reduced by 10  
13           percent from those filed on January 1, 1997."

14           Renumber the following bill sections accordingly.

15           Page 20, line 19:

16           Delete "20 - 22, 24 - 28, 30, and 31"

17           Insert "21 - 23, 25 - 29, 31, and 32"

18           Page 20, line 21:

19           Delete "19"

20           Insert "20"

21           Page 20, line 26:

22           Delete "23, and 29"

23           Insert "24, and 30"

24           Page 21, line 6:

25           Delete "sec. 32"

- 1           Insert "sec. 33"
  
- 2   Page 21, line 9:
- 3           Delete "sec. 34"
- 4           Insert "sec. 35"
  
- 5   Page 21, line 14:
- 6           Delete "sec. 21"
- 7           Insert "sec. 22"
  
- 8   Page 21, line 16:
- 9           Delete "sec. 22"
- 10          Insert "sec. 23"
  
- 11   Page 21, line 18:
- 12          Delete "sec. 31"
- 13          Insert "sec. 32"
  
- 14   Page 22, lines 20 - 21:
- 15          Delete "secs. 23 and 29"
- 16          Insert "secs. 24 and 30"
  
- 17   Page 21, line 23:
- 18          Delete "23, and 29"
- 19          Insert "24, and 30"
  
- 20   Page 21, line 24:
- 21          Delete "sec. 41"
- 22          Insert "sec. 43"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSSB 15(JUD) ("B" Version, Dated 3/11/97)

1 Page 1, line 1, following "actions;":

2 Insert "relating to interest in a contract or loan;"

3 Page 14, following line 29:

4 Insert a new bill section to read:

5 **\*\* Sec. 21.** AS 45.45.010(b) is amended to read:

6 (b) Interest may not be charged by express agreement of the parties in a contract  
7 or loan commitment that is more than five percentage points above the annual rate  
8 charged member banks for advances by the 12th Federal Reserve District on the day on  
9 which the contract or loan commitment is made. A contract or loan commitment in  
10 which the principal amount exceeds \$250,000 [\$25,000] is exempt from the limitation  
11 of this subsection."

12 Renumber the following bill sections accordingly.

13 Page 20, line 19:

14 Delete "20 - 22, 24 - 28, 30, and 31"

15 Insert "20, 22, 23, 25 - 29, 31, and 32"

16 Page 20, line 26:

17 Delete "23, and 29"

18 Insert "24, and 30"

19 Page 21, line 6:

20 Delete "32"

- 1           Insert "33"
  
- 2   Page 21, line 9:
- 3           Delete "34"
- 4           Insert "35"
  
- 5   Page 21, line 14:
- 6           Delete "21"
- 7           Insert "22"
  
- 8   Page 21, line 16:
- 9           Delete "22"
- 10          Insert "23"
  
- 11   Page 21, line 18:
- 12          Delete "31"
- 13          Insert "32"
  
- 14   Page 21, lines 20 - 21:
- 15          Delete "secs. 23 and 29"
- 16          Insert "secs. 24 and 30"
  
- 17   Page 21, line 23:
- 18          Delete "23, and 29"
- 19          Insert "24, and 30"
  
- 20   Page 21, line 24:
- 21          Delete "41"
- 22          Insert "42"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 15(JUD) ("B" Version, Dated 3/11/97)

1 Page 12, following line 27:

2 Insert a new bill section to read:

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

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

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

8 (1) \$50,000 if the employer has less than 101 employees;

9 (2) \$100,000 if the employer has more than 100 but less than 201  
10 employees;

11 (3) \$200,000 if the employer has more than 200 but less than 501  
12 employees;

13 (4) \$300,000 if the employer has more than 500 employees.

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

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

18 Renumber the following bill sections accordingly.

19 Page 20, line 19:

20 Delete "20 - 22, 24 - 28, 30, and 31"

21 Insert "21 - 23, 25 - 29, 31, and 32"

22 Page 20, line 21:

- 1 Delete "and 19"
- 2 Insert "18, and 20"
  
- 3 Page 20, line 26:
- 4 Delete "23, and 29"
- 5 Insert "24, and 30"
  
- 6 Page 20, line 28:
- 7 Delete "18"
- 8 Insert "19"
  
- 9 Page 21, line 6:
- 10 Delete "32"
- 11 Insert "33"
  
- 12 Page 21, line 9:
- 13 Delete "34"
- 14 Insert "35"
  
- 15 Page 21, line 14:
- 16 Delete "21"
- 17 Insert "22"
  
- 18 Page 21, line 16:
- 19 Delete "22"
- 20 Insert "23"
  
- 21 Page 21, line 18:
- 22 Delete "31"
- 23 Insert "32"
  
- 24 Page 21, lines 20 - 21:

1 Delete "secs. 23 and 29"

2 Insert "secs. 24 and 30"

3 Page 21, line 23:

4 Delete "23, and 29"

5 Insert "24, and 30"

6 Page 21, line 24:

7 Delete "41"

8 Insert "42"

# ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair  
Sen. Drue Pearce, Vice Chair  
Sen. Mike Miller  
Sen. Sean Pamell  
Sen. Johnny Ellis

State Capitol  
Juneau, AK 99801-1182  
(907) 465-3717  
Fax: (907) 465-3922

## Senate Judiciary Committee

### SPONSOR STATEMENT for CSSB15 (JUD)

This bill addresses the widely held public perception that there are imbalances in the civil justice system. In 1996 an Advisory Task Force on Civil Justice Reform composed of a diverse group of Alaskans representing business, the judiciary, and the public studied available data and made recommendations. This bill embodies those recommendations and includes:

- structured caps on punitive damages
- clarification of liability for intentional acts
- shorter statutes of limitation
- an alternative dispute resolution process
- market rate of interest on judgments and provisions to encourage offers of judgment
- increased fines for litigation misconduct by attorneys
- collection of more detailed information on insurance premiums

The proposed Judiciary Committee substitute for SB 15 addresses these perceived problems. Additionally, CSSB 15 (JUD) addresses real problems with insurance industry claims practices and returns to the public some small measure of benefit in exchange for the rights that have been given up through changes in Alaska law during the last decade. Some of those changes would:

- make certain that Alaskans have access to all the insurance coverage for which they have paid
- make sure that hyper-technical insurance exclusions are not used to force needless litigation while depriving Alaskans of insurance protection for which they have paid
- provide Alaskan insurance consumers with an affordable dispute resolution process where their claims for medical payments are wrongfully denied
- make insurance companies accountable when they wrongfully deny claims
- make employers accountable when their failure to follow safety practices cause injury
- roll back insurance rates
- reduce interest rates chargeable by lending institutions

This bill gives Alaskans something in return for the rights that have been taken in recent years. It strikes a better balance than other legislative proposals between the interests of the individual and the perceived need to foster economic development through changes in the civil justice system.



OFFICE OF THE ATTORNEY GENERAL

BRUCE M. BOTELHO, ATTORNEY GENERAL

Joe - I decided maybe  
this would be an  
easier way for you to  
have this info - You can  
see there weren't many  
close votes and that  
when propositions didn't  
get out of committee  
those decisions were unanimous  
also - Crystal

450 Dimond Courthouse  
P.O. Box 110300, Juneau, Alaska 99811-0300  
907-465-2133; 907-465-2075 (fax)

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Governor's Advisory Task Force on Civil Justice Reform

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March 7, 1997

Senator Robin L. Taylor  
State Capitol  
Juneau, AK 99801-1182

Re: Various Tort and Insurance Law Reforms

Dear Senator Taylor:

Please give me a call after you have had a chance to review this material. I enclose draft legislation that would:

- 1) clarify that UM/UIM coverage is excess and stackable thus eliminating ambiguity in prior legislative enactments and eliminating a case currently pending before the State Supreme Court,
- 2) alter the trigger of UIM coverage to eliminate needless and wasteful law suits to obtain every nickel of third party benefits while giving first party carriers every nickel of credit that they are entitled to,
- 3) provide medical pay coverage claimants with a fighting chance to litigate valid grievances,
- 4) establish a statutory bad faith claims handling cause of action,
- 5) eliminate the carrier/employer's worker's compensation lien where the employer's violation of safety regulations substantially contributed to plaintiff's injury,
- 6) roll back rates, and
- 7) alter the usury statute.

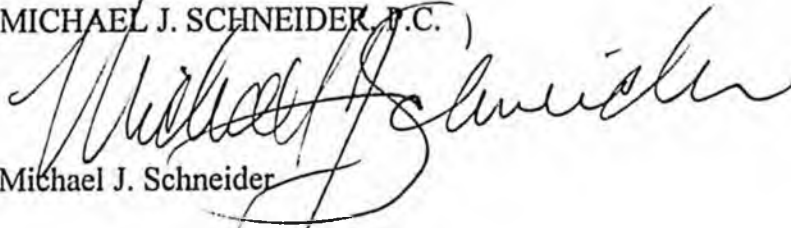
I am express mailing a computer disk to you with my drafts upon it (deleted language has been crossed through. That was done manually. The cross-outs will thus not appear on the disk).

Senator Robin L. Taylor  
March 7, 1997  
Page 2

Please call me once you have had a chance to look at these proposals. Best regards.

Very truly yours,

LAW OFFICES  
MICHAEL J. SCHNEIDER, P.C.



Michael J. Schneider

Enclosures

cc: Jan Bouch w/enclosures  
Kent Dawson w/ enclosures

[CLARIFICATION THAT UM/UIM COVERAGE IS EXCESS AND STACKABLE]

Sec. \_\_\_\_\_ AS 28.20.445 (h) is repealed.

Sec. \_\_\_\_\_ AS 28.22.211 is repealed.

Sec. \_\_\_\_\_ AS 28.40.100 (a)(22) is repealed.

**PURPOSE**

Clarify existing law that underinsured and uninsured motorist coverage, while not intended to provide a claimant with a windfall or double recovery, is truly excess to any other form or type of available compensation. An underinsured or uninsured motorist carrier, while entitled to a credit against claimant's total damages for any amounts recovered under any other applicable coverage or by way of payment directly from the uninsured or underinsured driver, is not entitled to a reduction in its stated UM/UIM limit for such payments. This clarification should resolve pending litigation over this topic before the Supreme Court of the State of Alaska and expedite the resolution of countless pending claims.

Sec. \_\_\_\_\_ AS 28.20.445 (c) is amended to delete the following language:

~~(c) If a person is entitled to uninsured or underinsured motorist coverage under more than one coverage when two or more vehicles are insured under one policy, the maximum amount payable may not exceed the highest limit of any one coverage under the policy. If a person is entitled as a named insured to uninsured or underinsured motorist coverage under more than one motor vehicle policy issued by the same insurer, the maximum amount payable may be limited to the highest limit of any one coverage under the policies.~~

**PURPOSE**

By deleting the language above, claimants get access to all of the UM/UIM insurance they have paid premiums for.

Purpose

## [ALTER TRIGGER OF UIM COVERAGE]

Sec. \_\_\_\_\_ AS 28.22.201 (a)(1) is amended to read:

(1) ~~does not apply~~ applies to bodily injury, sickness, disease, or death of an insured or damage to or destruction of property of an insured ~~until whether or not~~ the limits of liability bonds and policies that apply have been used up by payments or judgments or settlements, provided however that the insurer shall, in each instance, receive a credit against claimant's total damages for the full amount of the limits of applicable liability bonds and policies that apply as well as any payments, judgments, or settlements actually received by the claimant.

### PURPOSE

Currently, UM/UIM carriers force the court system and the public treasury to bear the burden of insulating those carriers from exposure because of the current wording of AS 28.22.201 (a)(1). The following hypothetical illustrates the problem.

Plaintiff has a triable case for damages well in excess of defendant's nominal policy limit of \$50,000.00. Plaintiff's case will be expensive to put on, potentially risky, and will consume many days of court resources as well as impose the burden of a jury trial on the jurors selected for the case.

Before trial plaintiff is offered \$60,000.00, however the computation is based on a \$45,000.00 principal amount plus addition of applicable interest and Rule 82 attorneys fees. Even though plaintiff is offered over \$60,000.00 and even though plaintiff wishes to accept this offer plaintiff cannot do so because the current statute would allow plaintiff's UIM carrier to argue that the full extent of the underlying liability policy has not been exhausted (as it would be if the base calculation were \$50,000.00 plus interest and Rule 82 attorneys fees). Thus, in a situation where both the defendant liability carrier and plaintiff wish to settle the case, and where plaintiff would gladly provide his UIM carrier, to whom a premium has been paid for this risk, with full credit for all possible recoveries against the liability policy (in this hypothetical, that may be \$65 or \$70,000.00 depending on the facts), everyone goes to war at great risk and expense. The proposed amendment would give the UIM carrier everything it is entitled to (full credit, whether received by plaintiff or otherwise, for the limits plus add-ons related to underlying liability policies) while putting plaintiff to his proof in the subsequent UIM claim.

There are approximately 17 states at this time that do not require that plaintiff litigate to a judgment equal to or exceeding the defendant's liability policy before triggering underinsured motorist coverage. Alaska's current statutory scheme should be changed to avoid this wasteful procedure and join the growing number of states taking this approach to this problem.

purpose 2

[FAIRNESS IN MPC DISPUTE RESOLUTION/COVERAGES NOT TO BE OFFSET  
WHERE SEPARATE PREMIUMS ARE PAID]

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

**Sec. 28.22.150. Medical payments coverage requirements.**

(a) Where an automobile liability policy also provides medical payments coverage, that coverage shall be interpreted as obligating the insurer, upon denial of a medical payment coverage claim, to pay the medical payment coverage claimant's (1) actual costs, plus interest thereon at the statutory rate, (2) actual attorneys fees, not to exceed \$250.00 per hour, or fees equal to 50% of the disputed amount awarded to the claimant, whichever is greater, as well as (3) all arbitration and/or court costs related to the proceeding where plaintiff is determined to be the prevailing party in the face of the denial. "Prevailing party" as used herein shall be defined as under Rule 82 of the Alaska Rules of Civil Procedure.

(b) Where a separate premium is paid for medical payments coverage, payments under that coverage shall not be offset or deducted from the limits of uninsured or underinsured motorist coverage otherwise available to the claimant.

**PURPOSE**

(a) Major auto carriers are denying medical payment claims at an alarming frequency and without justification. These claims, though devastating to the consumer, are too small to litigate and/or involve sums owed to health care providers. Consumers cannot pay an attorney by the hour to fight wrongful denials. A successful challenge (assuming a 1/3 contingency fee) only solves 2/3 of the consumer's problem! This provision makes the industry put its money where its mouth is.

(b) It is the intent of this subsection that, where claimant's injuries and damages equal or exceed the combined total of otherwise available medical payments coverage and uninsured or underinsured motorist coverage, the sum of the limits of those coverages be available to the claimant. This is fair because claimant has paid for the separate coverages with separate premiums.

purpose 1

[CIVIL REMEDIES FOR BAD FAITH CLAIMS

purpose 3

Sec. \_\_\_\_\_ AS 21.36 is amended to add a new section

**Sec. 21.36.126. Civil Remedy** (a) Any person may bring a civil action against an insurer with which such person is damaged by conduct described in AS 21.36.125 and/or 3AAC 26.010 et seq. Notwithstanding the provisions of AS 21.36.125 and/or 3AAC 26.010 et seq. to the contrary, a person pursuing a remedy under this section need not prove that the complained of act or omission was committed or performed with such frequency as to indicate a general business practice.

(b) As a condition precedent to bringing an action under this section, the insurer must have been given 60 days written notice of the violation. The notice shall state with specificity the following information:

- (1) The specific language of the statute or regulations which the insurer allegedly violated.
- (2) The facts and circumstances giving rise to the violation.
- (3) The name of any individual involved in the violation.
- (4) Reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third party claimant, he shall not be required to reference the specific policy language if the insurer has not provided a copy of the policy to the third party claimant pursuant to written request.
- (5) A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

(c) No action shall lie if, within 60 days after filing notice, the damages are paid or the circumstances giving rise to the violation are corrected.

(d) An insured that is the recipient of a notice filed pursuant to this section shall report each such notice to the director division of insurance, within 30 days of receipt of the notice and shall, within 30 days of the disposition of any claim related to the notice, report that disposition to the director.

(e) Any applicable statute of limitations for an action under this section shall be tolled for a period of 65 days by the mailing of the notice required by this section.

(f) Upon adverse adjudication at trial or upon appeal, the insurer shall be liable for damages, together with court costs and reasonable attorney's fees incurred by the plaintiff. The damages recoverable pursuant to this section shall include those damages which are a reasonably foreseeable result of a specified violation of the above statute and/or regulations and/or this section by the insurer and may include an award or judgment in an amount that exceeds the policy limits.

(g) No punitive damages shall be awarded under this section unless the acts giving rise to the violation are:

(1) willful, wanton, or malicious; or

(2) in reckless disregard of the rights of the complaining party.

(h) The civil remedy specified in this section is in addition to other remedies and does not preempt any other remedy or cause of action provided for pursuant to any other statute or pursuant to the common law of this state. To the extent that it is argued that Hillman v. Nationwide Mutual Fire Ins. Co., 758 P.2d 1248 (Alaska 1988); State Farm Insurance Company v. Weiford, 831 P.2d 1264 (Alaska 1992); O.K. Lumber v. Providence Washington Ins., 759 P.2d 523 (Alaska 1988); and/or Alaska Pacific Assur. Co. v. Collins, 794 P.2d 936 (Alaska 1990) are inconsistent with this section, this section shall control.

**[ELIMINATION OF WORKER'S COMPENSATION CARRIER'S LIEN  
WHERE VIOLATION OF SAFETY STATUTE OR REGULATION  
HELPED CAUSE INJURY]**

Sec. \_\_\_\_\_ AS 23.30.015 (e) and (g) is amended to read

*purpose 4*

(e) Where the violation of an applicable safety statute, regulation, or contractual safety provision was a substantial factor in bringing about the employee's injury for which compensation was paid, all amounts recovered by the employer under an assignment of benefits, including attorney's fees incurred, shall be distributed to the employee. In all other cases, an amount recovered by the employer under an assignment, whether by action or compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to

(A) the expenses incurred by the employer in respect to the action or compromise;

(B) the cost of all benefits actually furnished by the employer under this chapter;

(C) all amounts paid as compensation in second-injury fund payment;

(D) the present value of all amounts payable later as compensation (present value to be computed from a schedule prepared by the board), and the present value of the cost of all benefits to be furnished later under AS 23.30.095 (as estimated by the board), the amount so computed and estimated to be retained by the employer as a trust fund to pay compensation and the cost of benefits as they come due and to pay any finally remaining excess sum to the person entitled to compensation or to the representative;  
and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative of that person.

\* \* \*

(g) Where the violation of an applicable safety statute, regulation, or contractual safety provision was a substantial factor in bringing about the employee's injury for which compensation was paid, all amounts recovered by the employee or the employee's representative shall be retained by the employee. In all other cases, if the employee or the employee's representative recovers damages from the third person, the employee or representative shall promptly pay to the

employer the total amounts paid by the employer under (e)(1)(A), (B), and (C) of this section, insofar as the recovery is sufficient after deducting all litigation costs and expenses. Any excess recovery by the employee or representative shall be credited against any amount payable by the employer thereafter.

#### **PURPOSE**

Under current law an employer can contribute substantially to plaintiff's injury through failure to follow safety statutes, regulations, or contractual safety provisions. This weakens plaintiff's claim against a third party and makes plaintiff's litigation more difficult. The carrier/employer never pays for this extra burden nor helps fund plaintiff's litigation. Plaintiff takes all the risk. The employer/carrier pays no burden for violation of safety rules while demanding that plaintiff's recovery, weakened by the employer's own conduct, be distributed first to the employer/carrier. This provision would change that by denying the employer/carrier the ability to recover its worker's comp lien where its own conduct was a substantial factor in causing plaintiff's injury.

purpose 5

[INSURANCE RATE ROLL BACK]

Sec. \_\_\_\_\_ AS \_\_\_\_\_.\_\_\_\_\_ is amended to add a new section to read:

Sec. \_\_\_\_\_. **Insurance rates to be rolled back.** (a) With the exception of wet marine insurance, all policies issued or renewed in Alaska after January 1, 1998 shall reflect a 10% reduction in premiums charged per unit of coverage.

(b) No rate or premium increase will be allowed for a policy sold in the State of Alaska after January 1, 1998 without application to the director, division of insurance, Department of Commerce and Economic Development.

(c) Before any rate increase may be approved the director shall conduct a hearing, the date, time and place of which shall be noticed in the Alaska Bar Rag and in at least one other newspaper of general circulation within the state no less than 60 days before commencement of the hearing. In addition the notice shall summarize the particulars of the requested rate increase. At the director's discretion, costs associated with this procedure may be charged to the carrier requesting the rate or premium increase.

(d) Upon application of any interested person or entity to intervene in these proceedings, the director shall allow such intervention. The director may order discovery and shall allow any interested person or entity, once having intervened in the proceeding, discovery as to issues relevant to the proceeding and consistent with the definition and scope of discover as set forth in the Alaska Rules of Civil Procedure. No hearing shall take place until the requesting carrier has fully complied with discovery requests submitted to it by the director and any other party or parties to the proceeding.

(e) The carrier shall have the burden of proving that its requested rate increase is more likely than not in the public interest under all the circumstances. In the event that the rate of return to be enjoyed by the carrier in the face of the requested rate increase equals or exceeds the prejudgment interest rate on personal injury claims as then defined by statute, the rate increase shall be rebuttably presumed to be against the public interest.

(f) Interveners shall be deemed public interest litigants. To the extent they successfully oppose requested rate increases they shall be awarded full reasonable costs and attorney fees to be paid by the requesting carrier. In the event that interveners are unsuccessful in opposing rate increases, they shall be awarded full reasonable costs and attorneys fees where the director determines that their efforts in opposing the rate increase were taken in good faith, were not frivolous, or substantially advanced the public interest.

## PURPOSE

The insurance industry has milked the "tort reform" mythology to derive tremendous benefits as a result of changes in the civil justice system over the last decade. The public has reaped no benefit. This modest decrease in rates devolves some small benefit on the public in exchange for the rights that the public has lost and the cost that the public pays for these changes in the law.

# Chapter 45. Trade Practices.

3/7/97

## Article

- 1. Interest (§§ 45.45.010 — 45.45.070)
- 2. Collection of Advance Interest (§§ 45.45.080, 45.45.090)
- 3. Merchandise (§§ 45.45.100 — 45.45.110)
- 4. Funerals (§ 45.45.120)
- 5. Regulation of Motor Vehicle Repairs (§§ 45.45.130 — 45.45.240)
- 6. Motor Vehicle Warranties (§§ 45.45.300 — 45.45.360)
- 7. Used Vehicle Sales in Emission Inspection Areas (§ 45.45.400)
- 8. Copyright Royalties and Licensing (§§ 45.45.500 — 45.45.590)
- 9. Miscellaneous Provisions (§§ 45.45.900, 45.45.910)

Sen. Taylor -

Please call

Mike @ 277-9306

re this proposal

— M

## Article 1. Interest.

### Section

- 10. Legal rate of interest
- 20. Higher rate of interest prohibited
- 30. Action for recovery of double amount of usurious interest paid
- 40. Usurious rate as working forfeiture of entire interest

### Section

- 50. Recovery by assignee of usurious contract of amount paid
- 60. Contract not usurious because of agreement to pay taxes
- 70. Enforcement of contracts entered into under AS 45.45.060

**Sec. 45.45.010. Legal rate of interest.** (a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) Interest may not be charged by express agreement of the parties in a contract or loan commitment that is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District on the day on which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$25,000 is exempt from the limitation of this subsection.

(c) [Repealed, § 3 ch 84 SLA 1973.]

(d) [Repealed, § 2 ch 94 SLA 1981.]

(e) [Repealed, § 4 ch 146 SLA 1974.]

\$25,000

(f) A bank, credit union, savings and loan institution, pension fund, insurance company or mortgage company may not require or accept any percent of ownership or profits above its interest rate. This subsection does not apply to a loan if the principal amount of the loan is \$1,000,000 or more and the term of the loan is five years or more.

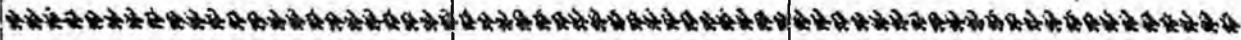
(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. (§ 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch 107 SLA 1980; am §§ 1, 2 ch 94 SLA 1981; am § 1 ch 56 SLA 1982)

**Cross references.** — For maximum rates of interest applicable to: bank credit cards, see AS 06.05.209; credit unions, see AS 06.45.060; judgments, see AS 09.30.070.

84, SLA 1973 (FCCS HCSSB 37), see 1973 Senate Journal Supplement 16, pp. 1 and 2, following p. 766 of the 1973 Senate Journal.

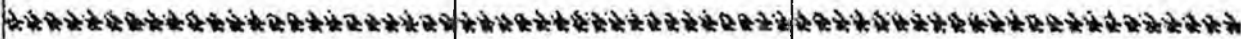
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FAX (907) 278-0449



FACSIMILE TRANSMITTAL SHEET

PLEASE DELIVER THE DOCUMENTS WHICH FOLLOW TO:

NAME: Senator Robin Taylor  
FIRM: \_\_\_\_\_  
FAX NUMBER: (907) 465-3922  
RE: CS For Senate Bill No. 15



DATE: 3-11-97  
NUMBER OF PAGES INCLUDING COVER SHEET: 4  
DOCUMENT BEING TRANSMITTED: Inputs for Bill

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
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## M E M O R A N D U M

TO: SENATOR ROBIN TAYLOR

FROM: DONNA C. WILLARD

DATED: MARCH 11, 1997

SUBJECT: CS FOR SENATE BILL NO. 15

VIA FAX  
(907) 465-3922

\*\*\*\*\*

I have had only a brief opportunity to consider the bill and did not receive the Schneider amendments so my comments may be somewhat "off the cuff." In addition, I suspect you and I have philosophical differences on the subject. In any event, here goes.

1. Foundation For Submission of Punitive Damages: One of the cardinal rules in the punitive damages area, more honored in the breach, is that the trial judge is supposed to take a hard look before the issue is ever submitted to the jury. I have found, however, that it simply does not happen. Is there any way this requirement could be added in?
2. Interest Rate: To maintain the legal rate of interest at 10.5% is simply outrageous when one considers what money is earning in this day and age. It is my belief that the rate should be changed in a manner which would tie it to prime. This issue arises in numerous different sections.
3. Section 09.17.020: I strongly disagree with the mandatory language which provides that the issue of punitives be decided "concurrent with all other issues." There are a number of excellent reasons why bifurcation should be required, not the least of which is the effect which the evidence relating to punitive damages has on the compensatory award.

Subsection (c) (7) with respect to the financial condition of the defendant needs some limitation. What has happened in the O.J. Simpson trial is really terrifying for those of us who represent businesses. Who has ever heard of projecting into the future the amount of money which a person or entity might make and then adding it to a financial statement and allowing it to be considered in making such an award?

ROBIN TAYLOR  
March 11, 1997  
Page 2

Subsection (d), I suspect, will not pass constitutional muster. Seems to me it is interfering with the trial court's ability to grant judgment n.o.v., not to mention to consider a motion for remittitur.

Subsection (e) seems less than clear to me. I simply do not understand how it will work in practical effect to bar discovery on the issue of punitives until after a decision has been made to award such damages. What kind of delay is this going to cause vis a vis a trial? Also, you have a typo. I believe it should read "Unless the evidence" rather than "Unless [that] evidence...."

My unalterable habit of editing is kicking in but it seems to me that subsection (g) should substitute determines for finds. Same comment re subsection (h).

It appears to me that there may be an inherent conflict between the language of subsection (h) and proposed Section 18.80.225 which, by the way, I love. Both address unlawful employment practices but subsection (h) in no manner recognizes nor delineates what employment practices it addresses as opposed to those which might be the subject of AS 18.80 litigation. While "employment practices" is defined as the "conduct of hiring, firing, transferring, promoting, demoting or terminating," in subsection (j)? which should be [b] with the one above [a], it could be equally well applied to the practices targeted in the human rights act.

4. Section 11 (AS 09.30.070(c)): I may be dull this morning but what is its purpose? Subsection (a) of the statute already provides for an interest rate on judgments and decrees so in what circumstances would this provision be applicable?
5. Alternative Dispute Resolution: I have real problems with both the pilot program referenced in Section 09.43.320 and the mandatory arbitration suggested in AS 09.55.535. Having just been through an arbitration for VECO utilizing the AAA, the system has severe deficiencies, not the least of which is the failure to require arbitrators to follow the law and the total lack of any explanation for the basis of an award. This bill incorporates those deficiencies because, at least in the mandatory section, the Uniform Arbitration Act is incorporated. Moreover, I do not believe that whoever is championing this notion has any idea of the expense which is being visited upon the litigants. God knows, the

ROBIN TAYLOR  
March 11, 1997  
Page 3

system is expensive enough already without layering on yet another significant level of costs.

Is the pilot program supposed to be limited to cases under \$100,000 as is the mandatory arbitration section? It does not say. However, this limitation merely reinforces my observation with respect to cost. People can barely afford an attorney to pursue a \$50,000 case. If they also have to pay arbitration costs, economics dictate that there will be a lot of people barred from the courthouse. Given the grave concern nationwide for the closing of the courthouse doors to people in the middle income bracket, I believe this notion is fool hardy to say the least.

I would further suspect that there are constitutional problems with the mandatory provision. What about the right to trial by jury?

6. AS 09.68.130: This section relating to the Judicial Council collecting and evaluating information with respect to the compromise and settlement of litigation raises at least two inquiries. First, how is such a requisite going to be enforced? WELL, FORGET THAT ONE--I FOUND IT IN THE PROPOSED AMENDMENT TO CIVIL RULE 41(a). Second, what about confidentiality provisions in settlement agreements?
7. AS 22.15.030(a): I disagree with raising the district court's jurisdictional limits. My experience has been that most appointees simply are not qualified to handle major litigation. Moreover, at the \$100,000 level, one can very well be looking at complex litigation. Moreover, when read in tandem with the proposed amendment to Rule 1(a)(1) of the District Rules [Section 28], what is being developed is a system of trial by ambush in a large case. Seems to me this is in direct conflict with the new discovery rules, the whole purpose of which was to get all the information out in the open.

Well, this is the best that I could do, given the time frame. I hope that I have provided some assistance.

Would be happy to speak with you about my comments. Will be working at home for the next two days--have a couple of Supreme Court briefs due next week.

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. SB 15

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: " . . . to punitive damages . . . related to employ- BRU: Criminal Division/Civil Division  
 ment; . . . to arbitration in a civil action; amending Rules 79(b) . . ." Component: Criminal Division  
 Sponsor: Senator Taylor General Legal Services  
 Requester: Senate Judiciary Committee COMPONENT SERIAL NO. 2085/2087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	83.8	83.8	83.8	83.8	83.8	83.8
TRAVEL	1.1	1.1	1.1	1.1	1.1	1.1
CONTRACTUAL	350.0	350.0	350.0	350.0	350.0	350.0
SUPPLIES	1.6	1.6	1.6	1.6	1.6	1.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	179.0	179.0	179.0	179.0	179.0	179.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
1007 Interagency Receipts	257.5	257.5	257.5	257.5	257.5	257.5
<b>TOTAL</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>	<b>436.5</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

SB 15 would require mandatory arbitration for all personal injury, death, or property damage cases where the amount of controversy is \$100,000 or less, with certain limited exceptions. The bill would also cap punitive damages for actions against an employer to recover damages for an unlawful employment practice prohibited by AS 18.80.220.

While the second change would have no impact on the Department of Law, the requirement for mandatory arbitration would cause new costs. The department anticipates that approximately 100 cases per year would require mandatory arbitration: 65 tort claims, 30 prisoner litigation cases, and 5 cases in other categories, primarily environmental claims. This estimate is based on the number of cases the department currently has where claims for damages are \$100,000 or less. If future plaintiffs claim damages greater than \$100,000, they could avoid the effect of the bill and the number of cases going to mandatory arbitration could be less.

Prepared by: Joan M. Kasson *Joan M. Kasson*  
 Division: Administrative/Services Division  
 Approved by Commissioner: Bruce M. Botelho, Attorney General *Bruce M. Botelho*  
 Agency: Department of Law

Phone: 465-5370  
 Date: 3/11/97  
 Date: 3/11/97

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ANALYSIS CONTINUATION:

Each case going to arbitration would require, on average, approximately 20 hours of attorney time specifically to prepare for and attend the arbitration hearing, in addition to the time ordinarily spent preparing the case (20 hours @ \$87/hr, or \$1,740). In addition, witness fees and costs could be expected to be approximately \$1,500 per case. The bill does not specify who would pay the cost of arbitration, and our estimate of costs assumes the state would be required to pay one-half of the arbitrator's fee, estimated at \$150/hr for 25 hours. These cost estimates of \$5,115 per case are conservative. Medical cases, for example, could be expected to involve considerably more in-house attorney time and increased costs for expert witnesses.

The estimated cost for mandatory arbitration would be offset by any savings from cases settling at the arbitration level, and not proceeding to trial. As a practical matter, very few of these types of cases go to trial. Most are either won or lost on motion practice, or settled prior to trial. An average of three tort cases, where the amount in controversy is \$100,000 or less, actually proceed to trial each year, and if all are assumed to be settled at the arbitration level, a potential savings of \$75,000 is possible (\$25,000 per case). This potential savings is reflected in our cost estimate.

The cost estimate is based on the department's standard attorney cost schedule (\$87/hour) and includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Witness and arbitrator costs are included separately.

	<u># cases</u>	<u>cost/case</u>	<u>total</u>	
<b>GENERAL LEGAL SERVICES</b>				
<u>Special Litigation (torts)</u>				
Department of Law attorney time	65	\$1,740	\$113,100	
Witness costs/fees		\$1,500	\$97,500	
Arbitrator cost/fees		\$1,875	\$121,875	
Total		\$5,115	\$332,475	
Estimated potential savings	3	(\$25,000)	(\$75,000)	
			\$257,475	IAR
<u>Other, non-tort, claims for damages</u>				
Department of Law attorney time	5	\$1,740	\$8,700	
Witness costs/fees		\$1,500	\$7,500	
Arbitrator cost/fees		\$1,875	\$9,375	
Total		\$5,115	\$25,575	GF
<b>CRIMINAL DIVISION</b>				
<u>Prisoner litigation cases</u>				
Department of Law attorney time	30	\$1,740	\$52,200	
Witness costs/fees		\$1,500	\$45,000	
Arbitrator cost/fees		\$1,875	\$56,250	
Total		\$5,115	\$153,450	GF
<b>TOTAL DEPARTMENT OF LAW</b>	<u>100</u>		<u>\$436,500</u>	

William F. Jennings  
Dorothy F. Jennings

Sincerely,

I am in favor of that reform. I think there are people out there looking for ways money and some of them will take advantage of any situation. Be it if decision and other business has to pay or hesitant to announce that the act is passed on to the people of Alaska.

Sincerely,

Subject: SB43

Jennings AK 99801-1152

State Capital

State Judiciary Committee

16250 Old Glenn  
Chugiak AK 99567  
January 27, 1997

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3 1997

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**cc:Mail for: Senator Taylor**

---

**Subject:** <none>

**From:** baker@Alaska.NET (Grant C. Baker) at CC2MHS1 2/4/97 9:09 PM

**bcc:** Senator Robin Taylor at JNU\_CAPITOL

**To:** AKMAIL1.Alaska@AKMAIL1.Alaska at CC2MHS1

---

Grant C. Baker  
P.O. Box 240986  
Anchorage, Alaska 99524

February 4, 1997

RE: Support for SB43 and HB60 (increasing fines against attorneys that violate court rules)

To the 1997 Alaska Legislature:

It is my understanding that part of tort reform (SB43 and HB60) calls for an increase in fines that can be levied against attorneys for violation of court rules. This letter is one of strong support for increasing these fines.

For the past three years, I have been in a legal battle with the University of Alaska (UA) administration and its hired attorneys. The case was recently decided in my favor by the Alaska Superior Court on January 2, 1997. The Court REVERSED UA's action and determined UA had breached its contract. Now, the Court's record shows what the faculty and students knew before this went to court; UA administration was wrong. Unfortunately, UA administration is easily swayed by attorneys that are willing and able to abuse the legal system to cover up its wrong doing.

The documents from this case show UA attorneys falsified, fabricated, concealed, and altered evidence. The Superior Court on September 14, 1995 found that the UA administration and their hired attorneys:

"failed to follow any of the rules in preparing the record."

Consequently, the Court threw out the entire record submitted by UA administration and UA attorneys.

UA attorneys also withheld the transcript of the university hearing while stating they had complied with court rules for submitting the transcript. The hearing had found in my favor on all issues. Incredible as it may seem, after being caught, the excuse UA attorneys used for the deception was that they thought UA administration had destroyed the hearing tapes. Thus, the deception was justified.

The Court ordered UA attorneys to submit the transcript with:

"the recognition that the record will not be complete until the transcript is prepared"

But when they submitted the transcript to the Court, it was illegible. UA attorneys then attempted to prevent the transcript from being corrected. Finally, after about eight months of delay by UA attorneys, the Superior Court approved our corrections over their continued objections on March 4,

---

1996. The Court concurred with us and found that our corrections were:

"necessary and appropriate to correct known and factual errors in the official transcript submitted by UAF"

The above described documents barely scratch the surface. There are many more documented instances of obstruction of evidence and violations of court rules by UA attorneys hired by UA administration.

Among the many common reasons that breed corruption, the problems in this case stem in part from current limits on fines being too low. The current limits pose no threat or deterrent to attorneys inclined to profit by abusing the legal system. This is reflected by the sanctions imposed by the Court have not stopped UA administration or its attorneys from continuing to obstruct evidence and proceedings.

>From my review of SB43 (Sec.26) and HB60 (Sec.26), both propose an increase in the fines for violation of civil procedure court rules from \$1000 to \$10,000 [CR 95(b)]. I think that this is an excellent start. Although, I believe an even greater increase is justified and may be needed to turn the current tide of abuse.

The damage done to an innocent party due to an opposing attorney's obstruction of evidence can easily far outweigh a \$10,000 fine. Thus, it becomes a financially viable option for an attorney to choose to violate court rules for personal gain. But, as I mentioned above, the increase to \$10,000 is certainly a welcomed move in the right direction and I support it.

\*\* However, I do not see anything in the proposed bills that increases the fines for violation of appellate procedure rules. In particular, Alaska Rule of Appellant Procedure AR 510(c), which seems to be analogous to CR 95(b) for civil procedure, is restricted to \$500 with no proposed increase. I strongly suggest that the AR 510 fines be increased to \$10,000 as well. In fact, there is as great, or greater need to put more bite into the appellant procedure fines. The procedure is strongly dependent upon good faith actions of attorneys to make material documents available to the court because discovery methods are not available as there are with civil proceedings. My case is a perfect example of the nose thumbing done by attorneys to the courts due to the inadequate \$500 fine limit.

I want to make it clear that this is not an anti-University letter. In fact, the exact opposite is true. It is an attempt to help the University by stopping UA administration and hired UA attorneys from dumping a needless burden on the backs of the rest of the University. They have chosen to abuse the legal system for their personal gain at the University's and the public expense. Doing nothing would certainly allow the abuses to continue and would further damage the University. There is a need, and a duty, to act.

If anyone investigates this case there is sure to be contrary stories created by UA administration and UA attorneys. It is hard to fight such overwhelming numbers especially since shaping public perception is their profession. But, I have faith that common sense can and should prevail. Hence I suggest that this case be viewed with the following in mind.

If claims by UA administration and UA attorneys were true, then they would not have concealed, altered, falsified, fabricated, and withheld evidence so severely that their entire record had to be thrown out by the Alaska Superior Court.

Apathy and inaction can be analogous to ignoring a cancer. It allows the

problem to grow and can make things get worse and worse. Thus, I urge all of you to do what is necessary to prevent the abuse of the legal system by attorneys such as that which has occurred in this case. The courts need effective tools to enforce court rules. Increased fines are needed before they will have any real impact against attorneys that have chosen to blatantly violate court rules, and indulge in other abuses of the legal system, for their personal gain. Thus, I support the proposed increases in fines described by SB43 and HB60 to CR 95(b) and recommend that the same increases be made to AR 510.

If you would like to discuss the above, I can be contacted at the numbers listed below. Thank you for your time and attention.

Respectfully submitted,

Dr. Grant C. Baker  
Tele: (907) 786-1056 (wk)  
(907) 563-2640 (hm)  
E-mail: baker@alaska.net  
Case No. 4FA-94-469-CV

cc: 1997 Alaska legislature  
enclosures: Copy to follow via regular mail.

RECEIVED FEB 12 1997

Grant C. Baker  
P.O. Box 240986  
Anchorage, Alaska 99524

February 4, 1997

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The documents from this case show UA attorneys falsified, fabricated, concealed, and altered evidence. See Ex.84, Ex.85-89, and Ex.90. The Superior Court on September 14, 1995 found that the UA administration and their hired attorneys (See Ex.84):

"failed to follow any of the rules in preparing the record."

Consequently, the Court threw out the entire record submitted by UA administration and UA attorneys. UA attorneys also withheld the transcript of the university hearing while stating they had complied with court rules for submitting the transcript. The hearing had found in my favor on all issues. See Ex.17-19. Incredible as it may seem, after being caught, the excuse UA attorneys used to justify the deception was that they thought UA administration had destroyed the hearing tapes.

The Court ordered UA attorneys to submit the transcript with (See Ex.90):

"the recognition that the record will not be complete until the transcript is prepared".

But when they submitted the transcript to the Court, it was illegible. UA attorneys then attempted to prevent the transcript from being corrected. Finally, after about eight months of delay by UA attorneys, the Superior Court approved our corrections over their continued

objections on March 4, 1996. The Court concurred with us and found that our corrections were (See Ex.97-98):

"necessary and appropriate to correct known factual errors  
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Among the many common reasons that breed corruption, the problems in this case stem in part from current limits on fines being too low. The current limits pose no threat or deterrent to attorneys inclined to profit by abusing the legal system. This is reflected by the sanctions imposed by the Court have not stopped UA administration or its attorneys from continuing to obstruct evidence and proceedings.

From my review of SB43 (Sec.26) and HB60 (Sec.26), both propose an increase in the fines for violation of civil procedure court rules from \$1000 to \$10,000 [CR 95(b)]. I think that this is an excellent start. Although, I believe an even greater increase is justified and may be needed to turn the current tide of abuse.

The damage done to an innocent party due to an opposing attorney's obstruction of evidence can easily far outweigh a \$10,000 fine. Thus, it becomes a financially viable option for an attorney to choose to violate court rules for personal gain. But, as I mentioned above, the increase to \$10,000 is certainly a welcomed move in the right direction and I support it.

\*\* However, I do not see anything in the proposed bills that increases the fines for violation of appellate procedure rules. In particular, Alaska Rule of Appellant Procedure AR 510(c), which seems to be analogous to CR 95(b) for civil procedure, is restricted to \$500 with no proposed increase. I strongly suggest that the AR 510 fines be increased to \$10,000 as well. In fact, there is as great, or greater need to put more bite into the appellant procedure fines. The procedure is strongly dependent upon good faith actions of attorneys to make material documents available to the court because discovery methods are not available as there are with civil proceedings. My case is a perfect example of the nose thumbing done by attorneys to the courts due to the inadequate \$500 fine limit.

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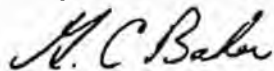
perception is their profession. But, I have faith that common sense can and should prevail. Hence I suggest that this case be viewed with the following in mind.

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Doing nothing will allow the problem to grow and make things get worse and worse. Thus, I urge all of you to do what is necessary to prevent the abuse of the legal system by attorneys such as that which has occurred in this case. The courts need effective tools to enforce court rules. Increased fines are needed before they will have any real impact against attorneys that have chosen to blatantly violate court rules, and indulge in other abuses of the legal system, for their personal gain. Thus, I support the proposed increases in fines described by SB43 and HB60 to CR 95(b) and recommend that the same increases be made to AR 510.

If you would like to discuss the above, I can be contacted at the numbers listed below. Thank you for your time and attention.

Respectfully submitted,



Dr. Grant C. Baker

Tele:

(907) 786-1056 (wk)

(907) 563-2640 (hm)

E-mail: baker@alaska.net

Case No. 4FA-94-469-CV

cc: 1997 Alaska legislature  
enclosures

# UNIVERSITY OF ALASKA FAIRBANKS

97



Accounting & Business Operations  
First Floor Signers' Hall • Fairbanks, Alaska • 99775-0380  
Telephone • (907) 474-7551

## MEMORANDUM

December 13, 1993

To: Chancellor Wadlow

From: Tim Bauer, Chair <sup>LTB</sup>  
UAF Grievance Council

CONFIDENTIAL

### ITEM AND ISSUE

Findings from grievance hearing - Grant Baker

### BACKGROUND AND SUMMARY

A hearing panel was convened and heard the matter of Grant Baker's grievances dated October 25, 1993 and November 10, 1993. In Dr. Baker's October request for a hearing he alleged that his non-retention on June 29, 1993 was not valid as it was in conflict with Regents Policy 04.04.04.C.1.c.

Dr Baker's November request for a hearing asserts that Dean Williams' 1991 and 1992 evaluations of his (Dr. Baker's) performance were not consistent with "documented facts" such as student evaluations and the evaluations from his Department Head. Dr. Baker makes the point that these evaluations would present a detriment to his efforts to seek employment elsewhere. He also alleged that these inconsistent evaluations contributed to his being selected as one of the 3 non-tenured faculty members who were non-retained.

On November 10, 1993 Interim Provost Reichardt indicated that his attempts to informally resolve the situation had proved to be unproductive. In retrospect it appears that this letter was referring to the first (October) request for a hearing. Because of the interrelationship of these issues and the fact that Dr. Baker's second (November) grievance included documentation of his appeal of "inaccurate evaluations" to Interim Provost Reichardt, the grievance council met to consider both requests for a hearing.

At that meeting, the council found that there was a reasonable likelihood of a grievable act in the matter of the timeliness of Dr. Baker's notice of non-retention. The council was divided as to the question of evaluations and Dr. Baker's assertions that these predated his non-retention and adversely affected future employment opportunities. The council decided that we would also include these in the hearing leaving the burden of proof on Dr. Baker to show a correlation to his non-retention and future employment.

The hearing was held on December 10, 1993. On the basis of the testimony of the parties, witnesses and documents submitted, the hearing panel deliberated and came to the following conclusions:

Ex. 17

IN THE MATTER OF THE TIMELINESS OF NOTIFICATION OF NON-RETENTION:

It was clear to the hearing panel that although UAF procedures provide for non-retention notice "not later than June 30 in the year preceding the expiration of an academic year appointment after two or more years of uninterrupted service ...", Regents Policy 04.04.04.C.1.c. sets this deadline for notification at "Twelve months prior to the expiration of an appointment...".

The panel was made aware of the fact that the Board of Regents was not only aware of UAF procedures, but in fact approved the UAF policies in August 1989. However, it was the decision of the hearing panel that the Board of Regents Policy takes pre-eminence over UAF Policy when there is a conflict.

Therefore, the panel finds in favor of Dr. Baker and recommends his retention for at least another academic year.

IN THE MATTER OF EVALUATIONS IN REGARD TO NON-RETENTION:

UAF regulation Section III (E) provides for consultation with the tenured faculty prior to a decision by the dean to not renew a faculty member's appointment. Based on the evidence presented, we could find no documentation that this step was ever taken by the Dean. Although, the Dean did discuss the possibility of non-tenured reductions with the department heads, it would appear that consultation with the tenured faculty was not performed as required by UAF regulation.

In view of the fact that the panel has already recommended that Dr. Baker's appointment be renewed for at least another academic year, the panel recommends that the Dean consult with tenured faculty before any additional non-retention of non-tenured faculty.

IN THE MATTER OF EVALUATIONS AND THEIR EFFECT ON FUTURE EMPLOYMENT OPPORTUNITIES:

Dr. Baker alleged that his evaluations by the Dean indicated a teaching effectiveness that was not reflective of similar evaluations by students and his department head. He also produced a letter from UAF Personnel Services which indicated that prospective employers often request and are provided information from an employee's personnel file including work performance history.

The hearing panel agrees that Dean Williams' 1991 and 1992 evaluations are not consistent with other indicators of Dr. Baker's teaching effectiveness, and concentrate almost exclusively on negative aspects of Dr. Baker's performance. Dr. Baker has asked that his evaluations be corrected. However, since evaluations are a subjective judgement, "correction" by the Dean might still not be acceptable to Dr. Baker, and could result in a new grievance request.

Therefore, the hearing panel recommends that the 1991 and 1992 performance appraisals prepared by the Dean be removed from Dr.

Baker's personnel file to eliminate any negative effect on his future employment opportunities.

In addition, it was clear to the hearing panel that the Dean was acting from data and advise that he believed was appropriate for the non-retention of a non-tenured faculty member with two or more years of university service. To prevent future conflicts of this nature, the hearing panel also recommends that you seek revision to Regents Policy 04.04.04.C.1.c to allow campuses discretion to set a shorter timeframe.

**ACTION REQUESTED**

For your information.

cc: Grant Baker  
Frank Williams  
Darlett Powell, Grievance Council Member  
Loren Johnston, Grievance Council Member  
Harikumar Thiagarajan, Grievance Council Member  
Sheri Schuyler, Grievance Council Member  
Jacob Joseph, Grievance Council Member  
Deb Watson, Grievance Council Member  
Gary Copus, Hearing Panel Member  
Bill Kauffman  
Jeanne Freeman  
Patty Kastelic

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FILED  
SEP 18 1995

GRANT C. BAKER,  
  
Appellant,  
  
vs.  
  
UNIVERSITY OF ALASKA-FAIRBANKS,  
et al,  
  
Appellee,

Filed in the Trial Courts  
STATE OF ALASKA, FOURTH DISTRICT

SEP 14 1995

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

Case No. 4FA-94-469 Civil

ORDER

Based upon the objections submitted by Appellant to the agency record prepared and filed by the Appellees in this matter and the court's review of the record, as well as the objections and the Appellees response to the objections, the court determines that the objections are meritorious; accordingly

IT IS HEREBY ORDERED that the court accepts as the alternative record submitted by Appellant which shall be used as the official record in this appeal; and <sup>the record</sup> prepared by the university is to be returned to them.

IT IS HEREBY FURTHER ORDERED that the bill for \$1,882.50 submitted by Appellees for the preparation of the record which was filed on August 12, 1995 is unreasonable and shall not be paid <sup>particularly in light of the fact that the</sup> or, ~~alternatively, is reduced to \$~~ <sup>university failed to follow any of the rules in preparing the record.</sup>

Dated: September 13, 1995

Mary E. Greene  
Mary E. Greene  
Superior Court Judge

I certify that on 9/14/95  
copies of this form were sent to  
CLERK: [Signature]

Jerman  
Jane Powell

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9-5-95

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

GRANT C. BAKER,

Appellant.

vs.

UNIVERSITY OF ALASKA-FAIRBANKS,  
et al,

Appellee.

Case No. 4FA-94-169 Civil

OBJECTIONS TO AGENCY RECORD

COMES NOW Grant Baker, Appellant, by and through his attorneys, Jermain, Dunnagan & Owens, P.C., pursuant to Rule 210(i) of the Alaska Rules of Appellate Procedure and the Court's order entered at the hearing before the Court on August 3, 1995 concerning issues of the proper record on appeal, who submits the following objections to the record assembled by Appellee's counsel and transmitted to the Court on July 12, 1995:

1. In the transmittal of agency record filed with the Court on July 12, 1995 and signed by Appellee's counsel, the Appellees certify that the agency record submitted to the Court is in compliance with Rule 604(b)(1)(B)(ii) and (iii) of the Alaska Rules of Appellate Procedure. However, the agency record assembled and submitted by counsel for Appellees does not consist of copies of the original papers and exhibits filed with the administrative agency, but appears to be an assemblage of documents

**Ex . 85**

taken from a variety of sources other than the original documents submitted to Interim Provost Paul Reichardt prior to his decision on January 31, 1994 (hereafter "decision"). A comparison of the record assembled by Appellee's counsel with the alternative record submitted by Appellant reveals that at least 44 documents are missing from the agency record and that 18 of these documents were either addressed to or copied to Dr. Reichardt and pertained to the decision.

2. Volume I of the agency record is the deposition of Ron Johnson, including all exhibits to the deposition, which was taken on June 16, 1994, almost five months after the decision.

3. Volume II of the agency record is the deposition of Grant Baker, including all exhibits to the deposition, which was taken on May 22, 1995, almost 16 months after the decision (and six days after the Court entered its order on May 16, 1995 converting this civil action to an administrative appeal).

4. Volume III of the agency record includes a 20-page document in a sealed envelope which purports to be the Accreditation Board for Engineering and Technology, Inc. (ABET) report dated August 28, 1991; however, there is nothing to indicate whether and, if so, how this report was utilized in reaching the decision.

5. The following documents in Volume IV are improperly included in the agency record for the following reasons:

a) The affidavit of Paul Reichardt (pp. 000001-000010) dated June 29, 1995, signed almost 17 months after the decision (and more than one month after the Court entered its order on May 16, 1995 converting this civil action to an administrative appeal).

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b) pp. 000016-000024 is not a copy of the original document submitted by Appellant to Dr. Reichardt, but a copy obtained from the Chancellor's office (and two cover letters dated December 16, 1993 and December 21, 1993 have been removed).

c) pp. 000025-000066 is not a copy of the original document submitted by Appellant, but a copy provided to Appellee's counsel during Appellant's deposition on May 22, 1995.

d) pp. 000067-000086 are not copies of original documents submitted by Appointment, but are copies provided to Appellee's counsel by Appellant during his deposition on May 22, 1995.

e) p. 000088 did not exist at the time of the decision.

f) pp. 000092-000098 are an affidavit of Linda M. Armstrong with attached exhibits which was prepared and signed on June 20, 1995, almost 17 months after the decision and one month after the Court entered its order on May 16, 1995 converting this case from a civil matter to an administrative appeal.

g) pp. 000099-000100 is not a copy of an original document, but one which appears to have been faxed to, received by and obtained from the UA General Counsel.

h) pp. 000180-000181 is not a copy of an original document, but appears to be a copy of a document previously used as "Ex. 9" from some deposition or proceeding in the civil matter.

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i) pp. 000182-000184 are not copies of original documents, but are copies provided to Appellee's counsel by Appellant during his deposition on May 22, 1995.

j) pp. 000217-000223 did not exist at the time of the decision.

k) pp. 000225-000226 did not exist at the time of the decision.

l) pp. 000227-000265 is a completed 1993 faculty evaluation report that did not exist at the time of the decision.

m) pp. 000319-000326 appear to be draft copies of UAF Policies and Procedures, but there is no indication of any approval by the UA Board of Regents.

n) pp. 000335-000381 appear to be the 1989 edition of the UAF Policies and Regulations, rather than the 1993 reprinted version.

o) pp. 000382-000395 appears to be a document from the UAF archives but of unknown origin and with no indication concerning whether and, if so, how it was utilized in reaching the decision.

p) p. 000418 pertains to an individual other than Appellant.

6. The following documents have not been included as part of the agency record assembled by counsel for the Appellee:

a) A transcript of the Grievance Council hearing of Appellant's grievance on December 10, 1993.

b) Copies of any notes or records of the interviews held by Dr. Reichardt with Dean Williams, all SOE department heads and John Zarling.

Dated at Anchorage, Alaska this 14<sup>th</sup> day of August, 1995.

JERMAIN, DUNNAGAN & OWENS, P.C.

By

Bradley D. Owens for

I hereby certify that on the 14<sup>th</sup> day of August 1995 a true and correct copy of the foregoing was mailed to:

Ann S. Brown, Esq.  
Lane Powell Spears Lubersky  
250 Cushman, Ste 4-H  
Fairbanks, AK 99701

Shirley Kelly  
Shirley Kelly

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

OCT 5 1995

GRANT C. BAKER,

Appellant,

vs.

UNIVERSITY OF ALASKA-FAIRBANKS,  
et al.

Appellees.

Filed in the Trial Courts  
STATE OF ALASKA, FOURTH DISTRICT

OCT - 5 1995

Clerk of the Trial Courts  
By \_\_\_\_\_ Deputy

Case No. 4FA-94-469 Civil

ORDER DIRECTING UAF TO PREPARE AND FILE TRANSCRIPT

The court having considered the motion filed by Baker in this matter, hereby orders UAF to prepare and file a transcript of the December 1993 grievance hearing within 5 days <sup>the distribution of</sup> of this Order, with a copy to Baker and without cost to Baker. \*

*Further, the Clerk shall enter a new briefing schedule of the recognition*  
DATED at Anchorage, Alaska this 4 day of Oct, 1995. *that the clerk will not be obligated until the transcript is prepared*

*Mary E. Greene*  
MARY E. GREENE  
SUPERIOR COURT JUDGE

*If the Univ. prevails on appeal, it may apply to recover this as a "cost."*

I hereby certify that on the 20 day of September 1995 a true and correct copy of the foregoing was mailed to:

Ann S. Brown, Esq.  
Lane Powell Spears Lubersky  
250 Cushman, Ste 4-H  
Fairbanks, AK 99701

*Shirley Kelly*

I certify that on 10-5-95 copies of this form were sent to  
CLERK: KSH J DYC J P S O C

Ex. 90

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

FILED in the Trial Courts  
State of Alaska, Fourth District

GRANT C. BAKER,

Appellant,

vs.

UNIVERSITY OF ALASKA-FAIRBANKS,  
et al,

Appellees,



MAR 5 1996

Clerk, Trial Courts

By \_\_\_\_\_ Deputy

MAR 08 1996

Case No. 4FA-94-469 Civil

ORDER

The Appellees, having moved this court to strike Appendix B and Grant Baker's affidavit in support of Appendix B, from the Appellant's opening brief; and the court having considered the opposition submitted by Baker thereto and being fully advised in the premises finds the corrections made by Baker in Appendix B are not contested as inaccurate by UAF and it is proper to supplement the transcript with these corrections; that the corrections submitted by Baker in Appendix B to his brief are necessary and appropriate to correct known factual errors in the official transcript submitted by UAF; accordingly,

IT IS ORDERED that Appellees' Motion to Strike is DENIED and that Appendix B, and Grant Baker's affidavit in support of Appendix B, shall remain part of Baker's brief for consideration by this court.

Ex. 97

*Handwritten initials/signature*

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IT IS FURTHER ORDERED that Baker shall file and serve his reply brief within 20 days after the date of the Clerk's certificate of distribution of this order.

Dated at Anchorage, Alaska this 4 day of March 1996.

Mary E. Greene  
MARY E. GREENE  
SUPERIOR COURT JUDGE

I certify that a copy of the foregoing was distributed via:  
MAIL  
 U.S. Postal Svc Jermain, D/O (Owens)  
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ORDER

Ex. 98

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