

**ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672**

**9716 SENATE RULES**

AMENDMENT

# 1

Sen. Kelly

OFFERED IN THE SENATE

TO: SCS CSSSHB 58( ) (Draft 0-LS0056/Z, Dated 4/14/97)

1 Page 4, line 4:

2 Delete "fraudulent"

passed  
adopted

3 Page 4, line 15:

4 Delete "the minor or"

5 Page 8, line 29, following "responsible person":

6 Insert "the person is not a person protected from a civil action under  
7 AS 09.10.055."

8 Page 8, line 31, through page 9, line 1:

9 Delete "is not a person protected from a civil action under AS 09.10.055 and"

10 Page 10, lines 14 - 16:

11 Delete all material and insert:

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

15 Page 18, line 10:

16 Delete "defending"

17 Insert "or owed by all"

18 Page 25, line 31:

19 Delete "a pilot"

1

Insert "an"

AMENDMENT

# 2

Sen. Kelly

OFFERED IN THE SENATE

TO: SCS CSSSHB 58( ) (Draft 0-LS0056VZ, Dated 4/14/97)

- 1 Page 23, line 2:
- 2 Delete "cases"
- 3 Insert "a civil action for personal injury or property damage"
  
- 4 Page 23, line 31, following "action":
- 5 Insert "involving personal injury or property damage"
  
- 6 Page 24, line 10, following "However.":
- 7 Insert "in a civil action for personal injury or property damage."
  
- 8 Page 24, line 17:
- 9 Delete "Unless"
- 10 Insert "In a civil action for personal injury or property damage, unless"

passed  
adopted

AMENDMENT

#3

Sen. Kelly

OFFERED IN THE SENATE

TO: SCS CSSSHB 58( ) (Draft 0-LS0056VZ, Dated 4/14/97)

- 1 Page 8, line 28:
- 2 Delete "to each claimant"
  
- 3 Page 9, line 4:
- 4 Delete "or"
- 5 Insert "and"

passed  
adopted

#4

AMENDMENT NO. -- "AMENDED TASK FORCE PROPOSAL ON  
PUNITIVE DAMAGES"

DUNCAN

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58( ) (Version Z)

*filed*

Page 7, lines 18 - 27:

Delete all material and insert:

"(g) If the fact finder finds that the conduct proven under (b) of this section was motivated by financial gain and the average annual net income earned by the defendant for the five years before the date the trial began exceeded \$1,000,000 per year, it may award an amount of punitive damages not to exceed the greatest of

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

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

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

#5

DUNCAN

AMENDMENT NO. -- "STANDARD FOR TIER 2 PUNITIVE DAMAGES"

OFFERED IN SENATE RULES COMMITTEE

BY:

*failed*

TO: SCS CSSSHB 58( ) (Version Z)

Page 7, line 21:

Delete "(1)"

Page 7, line 22:

Delete "; and"

Insert "."

Page 7, lines 23 - 27:

Delete all material

#6  
DUNCAN

AMENDMENT NO. -- "PUNITIVE DAMAGES IN EMPLOYMENT CASES"

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58( ) (Version Z)

*failed*

Page 8, line 1:

Following "(1)":

Delete "\$50,000"

Insert "\$200,000"

Following "less than":

Delete "15"

Insert "100"

Page 8, lines 2 - 3:

Delete all material

Page 8, line 4:

Delete "(3)"

Insert "(2)"

Page 8, line 6:

Delete "(4)"

Insert "(3)"

Page 8, line 8:

Delete "(5)"

Insert "(4)"

AMENDMENT NO. -- "NONECONOMIC DAMAGES CAP"

#7

DUNCAN

failed

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58( ) (Version Z)

Page 5, line 24:

Delete "injured"

Page 5, lines 25 - 31:

Delete all material and insert:

"damages are awarded for severe permanent physical impairment or severe disfigurement."

AMENDMENT NO. \_\_\_\_\_ -- "INSURANCE COVERAGE FOR  
EMERGENCY ROOM DOCTORS"

#8  
DUNCAN

*filed*

OFFERED IN SENATE RULES COMMITTEE BY:

TO: SCS CSSSHB 58( ) (Version Z)

Page 16, line 8:

Delete "\$500,000"

Insert "\$1,000,000"

Delete "\$1,500,000"

Insert "\$2,000,000"

DRAFT: SUBJECT TO REVISION

April 15, 1997

Sectional Summary  
of  
SENATE CS FOR CS FOR SS FOR HB 58 ( )

of 0-LS 0056/Z  
4-14-97

An Act Relating to Civil Actions

**Section 1. Legislative intent.** This section generally sets forth the legislative intent of this Act.

**Section 2. Minor consistency change.** This section clarifies that no change is being made to the Alaska Banking Code by the change in Section 23 of this Act, relating to a floating interest rate on judgments.

**Section 3. Certain property actions to be brought in six years.** This section is taken verbatim from the report of the Governor's Task Force on Civil Justice Reform ("Governor's Task Force"). It removes the existing six year statute of limitations for recovery of, or damages to, personal property, and reduces it to 2 years in Section 7.

**Section 4. Contract actions to be brought in three years.** This section is taken verbatim from the Governor's Task Force report. It adds a new section which imposes a three year statute of limitations on contract actions, thereby reducing it from the existing six year statute of limitations.

On the floor of the House, this section was amended to clarify that the the shortened statute of limitations could be waived by contract.

**Section 5. Statute of repose of eight years.** This section adds a new section which generally imposes a ten year statute of repose.

In this section, the statute of repose in design and construction cases begins to run on the earlier of the date of substantial completion of a construction project or of the last act alleged to have caused the personal injury, death or property damage. This changes existing law by reducing the time to bring an action from 15 years to ten, although the ten years may be waived by contract. The national average among the many states which have a statute of repose is 6 years.

In medical malpractice cases, the statute of repose is tolled until the actual discovery of a foreign object in the body of the injured person.

In medical malpractice cases involving children, the statute of repose does not apply if the facts that would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian.

This section does not apply if the cause of action resulted from:

- (a) intentional or reckless disregard of plans and specifications or building codes in the design-construction area;
- (b) hazardous waste exposure;
- (c) intentional act or gross negligence;
- (d) fraud or misrepresentation;
- (e) breach of express warranty or guarantee;
- (f) a defective product;
- (g) intentional concealment of facts;
- (h) where a shorter statute of limitations applies.

**Section 6. Actions for torts, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.** This section amends AS 09.10.070(a) by including in the two year statute of limitations actions for recovery of, or damages to, personal property. Such actions previously were limited to a six year statute of limitations under AS 09.10.050. The report of the Governor's Task Force recommended this reduction.

This section also eliminates the conflict between existing subsections AS 09.10.070(a)(2) - (3) with AS 09.10.090, to make clear the shorter statute of limitations of AS 09.10.090 controls in cases involving penalties and forfeitures to the state.

Language is added indicating that ordinary negligence and other non-intentional actions are covered by the two year statute of limitations.

**Section 7. Disabilities of minority and incompetency.** This section was amended by the House Finance Committee. The change is a consistency change for the new subsection in Section 8.

**Section 8. Disabilities of minority and incompetency.** This subsection clarifies that the normal two year statute of limitations for personal injuries or death under AS 09.10.070(a) is tolled, in the case of minors under the age of eight years at the time of the injury, until the minor's eighth birthday. This means the minor may bring an action for birth trauma injuries, or other injuries sustained before the age of eight, anytime before the minor's tenth birthday. This is consistent with the operation of the statute of repose.

**Section 9. Noneconomic damages.** This new section replaces an earlier version of this statute pertaining to noneconomic damages. This section generally places caps on the amounts which may be awarded for noneconomic damages. It also specifically adds loss of consortium to the list of items for which noneconomic damages may be sought. Under existing

law, there are no caps on noneconomic damages for "disfigurement or severe physical impairment."

This section leaves intact the existing recovery cap of \$500,000 for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other non pecuniary damage. However, it now takes into consideration injuries to children and young adults by allowing the greater of \$500,000 or the injured person's life expectancy in years multiplied by \$10,000. These caps are per occurrence, and not per claimant.

In more serious cases, such as loss of, or loss of functional use of one or more limbs, or permanent brain damage, or third degree burns over one-half or more of the claimant's body, or total deafness or total blindness, the recovery cap is substantially raised from previous versions of the bill to \$1,500,000. Again, in the case of injuries to children or young adults, the cap now is the greater of \$1,500,000 or the injured person's life expectancy in years multiplied by \$30,000. These caps are per occurrence, and not per claimant.

**Section 10. Punitive damages.** This new section replaces an earlier version of this statute, which defines the circumstances in which punitive damages may be awarded. This section incorporates the language used by the Alaska Supreme Court to require malice or conscious acts, including reckless conduct. Under existing law, there are no quantifiable caps on punitive damages.

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

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

Subsection (g) places a higher cap on punitive damages in cases where the wrongful conduct arose in connection with commercial activities motivated by financial gain, and the likelihood of injury was previously known by the persons who made the subsequent policy decisions, but they nonetheless went forward with selling the product, or otherwise engaged in the commercial activities that resulted in serious personal injuries or death. Under these circumstances, the cap on punitive damages would be the greater of four times compensatory damages or \$3,000,000.

Subsection (h) caps punitive damages in unlawful employment practice cases. It is generally taken from SB 15, except that it takes into consideration small businesses in this state. The amount of the caps varies in five categories, depending upon the number of employees in the state. Where employers have fewer than 15 employees, the punitive damage is capped at \$50,000. Where employers have 500 or more employees, the punitive damage cap is \$500,000.

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

**Section 11. Apportionment of damages.**

Under present law, fault can be allocated only to parties who are present in the lawsuit. By substituting the word "person" for the phrase "party to the action", this section extends apportionment of fault to nonparties to the action, thereby partially overruling Benner v. Wichman, 874 P.2d 949, 957 (Alaska 1994). Thus, consistent with the 1988 voters' initiative, this section generally requires state courts in the future to determine each person's share of the fault, whether or not that person is a party to the suit.

This section would allow allocation of fault to a person who is not a party to the action, however, unless the person has been identified as a potentially responsible person, and (a) the person is outside the jurisdiction of the court; or, (b) the person is precluded from being joined by law or court rule; or (c) is a person who is not reasonably locatable. The rationale is that if a person is identified as a potentially responsible party, and is available to be joined, but the defendant chose not to, it would be unfair to the injured plaintiff to allocate fault to an "empty chair" he or she has created by not joining the that person.

However, under this section if someone were identified as a potentially responsible person who could not be named a party to the lawsuit because the statute of repose had run, thereby granting immunity from suit, fault may not be allocated to that person.

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

**Section 12. Apportionment of damages.** This section amends AS 09.17.080(b) by allowing the trier of fact to assign a percentage of fault to two or more persons if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

This subsection was amended at the House Judiciary Committee by deleting the last sentence as a consistency change which should have been made with the repeal of the Contribution Among Joint Tortfeasors provisions, and to be consistent with AS 09.17.080(d).

**Section 13. Apportionment of damages; worker's compensation lien.** This section eliminates a reference to AS 09.16.040 since that statute was repealed by the 1987 Initiative Proposal.

This section also anticipates and resolves an issue left open by Section 16, which would otherwise have been resolved in the future by the Alaska Supreme Court. Under existing law the nonparty employer would have been entitled to full reimbursement of its worker's compensation lien under AS 23.30.015(g), which would be unfair in instances where the employer was found in the third-party action to be mostly at fault. This section makes clear that the employer's lien is only recoverable from the injured employee's recovery in the third-party action to the extent that the lien exceeds the dollar amount of fault attributed to the employer in the third-party action.

**Section 14. Definition; intentional torts.** This section is taken verbatim from the Report of the Governor's Task Force. This section amends AS 09.17.900 to clarify its application to intentional acts.

**Section 15. Expert witness qualification.** This section requires that certain minimal standards be met by persons who testify in professional malpractice cases, including medical malpractice cases. The legislative purpose of this section is to maintain the integrity of testimony by expert witnesses in professional malpractice cases. Under existing law, it is easier to qualify expert witnesses who are more in the nature of "hired guns" than an expert in the particular profession.

If there is no certification board in the area, this clarifies that the expert witness must still be licensed and trained as set forth in this section.

If there is a profession that does not require licensing in this state, this section does not apply.

**Section 16. Offers of judgment.** This section builds upon the approach taken from the Governor's Task Force report to encourage early settlements. This section places significantly more pressure on the parties to settle a case within 60 days after the Rule 26(a)(1) discovery disclosures have been made.

The approach taken in this section is to assess reasonable actual attorney fees against the offeree which are incurred after the date the offer is tendered, if the judgment finally entered is at least 5% less favorable to the offeree than the offer (or at least 10% less favorable if there are multiple defendants), whether the offer is tendered by the party making the claim, or the party defending against the claim.

The phrase "reasonable actual attorney fees" is intended to mean the actual attorney's time expended, as evidenced by time sheets and billing statements. That phrase is not intended to mean Rule 82 fees.

The encouragement to settle early is furnished by the sliding scale percentages of reasonable actual attorney fees imposed, based on how soon after the commencement of the action the offer is made. The maximum amount of settlement pressure will occur within 60 days after the Rule 26(a)(1) disclosures are made, since 75% of the reasonable actual attorney fees should provide a heavy inducement to settle, particularly against frivolous suits.

**Section 17. Offers of judgment.** This subsection addresses cases where one party is entitled to attorney fees under the offer of judgment rule, but the other party technically prevailed at the trial. In those rare instances, it is the party making the successful offer of judgment under Civil Rule 68 that overrides any claims by the other party to a set off by the amount of Civil Rule 82 attorney fees. Further, no party is ever allowed to claim attorney fees under both Civil Rule 68 and Civil Rule 82, in instances where a party both made a successful offer of judgment and was the prevailing party at trial.

**Section 18. Interest on judgments; prejudgment interest.** This section provides for a floating or variable interest rate on judgments and prejudgment interest by making it three hundred basis points above the discount rate at the 12th Federal Reserve District as of January 2 of the year in which the judgment or decree is entered. Once set by this section, the interest rate does not change until satisfaction of the judgment or decree. Using the discount rate of the 12th Federal Reserve District is consistent with the way interest rates are determined under the Alaska usury statute, AS 45.45.010(b).

The Governor's Task Force report recommends a floating interest rate on judgments and prejudgment interest. This section should satisfy those concerns.

**Section 19. Prejudgment interest.** This new section is intended to preclude prejudgment interest from being awarded for future economic and future non economic damages, as well as for punitive damage awards. It is consistent with existing Alaska case law. McConkey v. Hart, Alaska Supreme Court Opinion No. 4441, November 29, 1996; Anderson v. Edwards, 625 P.2d 282, 289 (Alaska 1981).

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

**Section 21. Interest in condemnation proceedings.** This section contains a technical consistency change which leaves the interest rate in condemnation proceedings unchanged at 10.5%, notwithstanding the interest rate change in Section 19.

**Section 22. Medical advisory panels.** This section is taken verbatim from the report of the Governor's Task Force. This provision amends AS 09.55.536(a) by making expert advisory panels available to state health care providers.

**Section 23. Expert advisory panel; panel questions.** This section is taken verbatim from the report of the Governor's Task Force. The proposed changes are intended to clarify that omissions as well as commissions are within the purview of the questions to be answered by the medical advisory panel.

**Section 24. Expert advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. The change allows discovery to proceed within 60 days after the selection of a panel, irrespective of whether the panel has rendered its report. The change is intended to expedite reporting of answers to improve the usefulness of the medical advisory panel system.

**Section 25. Expert advisory panel; public sector provider.** This section

is taken verbatim from the Governor's Task Force report. It should be read in tandem with AS 09.55.536(a), in that this provision makes clear the access of government healthcare providers to the expert medical advisory panel. The clarification is sought because some trial judges do not refer such cases, usually stemming from healthcare extended to prisoners in correctional facilities, to the expert advisory panel.

**Section 26. Definitions; health care provider.** This section amends the existing definition of health care providers to include various entities recently formed, and which will be formed, to provide health care services in the wake of the health care reforms which are taking place.

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

**Section 28. Attorney contingent fee agreements.** This section adds a new section AS 09.60.080 which clarifies that the 50% of punitive damage awards which are payable to the State of Alaska under Section 10 shall pass free and clear of any contingent fees which otherwise would have been deducted under the terms of a contingent fee agreement between the attorney and the client. This section is also intended to protect the client from paying for contingent attorney fees calculated from the State's share of the punitive damages recovery.

**Section 29. Civil liability of electric utility.** This section is intended to provide immunity from strict liability for publicly regulated electric utility companies for the generation, distribution, and sale of electricity. This section makes clear that the provision of electricity, from the time it is generated until the consumer utilizes it, is the provision of a service, which does not change its character from a service to a product.

**Section 30. Civil liability of hospitals for certain physicians.** This section adds a new section designated AS 09.65.096. This statute grants immunity to hospitals from liability for the acts or omissions of emergency room independent contractor physicians. Current law allows a claimant to sue only the hospital rather than the emergency room physician who may have less ability to satisfy a judgment. This section will provide immunity to the hospital if it posts a notice of limited liability in all admission areas, and publishes a notice annually in a local newspaper. This section is intended to overrule the case of Jackson v. Powell, 743 P.2d 1376 (Alaska 1987).

Subsection (c) imposes, however, an additional condition of immunity to the hospital by requiring the emergency room physician to carry liability insurance in the amount of at least \$500,000 per incident, and \$1,500,000 for all incidents in a year.

**Section 31. Damages resulting from commission of a felony, or while under the influence of alcohol or drugs.** In general, the Governor's Task Force report recommends that a person who sustains personal injuries or death during the commission, or attempted commission of a felony, should be barred from recovering damages for those injuries.

This section goes further than the Governor's Task Force report, and extends the bar to recovery to those instances where the injured perpetrator is convicted of operating a motor vehicle, aircraft or water craft while under the influence of intoxicating liquor or a controlled substance in violation of AS 28.35.030. This section also extends the bar to recovery to cases where the injured perpetrator was not convicted, but was nonetheless engaged in conduct that would constitute a violation of AS 28.35.030 if shown by clear and convincing evidence.

This section requires clear and convincing evidence that the claimant's conduct substantially contributed to the personal injury or death.

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

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

**Section 33. Insurance report.** This section is intended to require insurance companies to report information necessary to evaluate the impact of tort reform. This statute empowers the division of insurance to require reporting, by insurers doing business in this state, of information relating to premiums, claims, losses, expenses, and solvency of the company as a whole. This section obtains most of the information sought from the report of the Governor's Task Force, while minimizing the regulatory burden on the insurance industry.

The June 1, 2000 commencement date for the reports to the governor and legislature is suggested by the division of insurance as a realistic starting date considering existing regulatory reporting deadlines.

**Section 34. Appointment of independent counsel; conflicts of interest.**

This section makes an insurer responsible only for the costs and attorney fees incurred by an independent counsel defending against claims for which the insurer has either accepted coverage or reserved its right to deny coverage. The insurer is not responsible for costs and attorney fees incurred in defending against claims for which the insurer has denied coverage.

**Section 35. Appointment of independent counsel; conflicts of interest.** In the context of an insured represented by independent counsel, this section allows an insurer to settle directly with a plaintiff as to claims for which the insurer has either accepted coverage or reserved its right to deny coverage, even though the claims for which the insurer denied coverage are not settled.

**Section 36. Workers' compensation lien.** This section is a consistency change to the workers' compensation statutes required by the change in Section 19 of this Act. The employer's workers' compensation lien is reduced by the amount of fault attributed to the employer in the third-party action.

**Section 37. Claims against the state for medical claims.** This section is amended for purposes of effecting a consistency change in connection with the reduction of the statute of limitations for contract claims from 6 years to 3 years at the time AS 09.10.053 was split off from AS 09.10.050.

**Section 38. Motion to set trial and certificate.** This section is taken verbatim from the report of the Governor's Task Force. It is intended to improve upon existing Superior Court fast track procedures by providing for a meeting of the parties and a pretrial conference.

**Section 39. Alaska Rule of Civil Procedure 16.1(n).** This section is a consistency change to the foregoing section 45. It replaces the pretrial order section of the existing fast track rule with a meeting of parties requirement.

**Section 40. Limited Discovery; Expedited Calendaring.** This section applies the District Court streamlined provisions found in sections 45 and 46 of this bill to Superior Court personal injury and property damage cases involving \$100,000 in claims or less.

**Section 41. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 41(a) by adding a new paragraph to require collection of settlement information as required by the new AS 09.68.130.

**Section 42. Medical advisory panel; discovery.** This section is taken verbatim from the report of the Governor's Task Force. It amends Civil Rule 72.1(g) by allowing discovery to proceed after 60 days after the selection of the panel in order to expedite obtaining panel reports.

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

**Section 44. Sanctions for rules violations.** This section also modifies Civil Rule 95 by allowing the trier of fact to enter judgment against a party intentionally making a false statement of a material fact on the issue to which the false statement relates.

**Section 45. District Court; Deposition limitation.** This section requires that in District Court personal injury and property damage cases depositions be limited to two for each side, unless the parties otherwise agree, or the court for good cause otherwise directs.

**Section 46. District Court; Expedited Trials.** This section requires that all parties must file a memorandum to set the case for trial within six months after service of the complaint, and that the court shall set the case for trial "as soon as practicable" after confirming that all parties have exchanged the discovery materials required by Rule 26(a).

**Section 47. Settlement information.** This section is taken verbatim from the report of the Governor's Task Force. This section changes Appellate Rule 511 to require the gathering of settlement information at the appellate level.

**Section 48. Civil Rule 16.1(k)(4).** This rule is repealed as a consistency change to Section 39.

**Sections 49-54. Technical changes.** These sections denote which civil and evidence rules have to change to be consistent with the statutory changes in this Act.

**Section 55. Alternative dispute resolution.** This section requires the Alaska Judicial Council to see what alternative dispute resolution programs have been used in other states and the federal courts in order to efficiently and economically structure such a program in the Alaska Court System. It is further directed to work with the Alaska Supreme Court to prepare proposed rules and statutes to implement such a program, and submit the proposal in time for the second term of this 20th Legislature. The intent is to have an alternative dispute resolution program in effect by July 1, 1998.

While the Governor's Task Force report proposes a pilot program, it seems prudent to see first what the experience has been in other jurisdictions before putting any program into operation.

**Section 56. Applicability.** This Act will apply to all causes of action accruing on or after the effective date of this Act.

**Section 57. Severability.** If any section of this Act is held invalid, the remainder of this Act shall not be affected.

COMPARISON

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>  | <u>SENATE CS FOR CS FOR SS FOR</u><br><u>HB 58(WORK DRAFT Z)</u>  | <u>SENATE CS FOR CS FOR SS FOR HB</u><br><u>58(FIN)</u> |
|--|---|---|
| <u>SECTION 1.</u><br><u>INTENT</u>   | Same.   | Same.   |
| <u>SECTION 2.</u><br><u>LIQUIDATION OF A STATE</u><br><u>BANK</u>                                | Same.   | Same.   |
| <u>SECTION 3.</u><br><u>STATUTE OF LIMITATIONS</u><br><u>FOR PROPERTY ACTIONS</u>                | Same.   | Same.   |
| <u>SECTION 4.</u><br><u>STATUTE OF LIMITATIONS</u><br><u>FOR PROPERTY ACTIONS</u>                | Same.   | Same.   |
| <u>SECTION 5.</u><br><u>STATUTE OF REPOSE</u>  | * Increased to 10 years.<br><br>* Excepts from the statute of repose the situation where the facts which would give notice of a potential cause of action of a minor are not discoverable in the exercise of reasonable care by the minor's parent or guardian. | *8 years.   |
| <u>SECTION 6.</u><br><u>STATUTE OF</u><br><u>LIMITATIONS FOR TORT</u><br><u>AND OTHER CLAIMS</u> | Same.   | Same.   |
| <u>SECTION 7.</u><br><u>DISABILITY OF</u><br><u>MINORITY</u>                                     | Same.   | Same.   |
| <u>SECTION 8.</u><br><u>ADDITION TO</u><br><u>DISABILITY OF</u><br><u>MINORITY</u>               | Same.   | Same.   |

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>                  | SENATE CS FOR CS FOR SS FOR<br>HB 58(WORK DRAFT Z)  | SENATE CS FOR CS FOR SS FOR HB<br>58(FIN)                           |
|--|---|---|
| <u>SECTION 9.</u><br><u>NON-ECONOMIC</u><br><u>DAMAGES</u> | <p>* Lower limit increases to \$500,000 or the injured person's life expectancy in years multiplied by \$10,000, whichever is greater.</p> <p>* Upper limit increases to \$1.5 million or the person's life expectancy multiplied by \$30,000, whichever is greater.</p> <p>*Provides that these limits are the maximum amount that can be recovered for all claims arising out of a single injury.</p> | <p>*Lower limit of \$300,000.</p> <p>*Upper limit of \$500,000.</p> |

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>     | SENATE CS FOR CS FOR SS FOR<br>HB 58(WORK DRAFT Z)   | SENATE CS FOR CS FOR SS FOR HB<br>58(FIN)   |
|---|--|---|
| <u>SECTION 10.</u><br><u>PUNITIVE DAMAGES</u> | <p>*Adopts the Task Force recommendations for subsections a through e.</p> <p>*Retains the three times compensatory damage limit contained in the Senate Finance CS, but increases that limit to a maximum of \$500,000.</p> <p>* Increases the secondary limit to four times compensatory or \$3 million, whichever is greater.</p> <p>*Adds additional limits for punitive damages against an employer for violation of an unlawful employment practices prohibited by AS 18.80.220.</p> <p>*Limits are \$50,000 if the employer has less than fifteen employees; \$100,000 if fifteen or more but less than one hundred employees, \$300,000 if one hundred or more but less than two hundred employees; \$400,000 if 200 or more but less than five hundred employees; \$500,000 if more than 500 employees.</p> | <p>*Limit for most cases is three times compensatory damages or \$300,000, whichever is greater.</p> <p>*Secondary limit is four times compensatory damages or \$600,000, whichever is greater.</p> |
|   | Deleted.   | Section 12. (Income taxes)  |
|   | Deleted.   | Sections 13-15 (Periodic payments)  |
|   | Deleted.   | Section 16 (Collateral benefits)  |

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>                 | <u>SENATE CS FOR CS FOR SS FOR HB 58(WORK DRAFT Z)</u>  | <u>SENATE CS FOR CS FOR SS FOR HB 58(FIN)</u>   |
|---|---|---|
| <u>SECTION 11.</u><br><u>ALLOCATION OF FAULT</u>          | *Requires the person to be joined in order to allocate fault unless the person cannot be sued because of the statute of repose, is not within the jurisdiction of the court, or is precluded from being joined by law or court rules or is cannot be reasonably located.                                    | *Appears as section 17 in the Senate Finance CS.<br><br>*Provides that fault would be allocated to all persons, regardless of whether they are joined as a party unless they cannot be sued because of the statute of repose. |
| <u>SECTION 12.</u><br><u>ALLOCATION OF FAULT</u>          | No change.  | *Appears as section 18 in Senate Finance CS.  |
| <u>SECTION 13.</u><br><u>ALLOCATION OF FAULT</u>          | No change.  | *Appears as section 19 of Senate Finance CS.  |
| <u>SECTION 14.</u><br><u>INTENTIONAL CONDUCT</u>          | No change.  | *Appears as section 20 of Senate Finance CS.  |
| <u>SECTION 15.</u><br><u>EXPERT WITNESS QUALIFICATION</u> | *Substantially the same as section 21 of Senate Finance CS.   | *Appears as section 21 of Senate Finance CS.<br><br>*Substantially the same.  |
| <u>SECTION 16.</u><br><u>OFFERS OF JUDGMENT</u>           | * Provides that if there are multiple defendants, the judgment must be at least 10% less favorable to the offeree than the offerer.<br><br>* Decreases the sanction amounts from 100, 75 or 50% of the offerers reasonable actual attorneys fees to 75, 50 and 30%, depending upon when the offer was made. | *Appears as section 22 in Senate Finance CS.  |
| <u>SECTION 17.</u><br><u>OFFERS OF JUDGMENT</u>           | Same.   | * Appears as section 23 of Senate Finance CS  |

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>   | <u>SENATE CS FOR CS FOR SS FOR</u><br><u>HB 58(WORK DRAFT Z)</u>   | <u>SENATE CS FOR CS FOR SS FOR HB</u><br><u>58(FIN)</u> |
|---|--|---|
| <u>SECTION 18.</u><br><u>PREJUDGMENT</u><br><u>INTEREST</u>                             | Same.  | * Appears as section 24 of Senate Finance CS.           |
| <u>SECTION 19.</u><br><u>PREJUDGMENT</u><br><u>INTEREST ON FUTURE</u><br><u>DAMAGES</u> | Same.  | * Appears as Senate Finance CS Section 25.              |
| <u>SECTION 20.</u><br><u>JUDGMENT FOR</u><br><u>PLAINTIFF</u>                           | Same.  | * Appears as section 26 of Senate Finance CS.           |
| <u>SECTION 21.</u><br><u>CONDEMNATION</u>   | Same.  | * Appears as section 27 of Senate Finance CS.           |
| <u>SECTIONS 22 - 29.</u>  | Same.  | * Appears as sections 29-36 of Senate Finance CS.       |
| <u>SECTION 30.</u><br><u>CIVIL LIABILITY OF</u><br><u>HOSPITALS</u>                     | <p>* Amount of the insurance was changed from \$500,000 for each incident to "\$500,000 for each incident and 1,500,000 for all incidents in a year."</p> <p>* Definition of emergency room physician was changed from a physician who provides health care services in a hospital emergency room to a physician who does not have an ongoing physician patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.</p> | * Appears as section 37 in Senate Finance CS.           |

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>                                | <u>SENATE CS FOR CS FOR SS FOR</u><br><u>HB 58(WORK DRAFT Z)</u>  | <u>SENATE CS FOR CS FOR SS FOR HB</u><br><u>58(FIN)</u>                          |
|--|---|--|
| <u>SECTION 31.</u><br><u>DAMAGES FROM</u><br><u>COMMISSION OF FELONY</u> | * Change to require clear and convincing evidence both of the violation and that the violation substantially contributed to the personal injury or death. | * Appears as section 38 in Senate Finance CS.                                    |
| <u>SECTION 32.</u><br><u>SETTLEMENT</u><br><u>INFORMATION</u>            | * Adds collection of attorney fees and costs information.   | * Appears as section 39 in the Senate Finance CS.                                |
| <u>SECTION 33.</u><br><u>INSURANCE REPORT</u>                            | Same.   | * Appears as section 40 of Senate Finance CS.                                    |
| <u>SECTIONS 34-39.</u>   | Same.   | * Appears as sections 41- 46.  |
| <u>SECTION 40 (NEW)</u><br><u>LIMITED DISCOVERY</u>                      | * Provides for limited discovery.   | * Not present.   |
| <u>SECTION 41.</u><br><u>SETTLEMENT</u><br><u>INFORMATION</u>            | *Includes attorney fee information.   | * Appears as section 47 of Senate Finance CS.                                    |
| <u>SECTION 42.</u><br><u>DISCOVERY IN MEDICAL</u><br><u>MALPRACTICE</u>  | Same.   | * Appears as section 48 of Senate Finance CS.                                    |
| <u>SECTION 43.</u><br><u>RULE 95</u>                                     | *Increases sanctions to \$50,000.   | * Appears as section 49 of Senate Finance CS.<br><br>* Sanctions remain \$1,000. |
| <u>SECTION 44</u><br><u>TRUTH PROVISION</u>                              | *Limited to Personal Injury and Property Damage cases.  | * Appears as section 50 of Senate Finance CS.<br><br>* Unlimited.                |
| <u>SECTION 45-46.</u><br><u>DISTRICT COURT</u><br><u>PROCEDURES</u>      | *Provides for expedited procedure in certain cases.   | *Not present.  |

| <u>VERSION Z</u><br><u>SECTION NUMBER</u>                            | <u>SENATE CS FOR CS FOR SS FOR</u><br><u>HB 58(WORK DRAFT Z)</u>                            | <u>SENATE CS FOR CS FOR SS FOR HB</u><br><u>58(FIN)</u>   |
|--|---|---|
| <u>SECTION 47</u><br><u>SETTLEMENT</u><br><u>INFORMATION</u>         | *Same as section 51 of Senate Finance CS, except that it includes attorney fee information. | * Appears as section 51 of Senate Finance CS.             |
| <u>SECTION 48-54</u><br><u>RULES CHANGES</u>                         | *Substantially the same.  | *Appears as section 52-62 Repealers of Senate Finance CS. |
| <u>SECTION 55</u><br><u>ALTERNATIVE DISPUTE</u><br><u>RESOLUTION</u> | *Substantially the same.  | *Appears as section 63 of Senate Finance CS.              |
| <u>SECTION 56</u>  | Same.   | *Appears as section 64 of Senate Finance CS.              |
| <u>SECTION 57</u>  | Same.   | *Appears as section 65 of Senate Finance CS.              |

match to work  
draft 0-LS0056/Z  
4-14-97

To: Senator Tim Kelly

Fm: Representative Brian Porter,  
by Jim Sourant

April 13, 1997

Re: Side by side analysis of HB 58: Senate Finance version v. Senate Rules version.

The Senate Finance Committee version will be referred to as the "Finance version", and the Senate Rules Committee version will be called "Rules version".

**Section 1. Legislative intent.** The Finance version is as stated. The Rules version moves the bill's nonapplicability to the Exxon Valdez case language from the beginning of the intent section to the end of the intent section.

Sections 2-4. Identical and noncontroversial.

**Section 5. Statute of Repose.** A statute of repose prevents causes of action from being brought a certain number of years after the conduct has occurred, since it is almost impossible to defend against claims when so many years have gone by that documents have been destroyed, witnesses have moved, and memories have faded. The Finance version makes it a tough 8 years, while the Rules version gives a significant concession by allowing 10 years.

The Rules version adds a new exclusion to the operation of the statute of repose: "if the facts that would give notice of a potential cause of action are not discoverable in the exercise of reasonable care by the minor or the minor's parent or guardian". This should quell fears that the bill is unfair to minors.

Sections 6-7. Identical and noncontroversial.

**Section 8. Minority statute of limitations.** Both versions make a change to the tolling provisions of the minority statute of limitations. The Finance version only tolls it for injuries or death occurring during a child's first six years of

life. The Rules version tolls it only for injuries (not death) occurring during a child's first eight years of life, thereby giving an extra two years to bring an action for birth injuries. It makes no sense to toll the statute of limitations in the case of death.

**Section 9. Noneconomic damages.** Both versions put a finite cap on noneconomic damages. The Finance version caps noneconomic damages at \$300,000 per occurrence, and, in the case of severe injuries, \$500,000 per occurrence. The Rules version raises the cap for noneconomic damages to \$500,000 per occurrence, and, for severe injuries, \$1,500,000 per occurrence.

In addition to the substantial increase in amounts available for noneconomic damages, the Rules version also allows potentially higher caps where the injured person is very young, and has a longer life expectancy. For the lower cap, the Rules version allows the greater of \$10,000 multiplied times the life expectancy of the injured person in years or \$500,000. For the upper cap, the Rules version allows the greater of \$30,000 multiplied by the life expectancy of the injured person in years or \$1,500,000.

The Rules version has also broadened the higher cap to include claims for "loss of, or loss of functional use of, one or more limbs", as well as for total deafness.

**Section 10/11. Punitive damages.** Both versions include reckless conduct as a basis for punitive damages, using about the same language found in Senator Sean Parnell's amendment. Both versions provide that 50% of punitive damage recoveries go to the State.

The Finance version puts its caps provisions in Section 11. There, caps for punitives, including punitives for unlawful employment practices, is set at the greater of three times compensatory damages or \$300,000. Where there has been "Ford pinto" type of conduct, the caps are raised to the greater of four times compensatory damages or \$600,000.

The Rules version punitive caps appear in Section 11. The language is mostly taken from the Governor's Task Force recommendation and HB 60, but slightly modified. Here the punitives damage caps are set significantly higher than in the Finance version. It is the greater of three times compensatory damages or \$500,000. The same "Ford pinto" language found in the Finance version is used here, but the caps are raised very substantially to the greater of four times compensatory damages or \$3,000,000.

The Rules version has added new caps on punitive damages in the area of unlawful employment practice. The caps vary on a sliding scale from a low of \$50,000 if the employer has less than 15 employees, to a high of \$500,000 if the employer has 500 or more employees in this state.

Sections 12, 13, 14, 15, and 16 of the Finance version have been deleted in the Rules version. Reducing judgments by the amount of income taxes that would have been paid; periodic payments; and collateral benefits have been

deleted from the Rules version. This is a substantial concession to the trial lawyers.

Sections 17-19 of the Finance version, dealing with the **allocation of fault** and damages, appears in sections 11-13 of the Rules version. Under both versions of this bill, fault cannot be allocated against a person against whom the statute of repose has run. In order to allocate fault under the Rules version, a defendant must join a third person, unless the third person is unavailable. A third person is unavailable if (a) not subject to the jurisdiction of the court, (b) cannot be joined because of statute or rule, or (c) is not reasonably locatable. The rationale is that if a third person is identified as a potentially responsible party, and is available to be joined, but a choice is made not to join that third person, the party which fails to join that person should not be able to allocate fault to the "empty chair" he or she has created by not joining the third person.

Section 20 of the Finance version and Section 14 of the Rules version are identical and noncontroversial.

Section 21 of the Finance version and Section 15 of the Rules version deal with **expert witness qualifications** in professional malpractice cases. They are basically the same, except that the Rules version excludes the requirements where the profession is not licensed in this state.

Section 22 of the Finance version and Section 16 of the Rules version deal with **offers of judgment**. They are almost identical, except that in the Rules version the percentage of attorney fees awarded, depending upon how early the offer was made, was reduced. What was 100% is now 75%; what was 75% is now 50%; and what was 50% is now 30%. The Rules version also provided that where there are multiple defendants, the plus or minus 5% figure to determine if the sanctions kick in was expanded to plus or minus 10%.

Section 23 of the Finance version and Section 17 of the Rules version are also offer of judgment provisions which are identical except for the subsection (c) of the Finance version. That subsection is duplicative of existing rules, and was stricken as surplusage.

Sections 24-27 of the Finance version and Sections 18-21 of the Rules version are identical and noncontroversial.

Section 28 of the Finance version was deleted, since it was only put there because we earlier repealed collateral benefits in medical arbitrations. We have now put back the medical collateral benefits because of the deletion of the other collateral benefits section. Forget this. Consistency change.

Sections 29-34 of the Finance version and Sections 22-27 of the Rules version are identical and noncontroversial.

Section 35 of the Finance version and Section 28 of the Rules version are identical, but controversial to the tort lawyers, since it makes clear that the **half of punitive damages which go to the state** pass free and clear of contingent attorney fees.

Section 36 of the Finance version and Section 29 of the Rules version are identical and so far uncontroversial. It codifies the common law and prevents strict liability being used as a basis of liability against electric utility companies..

Section 37 of the Finance version and Section 30 of the Rules version are similar, in dealing with **emergency room physicians**, except that the Rules version expands the insurance to \$500,000 for each incident and \$1,500,000 for all incidents in a year.

The Rules version does not have the enhanced notice (four foot by two foot sign) requirements of the Finance version.

The Rules version broadens which physicians may use the emergency room without triggering liability on the part of the hospital. It defines "emergency room physician" as a physician who does not have an ongoing physician-patient relationship with the emergency room patient and who provides emergency health care services in a hospital emergency room.

Section 38 of Finance version and Section 31 of the Rules version deal with barring the **tort claims of one who was committing a felony, or while operating a motor vehicle, aircraft or boat while under the influence of alcohol or drugs**. The Rules version responded to criticisms by tightening up the language to show that there is clear and convincing evidence that the improper activity substantially caused the plaintiff's own injuries. It allows a driver who had two glasses of wine with dinner to sue someone who crossed over the line in a head on collision case.

Section 39 of Finance version and Section 32 of the Rules version relate to **collection of settlement information**. The Rules version, at the initial suggestion of Jeff Feldman and Botelho last week, was expanded to include data from all covered cases, whether settled, tried, disposed of by summary judgment, etc. It requires information from both sides, and not just from plaintiffs. It is an excellent way to get the facts for future legislative actions.

Sections 40-46 of the Finance version and Sections 33-39 of the Rules version are identical and relatively uncontroversial.

Section 40 of the Rules version is new. It expedites **Superior Court cases** by requiring that in cases **involving less than \$100,000** the parties take only two depositions, and then try the case quickly.

Sections 47-48 of the Finance version and Sections 41-42 of the Rules version are identical and uncontroversial.

Section 49 of the Finance version and Section 43 of the Rules version are similar in assessing **finer against lawyers**. The Rules version raised the amount from \$10,000 to **\$50,000**.

Sections 50-62 of the Finance version are consistent with the Rules version, and are mostly technical/consistency stuff.

Sections 44, 47-54 of the Rules version are consistent with the Finance version, and are mostly technical/consistency stuff.

Sections 45-46 of the Rules version are new, and incorporate what Charlie Cole and the Task Force wanted: **District Court cases limited to two depositions and then an expedited trial date.**

Section 63 of the Finance version and Section 55 of the Rules version both relate to **Alternative Dispute Resolution**. The Rules version improves it. The Rules version goes further and requires the Alaska Judicial Council to confer with the Alaska Supreme Court and actually present an ADR plan, to be operational by July 1, 1998, complete with proposed rules and statutes, by the time the legislature convenes next year. It is also directed to do so within the existing \$19,400 fiscal note.

TORT REFORM LIST - AMENDMENT DIST.

LEGISLATURE - • MILLER • TAYLOR  
• LEMAN • PORTER  
• TORGERSON

ADMINISTRATION - • JEFF BUSH • BOTELHO

ALASKA ACTION TRUST

• JEFF FELDMAN - FX - 276-7185  
• MIKE SCHNIDER " "  
• JOHN SUDDOCK " "

ALASKANS FOR LIABILITY REFORM

• BILL ALLEN - FX - 264-8130  
• ROGER HOLMES - FX - 248-6695  
• PAM LABOLLE - FX - 463-5515

OTHER

• CHARLIE COLE - FX - 456-2523  
• MARY GORE (HAND DELIVER)  
• PORTIA PARKER ( " " )

Tort Reform Summit Participants  
April 5, 1997  
Juneau Court House

Legislature

- ~~Senator Miller~~
- ~~Senator Taylor~~
- ~~Senator Leman~~
- ~~Representative Porter~~

~~SEN. TORGERSON~~

HAND

Administration

- ~~Bruce Botelho~~ H
- ~~Jeff Bush~~ H

Alaska Action Trust

- ~~Jeff Feldman~~
- ~~Mike Schneider~~
- ~~John Suddock~~

FTF

Alaskans for Liability Reform

- ~~Bill Allen~~ F
- ~~Roger Holmes (possibility)~~ F
- ~~Pam LaBolle~~ F

Other

- ~~Charlie Cole~~ F

Staff

- ~~Mary Gore~~ H
- ~~Portia Parker~~ H
- ~~Annette Kritzer?~~ H

Tort Reform Summit Participants  
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- ✓ Senator Miller
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- ✓ Representative Porter

Administration

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- Jeff Bush

Alaska Action Trust

- ✓ Jeff Feldman
- ✓ Mike Schnider
- ✓ John Suddock

258-4040  
276-7155

Alaskans for Liability Reform

- ✓ Bill Allen - 69000 - 264-8130
- ✓ Roger Holmes (possibility) 243-6695
- ✓ Pam LaBolle 463-5515

Other

- ✓ Charlie Cole - 452-1124  
456-2523

Staff

- ✓ Mary Gore - 465-3883
- ✓ Portia Parker - 465-3883
- ✓ Annette Kritzer? - 465-3818

To: Legislative aides to:  
Senator Drue Pearce  
Senator Bert Sharp  
Senate Finance Committee

Fm: Jim Sourant, legislative aide to:  
Representative Brian Porter

Date: March 29, 1997  
Re: HB 58 Tort reform

I bring to your attention a very important matter which has not been publicly disclosed during this session about the Governor' Task Force on Civil Justice Reform. At every stage through the House, the opponents of HB 58 have touted the recommendations of the task force as being the product of a blue ribbon bipartisan group which represents "the interests of large and small businesses, doctors...." This assertion has gone unchallenged to the present time. The fact of the matter is that nothing could be further from the truth.

The best evidence of misrepresentation is found in the attached letter from State Farm Insurance Company, which has over 200,000 automobile and homeowner insurance policies in effect in the state. The letter was written after the task force was created, but several months before the first meetings ever took place. The letter speaks for itself, but it is clear that State Farm was asking to be put on the task force. The "oversight" was not corrected, even though there was ample time to do so. Consequently, there were no representatives of the insurance industry on the task force.

Also conspicuously absent from the task force was the Division of Insurance. Had it been directly represented, there would have been evidence that over the past few years, ALL domestic insurance companies have withdrawn from high risk areas of coverage, such as the marine highway.

The task force then erroneously concluded that there was "no evidence of a crisis in insurance cost or availability, nor did it hear from the insurance industry in the course of its debate." Pages 2 and 7 of the task force report. First the insurance industry was arrogantly excluded from participation on the task force, then the task force cavalierly implied that the insurance industry was not interested in participating. Whatever the Division of Insurance could have contributed was not heard.

On those same pages of the task force report, the task force erroneously concluded that since insurance rates are not set by claims experience within Alaska, "the task force found no evidence that changes in Alaska law would affect Alaska insurance rates."! A look at the compendium of 25 letters

*P.S. BRIAN AUTHORIZED ME TO RELEASE THE LETTER ATTACHED, BUT THAT'S ALL? THE EXPLANATION OF THE IMPLICATIONS OF THAT LETTER IS MY IDEA AND RESPONSIBILITY TO COORDINATE ANYTHING WITH YOU BEFORE*

*DO YOU WANT TO BE THAT BRIAN? THIS WILL LET YOU SLEEPING ON THE JOB. VERY GOOD REASONS. Jim*

(USAA Insurance Company's letter and Mike Lessmeier's letter for State Farm) previously furnished to your offices makes clear that just the opposite is true: insurance rates in Alaska are determined in part by claims experience in Alaska, and insurance rates and rebates will benefit from HB 58!

These egregious misrepresentations go a lot further than mere "spinmeistering"; they appear to be intentionally false and misleading. This is much more than "politics as usual" in my book.

It is also clear that the one physician on the task force did not represent the 500 physicians who belong to the Alaska State Medical Association. Also conspicuously absent from the composition of the task force were the 100 airlines represented by the Alaska Air Carriers Association; the 4500 Alaska small business members of the NFIB; the 700 businesses statewide represented by the Alaska State Chamber of Commerce; the 25 companies represented by the Alaska Trucker's Association; the 250 companies represented by the Alaska Forest Association; the 1000 members of the Alaska Miner's Association; the 135 municipalities represented by the Alaska Municipal League; 18 electric utility cooperatives statewide; the 33 hospitals and nursing homes represented by the Alaska State Hospital and Nursing Home Association; and the 550 general contractors represented by the Association of General Contractors.

These groups, and the tens of thousands of employees they represent, were not given a slot on the task force. The composition of the task force was skillfully skewed. Add to that a 2/3 majority required to pass meaningful tort reform measures, and it becomes apparent that the deck was carefully stacked to prevent a result not favored by the trial lawyers.

Don't be fooled. If someone starts touting the recommendations of the task force, just ask them if it is not true that the insurance industry wanted to be a part of it. If anyone denies it, show them the letter. If anyone admits it, ask them why the insurance industry was not allowed to participate. The answer will be interesting, especially since the trial lawyers were not only allowed to participate, but were allowed to dominate and write the report.

The point is that the recommendations of the task force are not credible. To date, the touting of the objectivity of the task force has gone unchallenged during this session. It is speculation on my part, but if the governor wants to veto this bill, he will do it under the political cover of the task force recommendations. Whether you or your bosses choose to preempt the governor's ability to shield himself is up to you. But record should be corrected sometime, and this is the only chance we'll have to do it.

cc: Portia Parker  
cc: Annette Kreitzer

# State Farm Insurance Companies

GARY L. METHNER  
REGIONAL VICE PRESIDENT  
PACIFIC NORTHWEST OFFICE

1000 WILMINGTON DRIVE  
DUPONT, WASHINGTON 98527

4000 ESTER AVENUE, NORTHEAST  
SALEM, OREGON 97313

July 18, 1996

The Honorable Tony Knowles  
Governor of Alaska  
P.O. Box 110001  
Juneau, AK 99811-0001

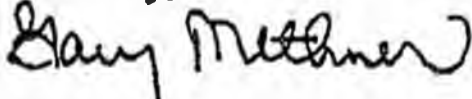
Dear Governor Knowles,

On behalf of Alaskans holding over 200,000 State Farm Insurance policies, I wish to express my disappointment at the composition of the Governor's Advisory Task Force on Civil Justice Reform (Advisory Task Force) that you created by means of Administrative Order Number 165.

In spite of the facts that insurance provides most of the money used to pay civil liability claims; that the Advisory Task Force is directed to assess the effects of insurance reforms on insurance rates in both Alaska and the Nation; and that State Farm and other insurers played a major role in the passage of HB 158, the Advisory Task Force has no direct representation from any member of the insurance industry. This omission is troubling and challenges the balance of the Advisory Task Force. None of the other members selected, business or otherwise, has the background, information, or concern to represent adequately the interests of policyholders and their insurers.

Failure to grant insurers seats on the Advisory Task Force has denied a voice to the hundreds of thousands of Alaskans whose premiums pay for the civil justice system that the Governor agrees needs reformation. Hopefully, you will recognize the gravity of this oversight and expand the Advisory Task Force to include as many of Alaska's major insurers as wish to participate. State Farm, for one, volunteers to sit on the Advisory Task Force should you choose to expand it. I await your response.

Sincerely,



Gary Methner

GM:la

# GOVERNOR'S ADVISORY TASK FORCE ON CIVIL JUSTICE REFORM

August 5, 1996

| Name                 | Business                       | Mailing Address              | City                  | Phone-work           | Phone-home/ other             | Fax                         | e-mail | Contact person         | Comments       |
|----------------------|--------------------------------|------------------------------|-----------------------|----------------------|-------------------------------|-----------------------------|--------|------------------------|----------------|
| Judge Thomas Stewart | Retired Superior Court Judge   | Box 114100                   | Juneau, AK 99811-4100 | 463-4741 (court)     | 586-1220                      | 463-5016 (court)            |        |                        |                |
| Marlene Johnson      | Huna Totem Heritage Foundation | 9505 Antler Way              | Juneau, AK 99801      | 789-1773<br>790-4937 | 789-4833                      | 789-1896<br>789-4833 (home) |        |                        |                |
| Bill Allen           | VECO                           | 813 Northern Lights Blvd.    | Anchorage, AK 99503   | 264-8101             | 276-2266 (h); 244-6266 (cell) | 264-8130                    |        | Dee Walker             |                |
| Judy Brady           | Alaska Oil and Gas Association | 121 Fireweed Lane            | Anchorage, AK         | 272-1481             | 243-2533                      | 279-8114                    |        | Theresa [own schedule] |                |
| David H. Bundy       | Bundy & Christianson           | 911 W. 8th Avenue, Suite 302 | Anchorage, AK 99501   | 258-6016             | 248-8431(h); 440-4688 (cell)  | 258-2026                    |        | Ramona                 |                |
| Mike Burns           | Key Bank                       | P.O. B100420                 | Anchorage, AK 99510   | 564-0250             | 346-3276                      | 563-1764                    |        | Sue Day                |                |
| Charlie Cole         |                                | 406 Cushman Street           | Fairbanks, AK 99701   | 452-1124             | 479-5201                      | 456-2523                    |        |                        | gone 9/14-10/4 |
| Jeffrey M. Feldman   | Young, Sanders & Feldman       | 500 L Street, Suite 400      | Anchorage, AK 99501   | 272-3538             | 272-8084                      | 274-0819                    |        | Stephanie              |                |
| Roger Holmes         | Biss & Holmes                  | 3948 Clay Products Drive     | Anchorage, AK 99517   | 248-8013             |                               | 243-6695                    |        | Bruce Neilsen          |                |

| Name                | Business                                      | Mailing Address         | City                  | Phone-work | Phone-home/ other | Fax      | e-mail                         | Contact person        | Comments              |
|---------------------|---|-------------------------|-----------------------|------------|-------------------|----------|--------------------------------|-----------------------|-----------------------|
| Jerry Hood          | Alaska Teamsters Union                        | 4300 Boniface Parkway   | Anchorage, AK 99504   | 269-4101   | 274-9258          | 269-4468 |                                | Julie [own sched]     |                       |
| Julie Kitka         | Alaska Federation of Natives                  | 1577 C Steet, Suite 201 | Anchorage, AK 99501   | 274-3611   | 349-7143          | 274-7989 |                                |                       |                       |
| Julian L. Mason     | Ashburn & Mason                               | 1130 W. 6th Avenue      | Anchorage, AK 99501   | 276-4331   | 346-3326          | 277-8235 |                                | Paula [own sched]     |                       |
| Don Slone, PE       | Livingston Slone Inc                          | 3900 Arctic Blvd        | Anchorage, AK         | 562-2058   |                   | 561-4528 | lsi@alaska.net                 | own sched             |                       |
| Stephan H. Williams |   | 500 L Street, Suite 400 | Anchorage, AK 99501   | 276-6922   | 274-6328          | 276-2109 |                                | own sched             |                       |
| Mark Williams       | Carr Gottstein Foods Co.                      | 6411 A Street           | Anchorage, AK 99518   | 564-2320   | 364-3411          | 564-2580 |                                | Patti Bernard (Carol) |                       |
| Dr. Rodman Wilson   | Alaska State Medical Assoc.                   | 4107 Laurel St.         | Anchorage, AK 99508   | 562-2662   | 276-6142          | 561-2063 |                                |                       | Acting Exec. Director |
| <b>EX OFFICIO</b>   |   |                         |                       |            |                   |          |                                |                       |                       |
| Bruce M. Botelho    | Attorney General                              | P.O. Box 110300         | Juneau, AK 99811-0300 | 465-2133   | 364-2334          | 465-2075 | botelhob@law.state.ak.us       | Kathy Henderson       |                       |
| Jeff Bush           | Department of Commerce & Economic Development | P.O. Box 110800         | Juneau, AK 99811-0800 | 465-5459   | 586-3708          | 465-5442 | jeff_bush@commerce.state.ak.us | Elizabeth - 465-2500  |                       |

| Name                       | Business                              | Mailing Address                    | City                     | Phone-work   | Phone-home/ other | Fax               | e-mail                 | Contact person           | Comments |
|----------------------------|---------------------------------------|------------------------------------|--------------------------|--------------|-------------------|-------------------|------------------------|--------------------------|----------|
| The Honorable Johnny Ellis | Alaska State Senate                   | 716 4th Avenue, Suite 440          | Anchorage, AK 99501-1233 | 258-8182     |                   | 258-5571          |                        |                          |          |
| The Honorable Brian Porter | Alaska State House of Representatives | 716 W. 4th Street, Suite 360       | Anchorage, AK 995012133  | 258-8197     |                   | 258-5510          |                        |                          |          |
| Brad Thompson              | Division of Risk Management           | P.O. Box 110218                    | Juneau, AK 99811-0218    | 465-2180     |                   | 465-3690          |                        |                          |          |
| STAFF                      |                                       |                                    |                          |              |                   |                   |                        |                          |          |
| Marcia Vandercook          | Task Force Legal Researcher           | 1272 North Martha Washington Drive | Wauwatosa, WI 53213      | 414-774-7572 | same              | same (call first) | mvandercoo@aol.com     |                          |          |
| Nancy Gordon               | Alaska Department of Law              | 1031 W. 4th Ave., Suite 200        | Anchorage, AK 99501-1994 | 269-5152     | 274-6328          | 258-4978          |                        | Ann Wilde<br>269-5135    |          |
| Gail Voigtlander           | Alaska Department of Law              | 1031 W. 4th Ave., Suite 200        | Anchorage, AK 99501-1994 | 269-5191     | 694-9658          | 258-0760          |                        | Sandy Orcutt<br>269-5187 |          |
| Chrystal Smith             | Attorney General's Office             | P.O. Box 110300                    | Juneau, AK 99811-0300    | 465-2132     | 463-5175          | 465-2075          | smithc@law.state.ak.us |                          |          |

**HB**

**63**

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

*Senate Rules Committee 5/11/97 12:48 p.m.*

SENATE CS FOR CS FOR HOUSE BILL NO. 63( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES THERRIAULT, Davies, Kelly, Brice, Kubina

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the tax on motor fuel; amending the definition of 'motor  
2 fuel' under the state's motor fuel tax to add, as a part of the tax exemption  
3 set out in that definition, exemption from the tax for fuel sold for use in jet  
4 propulsion aircraft operating in flights that continue from foreign countries,  
5 subject to termination of the exemption for that fuel if a refiner operating a  
6 refinery at which the fuel was produced fails to comply with terms of a  
7 voluntary agreement entered into by the refiner to use Alaska residents,  
8 contractors, and suppliers to provide goods and services when the refinery's  
9 capacity is expanded, to add exemption from the tax for certain number 6  
10 'residual fuel oil,' also known as bunker fuel, and to delete the exemption from  
11 the tax for fuel that is at least 10 percent alcohol by volume; and repealing  
12 ch. 42, SLA 1994, the Act providing for the imposition of a different tax levy

1 on residual fuel oil used in and on certain watercraft until June 30, 1998; and  
2 providing for an effective date."

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

4 \* Section 1. AS 43.40.010(a) is amended to read:

5 (a) There is levied a tax of eight cents a gallon on all motor fuel sold or  
6 otherwise transferred within the state, except that

7 (1) the tax on aviation gasoline is four and seven-tenths cents a gallon;

8 (2) the tax on motor fuel used in and on watercraft of all descriptions  
9 is five cents a gallon; [AND]

10 (3) the tax on all aviation fuel other than gasoline is three and two-  
11 tenths cents a gallon; and

12 (4) the tax rate on motor fuel that is blended with alcohol is the  
13 same tax rate a gallon as other motor fuel; however,

14 (A) in an area and during the months in which fuel  
15 containing alcohol is required to be sold, transferred, or used in an effort  
16 to attain air quality standards for carbon monoxide as required by federal  
17 or state law or regulation, the tax rate on motor fuel that is blended with  
18 alcohol is four cents less than the tax on other motor fuel not described in  
19 (1) - (3) of this subsection;

20 (B) notwithstanding (A) of this paragraph, through June 30,  
21 2004, the tax on motor fuel sold or otherwise transferred within the state  
22 is eight cents a gallon less than the tax on other motor fuel not described  
23 in (1) - (3) of this subsection if the motor fuel

24 (i) is at least 10 percent alcohol by volume, has been  
25 produced from the processing of lignocellulose derived from wood,  
26 and was produced in a facility that processes lignocellulose from  
27 wood, but this reduction in the rate of tax applies to motor fuel sold  
28 or transferred that contains alcohol that was produced only during  
29 the first five years of the facility's processing of lignocellulose from  
30 wood; or

1                   (ii) is at least 10 percent alcohol by volume, has been  
2                   produced from the processing of waste seafood, and was produced  
3                   in a facility that processes alcohol from waste seafood, but this  
4                   reduction in the rate of tax applies to motor fuel sold or transferred  
5                   that contains alcohol that was produced only during the first five  
6                   years of the facility's processing of alcohol from waste seafood.

7           \* Sec. 2. AS 43.40.010(a), as repealed and reenacted by sec. 3, ch. 127, SLA 1994, is  
8 amended to read:

9           (a) There is levied a tax of eight cents a gallon on all motor fuel sold or  
10 otherwise transferred within the state, except that

11                   (1) the tax on aviation gasoline is four cents a gallon;

12                   (2) the tax on motor fuel used in and on watercraft of all descriptions  
13 is five cents a gallon; [AND]

14                   (3) the tax on all aviation fuel other than gasoline is two and one-half  
15 cents a gallon; and

16                   (4) the tax rate on motor fuel that is blended with alcohol is the  
17 same tax rate a gallon as other motor fuel; however,

18                           (A) in an area and during the months in which fuel  
19 containing alcohol is required to be sold, transferred, or used in an effort  
20 to attain air quality standards for carbon monoxide as required by federal  
21 or state law or regulation, the tax rate on motor fuel that is blended with  
22 alcohol is four cents less than the tax on other motor fuel not described in  
23 (1) - (3) of this subsection;

24                           (B) notwithstanding (A) of this paragraph, through June 30,  
25 2004, the tax on motor fuel sold or otherwise transferred within the state  
26 is eight cents a gallon less than the tax on other motor fuel not described  
27 in (1) - (3) of this subsection if the motor fuel

28                           (i) is at least 10 percent alcohol by volume, has been  
29 produced from the processing of lignocellulose derived from wood,  
30 and was produced in a facility that processes lignocellulose from  
31 wood, but this reduction in the rate of tax applies to motor fuel sold

1 or transferred that contains alcohol that was produced only during  
2 the first five years of the facility's processing of lignocellulose from  
3 wood; or

4 (ii) is at least 10 percent alcohol by volume, has been  
5 produced from the processing of waste seafood, and was produced  
6 in a facility that processes alcohol from waste seafood, but this  
7 reduction in the rate of tax applies to motor fuel sold or transferred  
8 that contains alcohol that was produced only during the first five  
9 years of the facility's processing of alcohol from waste seafood.

10 \* Sec. 3. AS 43.40.010(b) is amended to read:

11 (b) There is levied a tax of eight cents a gallon on all motor fuel consumed  
12 by a user, except that

13 (1) the tax on aviation gasoline consumed is four and seven-tenths cents  
14 a gallon;

15 (2) the tax on motor fuel used in and on watercraft of all descriptions  
16 is five cents a gallon; [AND]

17 (3) the tax on all aviation fuel other than gasoline is three and two-  
18 tenths cents a gallon; and

19 (4) the tax rate on motor fuel that is blended with alcohol is the  
20 same tax rate a gallon as other motor fuel; however,

21 (A) in an area and during the months in which fuel  
22 containing alcohol is required to be sold, transferred, or used in an effort  
23 to attain air quality standards for carbon monoxide as required by federal  
24 or state law or regulation, the tax rate on motor fuel that is blended with  
25 alcohol is four cents less than the tax on other motor fuel not described in  
26 (1) - (3) of this subsection;

27 (B) notwithstanding (A) of this paragraph, through June 30,  
28 2004, the tax on motor fuel consumed by a user within the state is eight  
29 cents a gallon less than the tax on other motor fuel not described in (1) -  
30 (3) of this subsection if the motor fuel

31 (i) is at least 10 percent alcohol by volume, has been

1 produced from the processing of lignocellulose derived from wood,  
2 and was produced in a facility that processes lignocellulose from  
3 wood, but this reduction in the rate of tax applies to motor fuel  
4 consumed by a user that contains alcohol that was produced only  
5 during the first five years of the facility's processing of  
6 lignocellulose from wood; or

7 (ii) is at least 10 percent alcohol by volume, has been  
8 produced from the processing of waste seafood, and was produced  
9 in a facility that processes alcohol from waste seafood, but this  
10 reduction in the rate of tax applies to motor fuel consumed by a  
11 user that contains alcohol that was produced only during the first  
12 five years of the facility's processing of alcohol from waste seafood.

13 \* Sec. 4. AS 43.40.010(b), as repealed and reenacted by sec. 5, ch. 127, SLA 1994, is  
14 amended to read:

15 (b) There is levied a tax of eight cents a gallon on all motor fuel consumed  
16 by a user, except that

17 (1) the tax on aviation gasoline consumed is four cents a gallon;

18 (2) the tax on motor fuel used in and on watercraft of all descriptions  
19 is five cents a gallon; [AND]

20 (3) the tax on all aviation fuel other than gasoline is two and one-half  
21 cents a gallon; and

22 (4) the tax rate on motor fuel that is blended with alcohol is the  
23 same tax rate a gallon as other motor fuel; however,

24 (A) in an area and during the months in which fuel  
25 containing alcohol is required to be sold, transferred, or used in an effort  
26 to attain air quality standards for carbon monoxide as required by federal  
27 or state law or regulation, the tax rate on motor fuel that is blended with  
28 alcohol is four cents less than the tax on other motor fuel not described in  
29 (1) - (3) of this subsection;

30 (B) notwithstanding (A) of this paragraph, through June 30,  
31 2004, the tax on motor fuel consumed by a user within the state is eight

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cents a gallon less than the tax on other motor fuel not described in (1) -  
(3) of this subsection if the motor fuel

(i) is at least 10 percent alcohol by volume, has been  
produced from the processing of lignocellulose derived from wood,  
and was produced in a facility that processes lignocellulose from  
wood, but this reduction in the rate of tax applies to motor fuel  
consumed by a user that contains alcohol that was produced only  
during the first five years of the facility's processing of  
lignocellulose from wood; or

(ii) is at least 10 percent alcohol by volume, has been  
produced from the processing of waste seafood, and was produced  
in a facility that processes alcohol from waste seafood, but this  
reduction in the rate of tax applies to motor fuel consumed by a  
user that contains alcohol that was produced only during the first  
five years of the facility's processing of alcohol from waste seafood.

\* Sec. 5. AS 43.40.015(d) is amended to read:

(d) A certificate of use is not required

(1) for fuel exempted under AS 43.40.100(2)(C) [, (F),] or (J) [(K)];

and

(2) for fuel exempted under AS 43.40.100(2)(I) [AS 43.40.100(2)(J)]

other than fuel sold or transferred under this exemption to a person who is engaged in  
construction or mining activity.

\* Sec. 6. AS 43.40 is amended by adding a new section to read:

**Sec. 43.40.092. Disallowance of exemption from motor fuel tax for certain  
fuel sold for use in jet propulsion aircraft operating in flights that continue from  
foreign countries.** (a) The provisions of this section apply to disallow the exemption  
for motor fuel sold for use by a dealer or used by a user in jet propulsion aircraft  
operating in flights that continue from foreign countries if, for motor fuel produced by  
a refiner,

(1) the refiner determines, on or after the effective date of this section,  
that the refiner will expand capacity or expand the refinery to produce more residual

1 fuel oil used in watercraft;

2 (2) on or after the effective date of this section, the refiner has  
3 voluntarily committed by agreement entered into with the commissioner that, if the  
4 refiner expands its oil refining capacity in order to produce additional supplies of fuel  
5 for use in jet propulsion aircraft that qualify for the tax exemption, when the refiner  
6 expands capacity, the refiner will

7 (A) use the refiner's best efforts to advertise for, recruit, and  
8 employ in the construction activities associated with expanding refinery  
9 capacity resident workers who have experience in the specific fields in which  
10 they are hired to work;

11 (B) contract with licensed Alaska firms to prepare materials that  
12 are used in construction activities and to provide services in conjunction with  
13 activities associated with expanded refinery capacity and, in contracting with  
14 those firms, to encourage the refiner's contractors to employ and, when  
15 necessary, train state residents; and

16 (C) enter into contracts with Alaska-licensed vendors,  
17 contractors, and suppliers for the provision of supplies and services used in  
18 conjunction with activities associated with expanding refinery capacity; and

19 (3) the commissioner determines that a dealer or user claiming the  
20 exemption for motor fuel acquired from a refiner who has entered into an agreement  
21 described in (2) of this subsection acquired the motor fuel for which the exemption is  
22 claimed from a refiner who has not complied with the requirements of the agreement  
23 in completing expansion of its oil refining capacity under the agreement described in  
24 (1) of this subsection.

25 (b) For purposes of this section,

26 (1) the term "resident worker" means an individual who

27 (A) is physically present in the state with the intent to remain  
28 in the state indefinitely and has a home in the state;

29 (B) demonstrates that intent by maintaining a residence in the  
30 state;

31 (C) possesses a resident fishing, trapping, or hunting license, or

1 receives a permanent fund dividend; and

2 (D) may be required to state under oath that the individual is  
3 not claiming residency outside of the state or obtaining benefits under a claim  
4 of residency outside of the state;

5 (2) the phrases "Alaska-licensed contractors" and "Alaska firms" mean  
6 a contractor or firm that

7 (A) has held an Alaska business license for one year before  
8 performing any work in connection with the commitment described in (a) of  
9 this section;

10 (B) has maintained for one year a place of business within the  
11 state that deals in the supplies, services, or construction of the nature required  
12 for the commitment described in (a) of this section; and

13 (C) is

14 (i) a sole proprietorship and the proprietor is an Alaska  
15 resident;

16 (ii) a partnership and more than 50 percent of the  
17 partners are Alaska residents;

18 (iii) a corporation that has been incorporated in the state  
19 or is authorized to do business in the state; or

20 (iv) a joint venture composed entirely of ventures that  
21 qualify under this subparagraph.

22 \* Sec. 7. AS 43.40.100(2) is amended to read:

23 (2) "motor fuel" means fuel used in an engine for the propulsion of a  
24 motor vehicle or aircraft, and fuel used in and on watercraft for any purpose, or in a  
25 stationary engine, machine, or mechanical contrivance that [WHICH] is run by an  
26 internal combustion motor; "motor fuel" does not include

27 (A) fuel consigned to foreign countries;

28 (B) fuel sold for use in jet propulsion aircraft operating in  
29 flights

30 (i) to foreign countries; or

31 (ii) that continue from foreign countries, unless

1 exemption of the motor fuel from taxation is disallowed because of  
2 the refiner's failure to comply with the provisions of a voluntary  
3 agreement under AS 43.40.092 in conjunction with expansion of  
4 refinery capacity;

5 (C) fuel used in stationary power plants operating as public  
6 utility plants and generating electrical energy for sale to the general public;

7 (D) fuel used by nonprofit power associations or corporations  
8 for generating electric energy for resale;

9 (E) fuel used by charitable institutions;

10 (F) [FUEL WHICH IS AT LEAST 10 PERCENT ALCOHOL  
11 BY VOLUME;

12 (G)] fuel sold or transferred between qualified dealers;

13 (G) [(H)] fuel sold to federal, state, and local government  
14 agencies for official use;

15 (H) [(I)] fuel used in stationary power plants that generate  
16 electrical energy for private residential consumption;

17 (I) [(J)] fuel used to heat private or commercial buildings or  
18 facilities;

19 (J) [(K)] fuel used for other nontaxable purposes as prescribed  
20 by regulations adopted by the department;

21 (K) [OR (L)] fuel used in stationary power plants of 100  
22 kilowatts [KW] or less that generate electrical power for commercial  
23 enterprises not for resale; or

24 (L) residual fuel oil used in and on watercraft if the residual  
25 fuel oil is sold or transferred in the state or consumed by a user; for  
26 purposes of this subparagraph, "residual fuel oil" means the heavy refined  
27 hydrocarbon known as number 6 fuel oil that is the residue from crude oil  
28 after refined petroleum products have been extracted by the refining  
29 process and that may be consumed or used only when sufficient heat is  
30 provided to the oil to reduce its viscosity rated by kinetic unit and to give  
31 it fluid properties sufficient for pumping and combustion;

1 \* Sec. 8. Chapter 42, SLA 1994, is repealed.

2 \* Sec. 9. CONDITIONAL EFFECT OF SECTIONS 2 AND 4. Sections 2 and 4 of this  
3 Act take effect only if, under sec. 6, ch. 127, SLA 1994, secs. 3 and 5, ch. 127, SLA 1994,  
4 take effect because the Department of Transportation and Public Facilities, before January 1,  
5 2000, increases the fee it charges under AS 02.15.090(a) for the privilege of landing aircraft  
6 at rural airports, as that term is defined in 17 AAC 40.795(2), above the amount of the fee in  
7 effect on January 1, 1994.

8 \* Sec. 10. Sections 1, 3, and 5 - 9 of this Act take effect July 1, 1997.

9 \* Sec. 11. (a) If secs. 2 and 4 of this Act take effect under sec. 9 of this Act and sec. 6,  
10 ch. 127, SLA 1994, they take effect on the later of

11 (1) the 30th day after the effective date of the landing fee increase described  
12 in sec. 9 of this Act; or

13 (2) the day after the day that sec. 9 of this Act becomes law.

14 (b) The commissioner of transportation and public facilities shall promptly notify the  
15 commissioner of revenue, the lieutenant governor, and the revisor of statutes of a landing fee  
16 increase described in sec. 9 of this Act.

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT


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## House Of Representatives

House District 33

### MEMORANDUM

**DATE:** May 8, 1997  
**TO:** Senator Loren Leman, Chair  
Senate Rules Committee  
**FROM:** Representative Gene Therriault   
**SUBJECT:** Scheduling of HB 63

---

I respectfully request CSHB 63(2nd RLS), "An Act amending the definition of 'motor fuel' under the state's motor fuel act....., and providing for an effective date" be scheduled for a hearing, pending referral, in the Senate Finance Committee.

Attached you will find a copy of CSHB 63(2nd RLS) that I am submitting for your consideration.

Since 1995, 37.6 million gallons of tax exempt foreign-produced fuel has been brought into Alaska for use in foreign flights. Without new legislation, it is anticipated that the practice of using the foreign trade zone (FTZ) to import fuel will increase as airlines move to purchase tax exempt fuel for use in foreign flights.

CSHB 63(2nd RLS) will exempt all jet fuel used in international flights. This will provide a level playing field to Alaskan oil refiners and should stimulate growth for this Alaskan resource.

CSHB 63(2nd RLS) was amended in the House Finance Committee to repeal the tax exemption for fuel that is at least 10 percent alcohol by volume. This action leaves the Federal tax exemption of 5.4 cents per gallon for this fuel in place. The Finance Committee Substitute also exempts residual fuel oil (bunker fuel) used in watercraft, if this fuel is sold or transferred within the State of Alaska, from motor fuel taxation.

CSHB 63(2nd RLS) was amended by the House Rules Committee with a title change, as well as an additional section describing the disallowance of the jet fuel tax exemption if a refiner, having entered into a voluntary agreement to use local hire and Alaskan companies for refinery expansion, fails to comply with the agreement.

Attachments include:

1. Bill copy
2. Sponsor Statement
3. Sectional Analysis

I appreciate your consideration of my request.

attachments (3)

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

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## House Of Representatives

House District 33

### CSHB 63(2nd RLS) 04/29/97

Modifies the existing statutes regarding taxation of motor fuel products such as jet fuel sold for use by aircraft flying to foreign destinations to also apply to jet fuel use by flights of foreign origination continuing on to a U.S. destination, subject to termination of the exemption of a refiner who expands the refinery fails to comply with terms of a voluntary agreement to use Alaska residents, contractors, and suppliers for the expansion; adds an exemption from the tax for any residual fuel oil (bunker fuel) sold or transferred in the state, deletes the tax on fuel at least 10 percent alcohol by volume; and repeals Ch. 42, SLA 1994, and Act providing for an additional tax levy on residual fuel oil used in and on certain watercraft; providing for an effective date.

SPONSOR: Representative Gene Therriault

#### Sectional Analysis:

- Section 1: Amends AS 43.40.015(d) by deleting the reference to fuel which is at least 10 percent alcohol by volume.
- Section 2. Adds a new section AS 43.40.092 addressing the disallowance of the motor fuel tax exemption for fuel used in jet propulsion aircraft operating in flights continuing from foreign countries. The exemption would be disallowed if the refiner, in expanding refinery capacity for fuel used in jet propulsion aircraft, or expands the refinery to produce more residual fuel (bunker fuel), fails to comply with terms of the voluntary agreement. If the refiner chooses to enter into same agreement (with the Commissioner of Revenue), the refiner must use best efforts to use experienced Alaskan resident workers, use Alaska firms for materials, and supplies for the construction of the expansion. This section also defines the terms used in the voluntary agreement.
- Section 3. Amends AS 43.40.100(2)(B) to expand the current tax exemption for fuel sold for use by jet propulsion aircraft operating in flights that continue from foreign countries, unless disallowed by violation of the refiner's voluntary agreement with the commissioner.

Deletes current tax exemption for fuel that is at least 10 percent alcohol by volume (AS 43.40.100(2)(F)).

Expands the description (KW) to its complete spelling of kilowatts in AS.43.40.100(2)(L).

Amends AS 43.40.100 by adding residual oil used in watercraft, if that same fuel is sold or transferred within the State, to the list of exemptions from motor fuel taxation.

Re-letters G to K under AS 43.40.100 Definitions, to adjust for changes.

Section 4: Repeals Chapter 42, SLA 1994. This legislation established a two tiered tax levied on residual oil that was sold for passenger watercraft use. This two tiered tax structure has proven to be ineffective.

Section 5: Establishes an effective date of July 1, 1997.

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

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House District 33

## House Of Representatives

**CSHB 63(2nd RLS)** Extending the motor fuel tax exemption of fuel sold for use in jet propulsion aircraft to fuel used in those aircraft for flights that continue from a foreign country, and exempting from motor fuel tax residual fuel oil used in and on watercraft if it is sold or transferred in the state, disallowing same exemption if the refiner fails to comply with terms under a voluntary agreement for expansion of said refinery; deleting the current tax exemption for fuel that is at least 10 percent alcohol by volume.

**SPONSOR:** Representative Gene Therriault

### SPONSOR STATEMENT:

CSHB 63(2nd RLS) extends the motor fuel tax exemption to include fuel used in aircraft for flights that continue from a foreign country. Currently, the State of Alaska provides a tax exemption for fuel used only in flights to foreign countries. Federal law preempts state taxation of imported aviation fuel transported through a foreign trade zone (FTZ) for use in aircraft during foreign flights. The federal definition of "foreign flight" includes flights originating from and flights continuing to a foreign country. As a result, jet fuel produced in Alaska is taxed 3.2 cents per gallon more than similar fuel produced at foreign refineries.

Two tankers filled with 20.7 million gallons of tax exempt foreign-produced fuel were brought into Alaska during 1995. Last year just under 38 million gallons were imported into the FTZ. Without new legislation, it is anticipated that the practice of using the FTZ to import fuel will increase as airlines move to purchase the tax exempt fuel for use in foreign flights.

CSHB 63(2nd RLS) is needed to provide a level playing field to Alaskan producers by allowing the tax exemption for all fuel used in foreign flights.

The original version of HB 63 was amended by the House Transportation Committee to also exclude residual fuel oil (commonly known as bunker fuel) used on passenger watercraft from motor fuel tax. The committee substitute will also repeal the 1994 legislation (Ch 42 SLA 94) that established a two tiered tax structure on residual (bunker) fuel oil for passenger watercraft.

CSHB 63(2nd RLS) was amended by the House Finance Committee by expanding the definition of motor fuel tax and motor fuel; repealing the motor fuel tax exemption

for fuel that contains an alcohol additive (gasohol), and deleting the word "passenger" as well as all references to "passenger watercraft".

CSHB 63(2nd RLS) was also amended by the House Rules Committee in two ways:

1. The title was narrowed to specific items to include the exemption from the motor fuel tax for fuel sold in flights of foreign origination, subject to the termination of the exemption if the refiner fails to comply with terms of a voluntary "local hire" agreement signed with the commissioner for expansion of the refinery. It includes an exemption from the tax for any residual fuel oil and deletes the tax on fuel at least 10 percent alcohol by volume.

2. Adds a new section defining the specific requirements of the voluntary agreement between the refiner who is expanding the refinery and the Commissioner of Revenue.

**HB**

**64**

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Mary Pagenkopf

Senate Rules Committee 2/20/97 10:45am

# MEETING AGENDA

I. CALL TO ORDER: Senate Rules Committee on Thursday, February 20th, 1997 in Room 203 of the Capitol Building at 10:45am.

II. ROLL CALL:

Kelly.....Leman.....Taylor.....

Torgerson.....Duncan.....

III. AGENDA ITEMS:

- 1) HB 64 - Naming the new state ferry the MV Kennicott - House TRA Committee

IV. MOTION:

Move to pass HB 64 from committee with individual recommendations, and calendar it for a Senate floor vote at the discretion of the chairman.

# FISCAL NOTE

No. 1  
 Bill Version: HB 64  
 (H) Publish Date: 1/13/97

**STATE OF ALASKA  
 1997 LEGISLATIVE SESSION**

Revision Date: 12/26/96 Dept. Affected: DOT/PF  
 Title: "An act for naming the new ferry" BRU: New  
 Component: New  
 Sponsor: Rules Committee  
 Requester: Governor's Office COMPONENT SERIAL NO. N/A

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

| OPERATING EXPENDITURES | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      | FY 03      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| TRAVEL                 | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| CONTRACTUAL            | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| SUPPLIES               | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| EQUIPMENT              | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| LAND & STRUCTURES      | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| GRANTS, CLAIMS         | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| MISCELLANEOUS          | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                      |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES |  |  |  |  |  |  |
|----------------------|--|--|--|--|--|--|

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

**FUND SOURCE (Thousands of Dollars)**

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  |            |            |            |            |            |            |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1006 GF/MHTIA            |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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

**POSITIONS**

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

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

This resolution would have no fiscal impact on the Department of Transportation and Public Facilities. The department supports an act naming the new ocean-class marine highway vessel.

Prepared by: Gary L. Hayden, System Director  
 Division: Alaska Marine Highway System  
 Approved by: Joseph L. Perkins, Commissioner  
 Agency: Department of Transportation and Public Facilities

Phone: 465-3959  
 Date: 12/26/96  
 Date: 12/27/96

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TONY KNOWLES  
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HB 64  
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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 13, 1997

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

Dear Speaker Phillips:

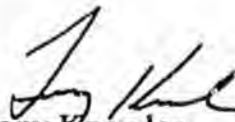
I am pleased to transmit this bill to you naming the latest addition to the state's marine highway fleet the Motor Vessel Kennicott.

This name complies with state law requiring the name of our maritime vessels be that of an Alaska glacier. But I think it's especially terrific this name was selected through a statewide essay contest conducted in our schools. The winning name was nominated by Leah Jarvis, a student at Glennallen Elementary School in Copper Center, Alaska.

A joint legislative and executive branch committee consisting of Lieutenant Governor Fran Ulmer, former Senate President Drue Pearce, and House Speaker Gail Phillips chose Leah's essay as the best one from among the numerous entries.

The Motor Vessel Kennicott will provide valuable service to the state for many years. Its name appropriately reflects one of Alaska's beautiful scenic wonders. I urge your favorable consideration of this bill and your joining me in congratulating Leah and all of the students who participated in this contest.

Sincerely,

  
Tony Knowles  
Governor

**HB**

**65**

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

Senate Rules Committee 4/9/97 11:18 am

# Alaska State Legislature House of Representatives

## COMMITTEE ASSIGNMENTS:

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SESSION:  
STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE (907) 485-3777  
FAX (907) 485-2819

## SPONSOR STATEMENT HB 65

Partial-birth abortions, which typically occur in late-term pregnancies, involve the following steps: First, the abortionist locates the baby's leg and pulls it into the birth canal; Second, the entire baby is delivered except the head; Third, scissors are inserted into the live baby's head and the hole enlarged; Fourth, a suction catheter is inserted into the hole and the baby's brains are sucked out, thereby collapsing the skull; Finally, the dead baby is completely removed.

In testimony before the US House of Representatives Judiciary Committee, Nurse Shafer described her experience of partial-birth abortions as follows:

"...His little fingers were clasping together. He was kicking his feet. All the while his little head was still stuck inside. [The doctor takes] a pair of scissors and insert[s] them into the back of the baby's head. Then he opened the scissors up. Then he stuck the high-powered suction tube into the hole and sucked the baby's brains out."

This gruesome and hideous procedure, which but for a few centimeters would be punishable as infanticide, would be outlawed by HB 65, as unworthy of civilized people. Such behavior coarsens our society, undermines people's trust in the medical profession, and blurs the legal distinction between abortion and homicide.

HB 65 makes it a felony for a person to perform a partial-birth abortion, except where necessary to save the life of the mother. While leaving intact the right to all other types of abortion procedures, HB 65 punishes the abortionist but not the mother.

Partial-birth abortions are not something that we need in the State of Alaska. Your support of HB 65 is urged.



Representative Pete Kott



# Alaska State Legislature House of Representatives

## COMMITTEE ASSIGNMENTS:

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## SECTIONAL ANALYSIS HB 65

**Section 1:** Makes partial-birth abortions illegal, except where necessary to save the life of the mother; exempts the mother from prosecution; defines "partial-birth abortion as the act of partially vaginally delivering a living fetus before killing it and completing the delivery.



Representative Pete Kott



STATE OF ALASKA  
1997 LEGISLATIVE SESSION

Bill Version: HB 65  
(H) Publish Date: 2/21/97

Revision Date: \_\_\_\_\_  
Title: "An act relating to partial-birth abortions."

Department Affected: Administration  
BRU: Public Defender Agency  
Component: Public Defender Agency

Sponsor: Representative Kott  
Requestor: (H) STA

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 | FY J3 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES      |       |       |       |       |       |       |
| TRAVEL                 |       |       |       |       |       |       |
| CONTRACTUAL            |       |       |       |       |       |       |
| SUPPLIES               |       |       |       |       |       |       |
| EQUIPMENT              |       |       |       |       |       |       |
| LAND & STRUCTURES      |       |       |       |       |       |       |
| GRANTS, CLAIMS         |       |       |       |       |       |       |
| MISCELLANEOUS          |       |       |       |       |       |       |
| TOTAL OPERATING        | **    | **    | **    | **    | **    | **    |

|                      |    |    |    |    |    |    |
|----------------------|----|----|----|----|----|----|
| CAPITAL EXPENDITURES | ** | ** | ** | ** | ** | ** |
|----------------------|----|----|----|----|----|----|

|                        |    |    |    |    |    |    |
|------------------------|----|----|----|----|----|----|
| CHANGE IN REVENUES ( ) | ** | ** | ** | ** | ** | ** |
|------------------------|----|----|----|----|----|----|

FUND SOURCE:

(Thousands of Dollars)

|                          |    |    |    |    |    |    |
|--------------------------|----|----|----|----|----|----|
| 1002 Federal Receipts    |    |    |    |    |    |    |
| 1003 GF Match            |    |    |    |    |    |    |
| 1004 GF                  |    |    |    |    |    |    |
| 1005 GF/Program Receipts |    |    |    |    |    |    |
| 1037 GF/Mental Health    |    |    |    |    |    |    |
| OTHER                    |    |    |    |    |    |    |
| TOTAL                    | ** | ** | ** | ** | ** | ** |

Estimate of any current year (FY 97) cost: \$ \*\*

POSITIONS:

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary.)

This bill would make performing a "partial-birth abortion" in Alaska a class C felony offense. It creates a new crime, and may result in additional cases and additional work for the Public Defender Agency. Although (presumably) only physicians would be prosecuted and it would be highly unusual for a physician to be a public defender client, other persons could be prosecuted as aiders or abettors. There is even the potential that people who form an agreement to have such a procedure outside the state could be prosecuted under the conspiracy laws. However, without an accurate prediction of the numbers of prosecutions expected, fiscal impact is impossible to quantify.

Prepared by: Barbara K. Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4414  
Date: \_\_\_\_\_

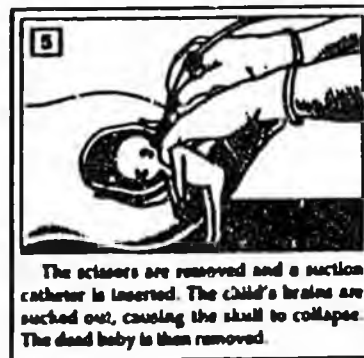
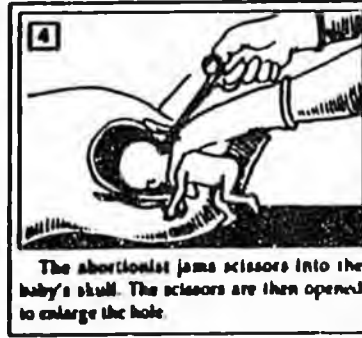
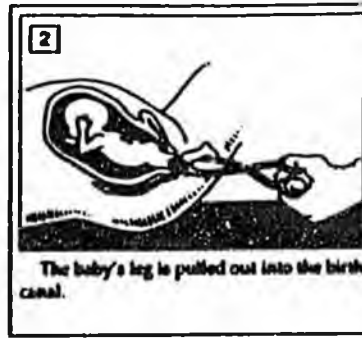
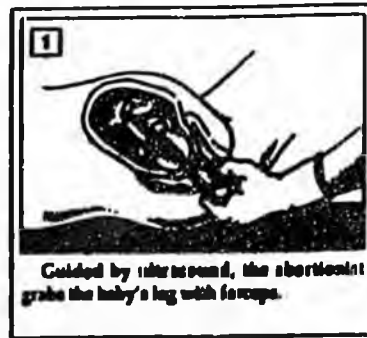
Approved by Commissioner: Mark Boyer  
Agency: Department of Administration

Date: 2/17/97

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## PARTIAL-BIRTH ABORTION



## PARTIAL-BIRTH ABORTION— COLD BLOODED KILLING

For the past two years, the National Right to Life Committee has undertaken a major effort to educate Americans about the growing use of an abortion technique called "D&X." D&X is a partial-birth, brain suction abortion procedure and is nothing less than cold-blooded killing. It is used to kill babies between 18 and 39 weeks of gestation.

When this kind of abortion is performed, the abortionist removes all but the head of the living baby from the mother's womb. The back of the baby's head is next stabbed with a pair of scissors. Finally the brains are suctioned out to collapse the head making it easier to remove the now dead baby from the mother's womb.

Two years ago, NRLC distributed over six million brochures that attacked partial-birth brain suction abortion and depicted the brutal D&X method. We were immediately attacked by many pro-abortion groups, including the National Abortion Federation.

In this current legislative session of the 104th Congress, legislation that outlaws brain suction abortion methods will be introduced. It is now being drafted by Representative Charles Canady of Florida. With the strong support of grassroots pro-lifers, NRLC is prayerfully hopeful that a bill prohibiting the killing of a living baby can be passed.

# Second Trimester Abortion: From Every Angle

## Fall Risk Management Seminar

September 13-14, 1992

Dallas, Texas

*Dr. Martin Haskell's  
paper on how to do  
the partial-birth abortion,  
with interviews attached.*

**Presentations, Bibliography & Related Materials**



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# Dilation and Extraction for Late Second Trimester Abortion

Martin Haskell, M.D.

Presented at the National Abortion Federation  
Risk Management Seminar, September 13, 1992

## INTRODUCTION

The surgical method described in this paper differs from classic D&E in that it does not rely upon dismemberment to remove the fetus. Nor are inductions or infusions used to expel the intact fetus.

Rather, the surgeon grasps and removes a nearly intact fetus through an adequately dilated cervix. The author has coined the term *Dilation and Extraction or D&X* to distinguish it from dismemberment-type D&E's.

This procedure can be performed in a properly equipped physician's office under local anesthesia. It can be used successfully in patients 20-28 weeks in pregnancy.

The author has performed over 700 of these procedures with a low rate of complications.

## BACKGROUND

D&E evolved as an alternative to induction or instillation methods for second trimester abortion in the mid 1970's. This happened in part because of lack of hospital facilities allowing second trimester abortions in some geographic areas, in part because surgeons needed a "right now" solution to complete suction abortions inadvertently started in the second trimester and in part to provide a means of early

second trimester abortion to avoid necessary delays for instillation methods. The North Carolina Conference in 1978 established D&E as the preferred method for early second trimester abortions in the U.S.<sup>2, 3, 4</sup>

Classic D&E is accomplished by dismembering the fetus inside the uterus with instruments and removing the pieces through an adequately dilated cervix.<sup>5</sup>

However, most surgeons find dismemberment at twenty weeks and beyond to be difficult due to the toughness of fetal tissue at this stage of development. Consequently, most late second trimester abortions are performed by an induction method.<sup>6, 7, 8</sup>

Two techniques of late second trimester D&E's have been described at previous NAF meetings. The first relies on sterile urea intra-amniotic infusion to cause fetal demise and lysis (or softening) of fetal tissues prior to surgery.<sup>9</sup>

The second technique is to rupture the membranes 24 hours prior to surgery and cut the umbilical cord. Fetal death and ensuing autolysis soften the tissues. There are attendant risks of infection with this method.

In summary, approaches to late second trimester D&E's rely upon some means to induce early fetal demise to soften the fetal tissues making dismemberment easier.

### PATIENT SELECTION

The author  routinely performs this procedure on all patients 20 through 24 weeks LMP with certain exceptions. The author performs the procedure on selected patients 25 through 28 weeks LMP.

The author refers for induction patients falling into the following categories:

- Previous C-section over 22 weeks
- Obese patients (more than 20 pounds over large frame ideal weight)
- Twin pregnancy over 21 weeks
- Patients 28 weeks and over

## DESCRIPTION OF DILATION AND EXTRACTION METHOD

Dilation and extraction takes place over three days. In a nutshell, D&X can be described as follows:

Dilation  
MORE DILATION  
Real-time ultrasound visualization  
Version (as needed)  
Intact extraction  
Fetal skull decompression  
Removal  
Clean-up  
Recovery

### Day 1 - Dilation

The patient is evaluated with an ultrasound, hemoglobin and Rh. Hadlock scales are used to interpret all ultrasound measurements.

In the operating room, the cervix is prepped, anesthetized and dilated to 9-11 mm. Five, six or seven large Dilapan hydroscopic dilators are placed in the cervix. The patient goes home or to a motel overnight.

### Day 2 - More Dilation

The patient returns to the operating room where the previous day's Dilapan are removed. The cervix is scrubbed and anesthetized. Between 15 and 25 Dilapan are placed in the cervical canal. The patient returns home or to a motel overnight.

### Day 3 - The Operation

The patient returns to the operating room where the previous day's Dilapan are removed. The surgical assistant administers 10 IU Pitocin intramuscularly. The cervix is scrubbed, anesthetized and grasped with a tenaculum. The membranes are ruptured, if they are not already.

The surgical assistant places an ultrasound probe on the patient's abdomen and scans the fetus, locating the lower extremities. This scan provides the surgeon information about the orientation of the fetus and approximate location of the lower extremities. The transducer is then held in position over the lower extremities.

The surgeon introduces a large grasping forcep, such as a Bierer or Herr, through the vaginal and cervical canals into the corpus of the uterus. Based upon his knowledge of fetal orientation, he moves the tip of the instrument carefully towards the fetal lower extremities. When the instrument appears on the sonogram screen, the surgeon is able to open and close its jaws to firmly and reliably grasp a lower extremity. The surgeon then applies firm traction to the instrument causing a version of the fetus (if necessary) and pulls the extremity into the vagina.

By observing the movement of the lower extremity and version of the fetus on the ultrasound screen, the surgeon is assured that his instrument has not inappropriately grasped a maternal structure.

With a lower extremity in the vagina, the surgeon uses his fingers to deliver the opposite lower extremity, then the torso, the shoulders and the upper extremities.

The skull lodges at the internal cervical os. Usually there is not enough dilation for it to pass through. The fetus is oriented dorsum or spine up.

At this point, the right-handed surgeon slides the fingers of the left hand along the back of the fetus and "hooks" the shoulders of the fetus with the index and ring fingers (palm down). Next he slides the tip of the middle finger along the spine towards the skull while applying traction to the shoulders and lower extremities. The middle finger lifts and pushes the anterior cervical lip out of the way.

While maintaining this tension, lifting the cervix and applying traction to the shoulders with the fingers of the left hand, the surgeon takes a pair of blunt curved Metzenbaum scissors in the right hand. He carefully advances the tip, curved down.

along the spine and under his middle finger until he feels it contact the base of the skull under the tip of his middle finger.

Reassessing proper placement of the closed scissors tip and safe elevation of the cervix, the surgeon then forces the scissors into the base of the skull or into the foramen magnum. Having safely entered the skull, he spreads the scissors to enlarge the opening.

The surgeon removes the scissors and introduces a suction catheter into this hole and evacuates the skull contents. With the catheter still in place, he applies traction to the fetus, removing it completely from the patient.

The surgeon finally removes the placenta with forceps and scrapes the uterine walls with a large Evans and a 14 mm suction curette. The procedure ends.

### Recovery

Patients are observed a minimum of 2 hours following surgery. A pad check and vital signs are performed every 30 minutes. Patients with minimal bleeding after 30 minutes are encouraged to walk about the building or outside between checks.

Intravenous fluids, pitocin and antibiotics are available for the exceptional times they are needed.

### ANESTHESIA

Lidocaine 1% with epinephrine administered *intra-cervically* is the standard anesthesia. Nitrous-oxide/oxygen analgesia is administered nasally as an adjunct. For the Dilapan insert and Dilapan change, 12cc's is used in 3 equidistant locations around the cervix. For the surgery, 24cc's is used at 6 equidistant spots.

Carbocaine 1% is substituted for lidocaine for patients who expressed lidocaine sensitivity.

## MEDICATIONS

All patients not allergic to tetracycline analogues receive doxycycline 200 mgm by mouth daily for 3 days beginning Day 1.

Patients with any history of gonorrhea, chlamydia or pelvic inflammatory disease receive additional doxycycline, 100mgm by mouth twice daily for six additional days.

Patients allergic to tetracyclines are not given prophylactic antibiotics.

Ergotrate 0.2 mgm by mouth four times daily for three days is dispensed to each patient.

Pitocin 10 IU intramuscularly is administered upon removal of the Dilapan on Day 3.

Rhogam intramuscularly is provided to all Rh negative patients on Day 3.

Ibuprofen orally is provided liberally at a rate of 100 mgm per hour from Day 1 onward.

Patients with severe cramps with Dilapan dilation are provided Phenergan 25 mgm suppositories rectally every 4 hours as needed.

Rare patients require Synalogs DC in order to sleep during Dilapan dilation.

Patients with a hemoglobin less than 10 g/dl prior to surgery receive packed red blood cell transfusions.

## FOLLOW-UP

All patients are given a 24 hour physician's number to call in case of a problem or concern.

At least three attempts to contact each patient by phone one week after surgery are made by the office staff.

All patients are asked to return for check-up three weeks following their surgery.

## THIRD TRIMESTER

The author is aware of one other surgeon who uses a conceptually similar technique. He adds additional changes of Dilapan and/or laminaria in the 48 hour dilation period. Coupled with other refinements and a slower operating time, he performs these procedures up to 32 weeks or more.<sup>10</sup>

## SUMMARY

In conclusion, Dilation and Extraction is an alternative method for achieving late second trimester abortions to 26 weeks. It can be used in the third trimester.

Among its advantages are that it is a quick, surgical outpatient method that can be performed on a scheduled basis under local anesthesia.

Among its disadvantages are that it requires a high degree of surgical skill, and may not be appropriate for a few patients.

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NEWS

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Barbara Bolsen, Editor

July 11, 1995

The Hon. Charles T. Canady  
Chairman, Subcommittee on the Constitution  
Committee on the Judiciary  
U.S. House of Representatives  
2138 Rayburn House Office Bldg.  
Washington, D.C. 20515-6216

Material on  
Dr. Martin  
Haskell

Dear Representative Canady:

We have received your July 7 letter outlining allegations of inaccuracies in a July 5, 1993, story in American Medical News, "Shock-tactic ads target late-term abortion procedure."

You noted that in public testimony before your committee, AMNews is alleged to have quoted physicians out of context. You also noted that one such physician submitted testimony contending that AMNews misrepresented his statements. We appreciate your offer of the opportunity to respond to these accusations, which now are part of the permanent subcommittee record.

AMNews stands behind the accuracy of the report cited in the testimony. The report was complete, fair, and balanced. The comments and positions expressed by those interviewed and quoted were reported accurately and in context. The report was based on extensive research and interviews with experts on both sides of the abortion debate, including interviews with two physicians who perform the procedure in question.

We have full documentation of these interviews, including tape recordings and transcripts. Enclosed is a transcript of the contested quotes that relate to the allegations of inaccuracies made against AMNews.

Let me also note that in the two years since publication of our story, neither the organization nor the physician who complained about the report in testimony to your committee has contacted the reporter or any editor at AMNews to complain about it. AMNews has a longstanding reputation for balance, fairness and accuracy in reporting, including reporting on abortion, an issue that is as divisive within medicine as it is within society in general. We believe that the story in question comports entirely with that reputation.

Thank you for your letter and the opportunity to clarify this matter.

Respectfully yours,

*Barbara Bolsen*

Barbara Bolsen  
Editor

Attachment

# American Medical News transcript - page 1

Relevant portions of recorded interview with Martin Haskell, MD:

AMN: Let's talk first about whether or not the fetus is dead beforehand...

Haskell: No it's not. No, it's really not. A percentage are for various numbers of reasons. Some just because of the stress — intrauterine stress during, you know, the two days that the cervix is being dilated. Sometimes the membranes rupture and it takes a very small superficial infection to kill a fetus in utero when the membranes are broken. And so in my case, I would think probably about a third of those are definitely are (sic) dead before I actually start to remove the fetus. And probably the other two-thirds are not.

AMN: Is the skull procedure also done to make sure that the fetus is dead so you're not going to have the problem of a live birth?

Haskell: It's immaterial. If you can't get it out, you can't get it out.

AMN: I mean, you couldn't dilate further? Or is that riskier?

Haskell: Well, you could dilate further over a period of days.

AMN: Would that just make it... would it go from a 3-day procedure to a 4- or a 5-?

Haskell: Exactly. The point here is to effect a safe legal abortion. I mean, you could say the same thing about the D&E procedure. You know, why do you do the D&E procedure? Why do you crush the fetus up inside the womb? To kill it before you take it out?

Well, that happens, yes. But that's not why you do it. You do it to get it out. I could do the same thing with a D&E procedure. I could put dilapan in for four or five days and say I'm doing a D&E procedure and the fetus could just fall out. But that's not really the point. The point here is you're attempting to do an abortion. And that's the goal of your work, is to complete an abortion. Not to see how do I manipulate the situation so that I get a live birth instead.

AMN, wrapping up the interview: I wanted to make sure I have both you and (Dr.) McMahon saying 'No' then. That this is misinformation, these letters to the editor saying it's only done when the baby's already dead, in case of fetal demise and you have to do an autopsy. But some of them are saying they're getting that information from NAF. Have you talked to Barbara Radford or anyone over there? I called Barbara and she called back, but I haven't gotten back to her.

Haskell: Well, I had heard that they were giving that information, somebody over there might be giving information like that out. The people that staff the NAF office are not medical people. And many of them when I gave my paper, many of them came in, I learned later, to watch my paper because many of them have never seen an abortion performed of any kind.

AMN: Did you also show a video when you did that?