

**SENATE CS FOR CS FOR HOUSE BILL NO. 158(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/10/96

Referred: Rules

Sponsor(s): REPRESENTATIVES PORTER, Toohey, Mulder, Ogan

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to civil actions; amending Rules 68, 82(b), and 95, Alaska  
2 Rules of Civil Procedure, repealing Rule 72.1, Alaska Rules of Civil Procedure,  
3 and amending Rule 601, Alaska Rules of Evidence."

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

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

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

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

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

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

14 (B) ensure that a claimant with substantial injury requiring long-term

1 treatment will have money available for future medical care;  
2 (C) reduce reparation system costs by eliminating those portions of  
3 awards that are not needed to compensate the claimant;  
4 (D) eliminate duplicate recoveries;  
5 (E) reduce the costs of litigation;  
6 (F) establish appropriate thresholds for a damage award in order to  
7 allow predictability of liability exposure; and  
8 (G) reduce the ultimate costs to the state and to local governments of  
9 providing medical services to those who cannot otherwise afford those services;  
10 (4) reduce the amount of litigation proceeding to trial by modifying the  
11 allocation of attorney fees and court costs based on the offer of judgment and the final court  
12 award thereby providing a financial incentive to both parties to settle the dispute;  
13 (5) enact a statute of repose that meets the tests set out in Turner Construction  
14 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);  
15 (6) clarify the circumstances in which hospitals are held directly liable for the  
16 actions of health care providers not employed by the hospital;  
17 (7) encourage health care providers to provide quality medical care in all areas  
18 of this state at a cost that is affordable;  
19 (8) stabilize the rapidly escalating costs of health care by curtailing the rapid  
20 escalation in malpractice premiums and thereby make broader based health care available to  
21 more residents of the state;  
22 (9) require that 90 percent of punitive damages awarded by a court be  
23 deposited into the general fund for the benefit of the public welfare and to deter future harm  
24 to the public.

25 \* **Sec. 2.** AS 09.10.055 is repealed and reenacted to read:

26 Sec. 09.10.055. STATUTE OF REPOSE OF 15 YEARS. (a) Notwithstanding  
27 the disability of minority described under AS 09.10.140(a), a person may not bring an  
28 action for personal injury, death, or property damage based on a defect in the design,  
29 planning, supervision, construction, or observation of an improvement to real property  
30 unless commenced within 15 years of the earlier of the date of

31 (1) substantial completion of the construction alleged to have caused

1 the personal injury, death, or property damage; however, the limitation of this  
2 paragraph does not apply to a claim resulting from an intentional or reckless disregard  
3 of specific project design plans and specifications, construction standards prevailing  
4 at the time of construction, or building codes; or

5 (2) the last act alleged to have caused the personal injury, death, or  
6 property damage.

7 (b) This section does not apply if

8 (1) the personal injury, death, or property damage resulted from

9 (A) exposure to a hazardous substance; in this subparagraph,  
10 "hazardous substance" means an element or compound that, when it enters into  
11 the air or on the surface or subsurface land or water of the state, presents an  
12 imminent and substantial danger to public or individual health and welfare;

13 (B) an intentional act or gross negligence;

14 (C) fraud or fraudulent misrepresentation;

15 (D) breach of an express warranty or guarantee; or

16 (E) a defective product; in this subparagraph, "product" means  
17 an object that has intrinsic value, is capable of delivery as an assembled whole  
18 or as a component part, and is introduced into trade or commerce; "product"  
19 includes an element or compound that if ingested by humans or if humans are  
20 exposed to, or are in contact with the element compound or product, poses a  
21 threat to human health;

22 (2) facts that would give notice of a potential cause of action are  
23 intentionally concealed;

24 (3) a shorter period of time for bringing the action is imposed under  
25 another provision of law; or

26 (4) a longer period of time for bringing the action was provided under  
27 a contract.

28 (c) In this section, "substantial completion" means the date when construction  
29 is sufficiently completed to allow the owner or a person authorized by the owner to  
30 occupy the improvement or to use the improvement in the manner for which it was  
31 intended.

1 \* **Sec. 3.** AS 09.10.070 is amended to read:

2           Sec. 09.10.070. ACTIONS FOR CERTAIN TORTS AND CERTAIN  
3 STATUTORY LIABILITIES TO BE BROUGHT IN TWO YEARS. **Except as**  
4 **otherwise provided by law, a** [A] person may not bring an action (1) for libel,  
5 slander, assault, battery, seduction, **or** false imprisonment [, OR FOR ANY INJURY  
6 TO THE PERSON OR RIGHTS OF ANOTHER NOT ARISING ON CONTRACT  
7 AND NOT SPECIFICALLY PROVIDED OTHERWISE]; (2) upon a statute for a  
8 forfeiture or penalty to the state; or (3) upon a liability created by statute, other than  
9 a penalty or forfeiture; unless the action is commenced within two years.

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

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

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

17 \* **Sec. 5.** AS 09.17.020 is amended to read:

18           Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be  
19 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear  
20 and convincing evidence **of outrageous conduct, including acts done with malice or**  
21 **bad motives, or reckless indifference to the interest of another person.**

22 \* **Sec. 6.** AS 09.17.020 is amended by adding new subsections to read:

23           (b) The amount of punitive damages awarded by a court or jury under (a) of  
24 this section may not exceed three times the amount of compensatory damages awarded  
25 or \$300,000, whichever amount is greater.

26           (c) The limit under (b) of this section does not apply to punitive damages  
27 awarded by a court or jury against a person who, as proven by a preponderance of the  
28 evidence, was attempting to commit or committing a felony if the person bringing the  
29 action was a victim of that offense and the offense substantially contributed to the  
30 injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

31           (d) If a person receives an award of punitive damages, the court shall require

1 that 90 percent of the award be deposited into the general fund of the state. This  
2 subsection does not grant the state the right to file or join a civil action to recover  
3 punitive damages.

4 \* **Sec. 7.** AS 09.17.040(e) is amended to read:

5 (e) **If a judgment is paid by periodic payments, the** [THE] court **shall**  
6 [MAY] require security be posted [,] in order to ensure that funds are available as  
7 periodic payments become due. The court may **waive this requirement if the person**  
8 **in whose favor judgment is entered agrees to waive the posting of security and the**  
9 **court determines that waiver is prudent in the action** [NOT REQUIRE SECURITY  
10 TO BE POSTED IF AN AUTHORIZED INSURER, AS DEFINED IN AS 21.90.900,  
11 ACKNOWLEDGES TO THE COURT ITS OBLIGATION TO DISCHARGE THE  
12 JUDGMENT].

13 \* **Sec. 8.** AS 09.17.040(f) is amended to read:

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

26 \* **Sec. 9.** AS 09.17.080 is amended by adding a new subsection to read:

27 (e) Notwithstanding any other provision of this section, fault may not be  
28 allocated to a person against whom an action cannot be brought as a result of  
29 application of a statute of repose, including AS 09.10.055.

30 \* **Sec. 10.** AS 09.30.065 is repealed and reenacted to read:

31 Sec. 09.30.065. OFFERS OF JUDGMENT. (a) At any time more than 10 days  
32 before the trial begins either the party making a claim or the party defending against a

1 claim may serve upon the adverse party an offer to allow judgment to be entered in  
2 complete satisfaction of the claim for the money or property or to the effect specified in  
3 the offer, with costs then accrued. If within 10 days after the service of the offer the  
4 adverse party serves written notice that the offer is accepted, either party may then file  
5 the offer and notice of acceptance together with proof of service, and the clerk shall enter  
6 judgment. An offer not accepted within 10 days is considered withdrawn and evidence  
7 of that offer is not admissible except in a proceeding to determine the form of judgment  
8 after verdict.

9 (b) If the judgment finally entered on the claim as to which an offer has been  
10 made under this section is at least five percent less favorable to the offeree than the  
11 offer, the offeree shall pay costs as allowed under the Alaska Rules of Civil Procedure  
12 and all reasonable attorney fees incurred by the offeror from the date the offer was made.

13 In comparing the offer to judgment finally entered, the court may not consider  
14 prejudgment interest payable under the judgment during the period between when  
15 payment would have been made under the offer and the date of entry of judgment.

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

17 (a) **Notwithstanding AS 45.45.010, the** [THE] rate of interest on judgments and  
18 decrees for the payment of money, **including prejudgment interest, is three percent**  
19 **above the interest rate set by the United States Bureau of the Public Debt for five-**  
20 **year treasury notes in effect on the day on which the judgment or decree is entered**  
21 [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in  
22 writing, providing for the payment of interest until paid at a specified rate not exceeding  
23 the legal rate of interest for that type of contract, bears interest at the rate specified in  
24 the contract if the interest rate is set out in the judgment or decree.

25 \* **Sec. 12.** AS 09.55.535 is repealed and reenacted to read:

26 Sec. 09.55.535. MANDATORY ARBITRATION. (a) A person who files an  
27 action for personal injury, death, or property damage shall also submit the claim to the  
28 court for arbitration unless the action is excluded under (b) of this section.

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

30 (1) amount in controversy, excluding interest, costs, and attorney fees,  
31 exceeds \$100,000 or is eligible for small claims court; this paragraph does not apply if,  
32 for purposes of arbitration only, the person bringing the claim waives the amount in

1 controversy that exceeds \$100,000;

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

4 (3) action

5 (A) is a class action;

6 (B) seeks equitable or declaratory relief;

7 (C) concerns the title to real property;

8 (D) is a probate action;

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

10 (F) involves divorce or domestic relations;

11 (G) is an appeal from action by an administrative agency.

12 (c) The court shall maintain a list of attorneys with at least five years of civil  
13 practice experience or who meet other qualifications as prescribed by the court, or retired  
14 judges, who have consented to serve as arbitrators. From the list of attorneys or retired  
15 judges the court shall appoint an arbitrator to review the claim and conduct the hearing.

16 Each party may exercise a peremptory challenge of an arbitrator appointed by the court.

17 (d) A party to arbitration shall comply with the Alaska Rules of Civil Procedure  
18 regarding mandatory discovery and may also take the deposition of an opposing party  
19 or conduct a mental or physical examination as allowed under the Alaska Rules of Civil  
20 Procedure. A party may not conduct further discovery except as allowed by the  
21 arbitrator or as allowed by agreement between the parties. Discovery shall be completed  
22 within 30 days after the arbitrator is selected, except as otherwise allowed by the  
23 arbitrator.

24 (e) The arbitrator shall set a date for a hearing on the claim. The hearing date  
25 shall be as soon as feasible, but not more than 60 days after the selection of the  
26 arbitrator, except as allowed by the arbitrator.

27 (f) The arbitrator shall conduct the hearing as necessary to ascertain facts in a  
28 timely manner. A witness may testify telephonically if allowed by the arbitrator. The  
29 Alaska Rules of Evidence do not apply to an arbitration hearing, except as determined  
30 by the arbitrator or by the Alaska Supreme Court. The Alaska Supreme Court shall  
31 establish a list of documents that shall be presumptively admissible in an arbitration  
32 hearing without prior establishment of authenticity or foundation, including bills, reports,

1 medical records, or photographs. This paragraph may not be construed to require the  
2 arbitrator to use or rely on any documents that the arbitrator has reason to doubt as to  
3 the document's authenticity or accuracy.

4 (g) An arbitrator shall render a decision within 30 days after hearing a claim  
5 under (e) of this section. The decision must contain findings of fact, conclusions of law,  
6 and an award or denial of damages. The decision of the arbitrator may be rejected by  
7 a party.

8 (h) Not more than seven days after the decision of the arbitrator is issued, a  
9 party may reject the decision of the arbitrator and file a request with the appropriate  
10 court for a trial on all issues raised by the claim. A timely filed request for trial shall  
11 proceed in the appropriate court.

12 (i) In a trial of a claim that has been arbitrated under this section, the decision  
13 of the arbitrator is admissible to the extent allowed under applicable rules of court, but  
14 the arbitrator may not be called as a witness. If a party rejects the decision of the  
15 arbitrator and litigates the claim in court, but fails to improve that party's position, the  
16 court shall award costs as allowed by law or under the Alaska Rules of Civil Procedure  
17 and reasonable attorney fees to the opposing party.

18 (j) The Alaska Supreme Court shall adopt rules necessary to implement this  
19 section.

20 (k) Notwithstanding AS 09.30.065, a claim subject to arbitration under this  
21 section is not subject to the offer of judgment provisions of AS 09.30.065(b).

22 \* **Sec. 13.** AS 09.55 is amended by adding a new section to read:

23 Sec. 09.55.551. EXPERT WITNESS QUALIFICATION. In an action based  
24 upon professional negligence, a person may not testify as an expert witness on the issue  
25 of the appropriate standard of care unless the witness is a professional who is licensed  
26 in this state or is licensed in another state or country and

27 (1) is trained and experienced in the same discipline or school of practice  
28 as the defendant or in an area directly related to a matter at issue; and

29 (2) is certified by a board recognized by the state as having  
30 acknowledged expertise and training directly related to the particular field or matter at  
31 issue.

32 \* **Sec. 14.** AS 09.55.560 is amended by adding a new paragraph to read:

1 (4) "professional negligence" means a negligent act or omission in  
2 rendering professional services.

3 \* **Sec. 15.** AS 09.65 is amended by adding a new section to read:

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

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

12 Notice of Limited Liability

13 The following health care providers are independent contractors  
14 and are not employees of the hospital:

15 (List specific health care providers)

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

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

23 (c) A hospital is not immune from liability under (a) of this section for an act  
24 or omission of a health care provider who is an independent contractor unless the  
25 health care provider has liability insurance coverage in the amount of at least  
26 \$2,500,000 per incident and the coverage is in effect and applicable to those health  
27 care services offered by the health care provider that the hospital is required to provide  
28 by law or by accreditation requirements.

29 (d) In this section,

30 (1) "health care provider" means a doctor of medicine, psychologist,  
31 osteopath, dentist, optometrist, chiropractor, optician, pharmacist, podiatrist, or certified  
32 registered nurse anesthetist, who is licensed in this state;

1 (2) "hospital" has the meaning given in AS 18.20.130 and includes a  
2 governmentally owned or operated hospital;

3 (3) "independent contractor" means a licensed health care provider who  
4 has been granted specified privileges to render health care services directly or  
5 indirectly to patients at the hospital, but who is not an employee or actual agent of the  
6 hospital in connection with the rendition of the health care services.

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

8 Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A  
9 FELONY. (a) A person who suffers personal injury or property damage may not  
10 recover damages for the personal injury or property damage if the injury occurred  
11 while the person was committing or attempting to commit a felony, or fleeing from the  
12 commission of a felony, and the person has been convicted of the felony, including  
13 conviction based on a guilty plea or plea of nolo contendere, and the felony  
14 substantially contributed to the injury or property damage.

15 (b) The personal representative of a deceased person may not recover damages  
16 for the person's death if the court determines by clear and convincing evidence that  
17 the death occurred while the person was committing or attempting to commit a felony,  
18 or fleeing from the commission of a felony, and that the felony substantially  
19 contributed to the death.

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

21 Sec. 09.68.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER  
22 PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party  
23 represented by an attorney shall be signed by at least one attorney of record in the  
24 attorney's individual name, whose address shall be stated. A party who is not  
25 represented by an attorney shall sign the party's pleading, motion, or other paper and  
26 state the party's address. Except when otherwise specifically provided by the Alaska  
27 Rules of Civil Procedure or statute, pleadings need not be verified or accompanied by  
28 affidavit. The signature of an attorney or party constitutes a certificate by the signer  
29 that the signer has read the pleading, motion, or other paper; that to the best of the  
30 signer's knowledge, information, and belief formed after reasonable inquiry it is well  
31 grounded in fact and is warranted by existing law or a good faith argument of the

1 extension, modification, or reversal of existing law; and that it is not interposed for any  
2 improper purpose, including to harass or to cause unnecessary delay or needless  
3 increase in the cost of litigation. If a pleading, motion, or other paper is not signed,  
4 it shall be stricken unless it is signed promptly after the omission is called to the  
5 attention of the pleader or movant. If it is alleged or appears that a pleading, motion,  
6 or other paper is signed in violation of this section, the court, upon motion or upon its  
7 own initiative, may set the matter for hearing. If the court determines that a pleading,  
8 motion, or other paper is signed in violation of this section, the court shall impose  
9 upon the person who signed it, a represented party, or both, an appropriate sanction  
10 that may include an order to pay to the other party the amount of the reasonable  
11 expenses incurred because of the filing of the pleading, motion, or other paper,  
12 including costs and attorney fees, and monetary sanctions not to exceed \$10,000.

13 \* **Sec. 18.** AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.560(2), and  
14 09.55.560(3) are repealed.

15 \* **Sec. 19.** Rule 68, Alaska Rules of Civil Procedure, is amended by adding a new  
16 subsection to read:

17 (d) The provisions of this rule do not apply to a claim subject to arbitration  
18 under AS 09.55.535.

19 \* **Sec. 20.** AS 09.30.065, as amended by sec. 10 of this Act, and AS 09.55.535(k), as  
20 enacted by sec. 12 of this Act, have the effect of amending Rule 68, Alaska Rules of Civil  
21 Procedure, by changing the provisions governing offers of judgment.

22 \* **Sec. 21.** Rule 72.1, Alaska Rules of Civil Procedure, is repealed.

23 \* **Sec. 22.** AS 09.55.535(i), enacted in sec. 12 of this Act, has the effect of amending Rule  
24 601, Alaska Rules of Evidence, by prohibiting the use of an arbitrator as a witness in a  
25 subsequent trial.

26 \* **Sec. 23.** AS 09.55.535(i), enacted in sec. 12 of this Act, has the effect of amending Rule  
27 82(b), Alaska Rules of Civil Procedure, by allowing the award of reasonable attorney fees in  
28 certain actions.

29 \* **Sec. 24.** AS 09.68.125, as enacted in sec. 17 of this Act, has the effect of amending Rule  
30 95, Alaska Rules of Civil Procedure, by requiring imposition of sanctions for certain failures  
31 to sign pleadings, motions, or other papers.

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

4     \* **Sec. 26.** APPLICABILITY. This Act applies to all causes of action accruing on or after  
5 the effective date of this Act.