

CS FOR HOUSE BILL NO. 158(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/8/95
Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Toohey, Mulder

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49,
2 68, and 95; amending Alaska Rule of Evidence 702; and providing for an
3 effective date."

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

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

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

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

12 (3) society as a whole cannot afford the price of lawsuits years after design and
13 construction, the delivery of services, and other actions; the widespread use of claims made
14 insurance policies makes it impossible to adequately and economically insure against actions

1 for an unlimited period of time; likewise, it is extremely difficult to defend against a claim
2 that has become stale after information and witnesses have disappeared;

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

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

8 (6) tortfeasors should not be held responsible for the negligence of an
9 employer; to this extent, this Act is intended to overrule the case of Lake v. Construction
10 Machinery, Inc., 787 P.2d 1027 (Alaska 1990);

11 (7) the issues in this Act were intended to be addressed in a comprehensive
12 way in 1986; however, the legislation passed in 1986 fell short of accomplishing the goals of
13 the legislature and many of the problems that existed in 1986 still exist in 1995;

14 (8) the civil justice system for resolving medical negligence claims has not
15 adequately protected patients, health care providers, or the public;

16 (9) many medical negligence claims involve complex issues of medical fact
17 that require expert medical testimony to assist the trier of fact in reaching a decision;

18 (10) many patients have been unable to obtain compensation through the
19 current civil justice system because of the high costs of litigation;

20 (11) injured parties are being compensated by the courts with punitive damages
21 when punitive damages should be awarded to deter and punish people who act with malicious
22 or deliberate disregard for the safety of others;

23 (12) the size and unpredictability of damage awards has driven up the cost of
24 liability insurance, thereby compromising the availability and affordability of insurance
25 coverage for many health care providers, and leading in turn to decreased availability or
26 complete unavailability of health care services in some geographic areas of the state and high
27 prices for health care services generally;

28 (13) the civil justice system is an expensive and inefficient method of resolving
29 medical liability disputes, with less than one-half of the total dollars spent on malpractice
30 insurance ever reaching the injured patient;

31 (14) existing legal standards governing medical negligence have resulted in

1 unpredictability, adversarial relationships, and unfairness to both patients and health care
2 providers;

3 (15) fear of lawsuits has prompted physicians to conduct unnecessary tests that
4 have greatly increased the cost of medical care; and

5 (16) malpractice premiums continue to escalate in this state substantially faster
6 than premiums in other states where legislation to change the civil justice system has been
7 implemented.

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

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

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

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

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

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

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

21 (D) eliminate duplicate recoveries;

22 (E) reduce the costs of litigation;

23 (F) establish appropriate thresholds for a damage award in order to
24 allow predictability of liability exposure; and

25 (G) reduce the ultimate costs to the state and to local governments of
26 providing medical services to those who cannot otherwise afford those services;

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

31 (5) reduce the amount of litigation proceeding to trial by modifying the

1 allocation of attorney fees and court costs based on the offer of judgment and the final court
2 award thereby providing a financial incentive to both parties to settle the dispute;

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

5 (7) clarify the circumstances in which hospitals are held directly liable for the
6 actions of health care providers not employed by the hospital;

7 (8) encourage health care providers to provide quality medical care in all areas
8 of this state at a cost that is affordable;

9 (9) stabilize the rapidly escalating costs of health care by curtailing the rapid
10 escalation in malpractice premiums and thereby make broader based health care available to
11 more residents of the state;

12 (10) require that one-half of punitive damages awarded by a court be deposited
13 into the general fund for the benefit of the public welfare and to deter future harm to the
14 public.

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

16 Sec. 09.10.055. STATUTE OF REPOSE OF EIGHT YEARS. (a)
17 Notwithstanding the disability of minority described under AS 09.10.140(a), a person
18 may not bring an action for personal injury, death, or property damage unless
19 commenced within eight years of the earlier of the date of

20 (1) substantial completion of the construction alleged to have caused
21 the personal injury, death, or property damage; however, the limitation of this
22 paragraph does not apply to a claim resulting from an intentional or reckless disregard
23 of specific project design plans and specifications or building codes; or

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

26 (b) This section does not apply if

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

28 (A) prolonged exposure to hazardous waste;

29 (B) an intentional act or gross negligence;

30 (C) fraud or fraudulent misrepresentation;

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

1 (E) a defective product; in this subparagraph, "product" means
2 an object that has intrinsic value, is capable of delivery as an assembled whole
3 or as a component part, and is introduced into trade or commerce;

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

6 (3) a shorter period of time for bringing the action is imposed under
7 another provision of law.

8 (c) The limitation imposed under (a) of this section is tolled during any period
9 in which there exists the undiscovered presence of a foreign body, that has no
10 therapeutic or diagnostic purpose or effect, in the body of the injured person and the
11 action is based on the presence of the foreign body.

12 (d) In this section, "substantial completion" means the date when construction
13 is sufficiently completed to allow the owner or a person authorized by the owner to
14 occupy the improvement or to use the improvement in the manner for which it was
15 intended.

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

17 Sec. 09.10.065. LIMITATION ON ACTIONS AGAINST HEALTH CARE
18 PROVIDERS. (a) Notwithstanding the disability of minority described under
19 AS 09.10.140(a), an action based on professional negligence may not be brought
20 against a health care provider if the injured person is, on the date of the alleged
21 negligent act or omission, less than six years of age, unless the action is commenced
22 before the person's eighth birthday.

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

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

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

30 (3) the undiscovered presence of a foreign body, that has no therapeutic
31 or diagnostic purpose or effect, in the body of the injured person and the action is

1 based on the presence of the foreign body.

2 (c) In this section,

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

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

6 (3) "professional services" means services provided by a health care
7 provider that are within the scope of services for which the health care provider is
8 licensed, and that are not prohibited under the health care provider's license or by a
9 hospital in which the health care provider practices.

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

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

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

20 Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO
21 PERSON OR PROPERTY. (a) Notwithstanding the disability of minority described
22 under AS 09.10.140(a), a person may not bring an action for personal injury, death,
23 property damage, or injury to the rights of another not arising on contract, unless the
24 action is brought within two years of the accrual of the action.

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

27 * **Sec. 6.** AS 09.17.010 is repealed and reenacted to read:

28 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover
29 damages for personal injury or wrongful death, all damage claims for noneconomic
30 losses shall be limited to compensation for pain, suffering, inconvenience, physical
31 impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other

1 nonpecuniary damage.

2 (b) Except as provided under (c) of this section, the amount of damages
3 awarded by a court or a jury under (a) of this section for all claims, including a loss
4 of consortium claim, arising out of a single injury or death may not exceed \$300,000.

5 (c) In an action for personal injury, the damages awarded by a court or jury
6 that are described under (b) of this section may not exceed \$500,000 when the
7 claimant, as a result of the injury,

8 (A) is a hemiplegic, paraplegic, or quadriplegic and has
9 permanent functional loss of one or more limbs resulting from injury to the
10 spine or spinal cord; or

11 (B) has permanently impaired cognitive capacity, is incapable
12 of making independent, responsible decisions, and is permanently incapable of
13 independently performing the activities of normal, daily living.

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

20 (e) Multiple injuries sustained as a result of a single incident shall be treated
21 as a single injury for purposes of this section.

22 * **Sec. 7.** AS 09.17.020 is amended to read:

23 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
24 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear
25 and convincing evidence **of malice or conscious acts showing deliberate disregard**
26 **of another person by the person from whom the punitive damages are sought.**

27 * **Sec. 8.** AS 09.17.020 is amended by adding new subsections to read:

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

31 (c) The limit under (b) of this section does not apply to punitive damages

1 awarded by a court or jury against a person who, as proven by a preponderance of the
2 evidence, was attempting to commit or committing a felony if the person bringing the
3 action was a victim of that offense and the offense substantially contributed to the
4 injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

5 (d) If a person receives an award of punitive damages, the court shall require
6 that one-half of the award be deposited into the general fund of the state. This
7 subsection does not grant the state the right to file or join a civil action to recover
8 punitive damages.

9 * **Sec. 9.** AS 09.17.040(a) is amended to read:

10 (a) In every case where damages for personal injury **or death** are awarded by
11 the court or jury [,]

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

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

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

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

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

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

19 (2) the amount of economic damages awarded for past or future
20 gross earnings shall be reduced by the amount of federal and state income tax
21 that would be paid on the earnings under tax rates in effect on the date of the
22 injury or death; this paragraph does not apply to economic damages that are
23 subject to federal or state income taxes.

24 * **Sec. 10.** AS 09.17.040(d) is amended to read:

25 (d) In an action to recover damages, the court shall, at the request of **a** [AN
26 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
27 for future damages **that exceed \$100,000** be paid to the maximum extent feasible by
28 periodic payments rather than by a lump-sum payment. **If a portion of the judgment**
29 **awarded is owed to an attorney under a contingent fee agreement, that portion**
30 **of the judgment shall be reduced to present value and paid in a lump sum, and**
31 **the remaining portion of the judgment shall be paid as provided under this**

1 **subsection.**

2 * **Sec. 11.** AS 09.17.040(e) is amended to read:

3 (e) **Except as provided in this subsection, if a judgment is paid by periodic**
4 **payments, the** [THE] court **shall** [MAY] require security be posted [,] in order to
5 ensure that funds are available as periodic payments become due. The court may not
6 require security to be posted if **the state, a self-insured municipality, or** an
7 authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
8 obligation to discharge the judgment.

9 * **Sec. 12.** AS 09.17.040(f) is amended to read:

10 (f) A judgment ordering payment of future damages **for personal injury or**
11 **death** by periodic payment shall specify the recipient, the dollar amount of the
12 payments, **including any increases in future payments for anticipated inflation,** the
13 interval between payments, and the number of payments or the period of time over
14 which payments shall be made. Payments may be modified only in the event of the
15 death of the judgment creditor, in which case payments may not be reduced or
16 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
17 of support, as provided by law, immediately before death. In the event the judgment
18 creditor owed no duty of support to dependents at the time of the judgment creditor's
19 death, the money remaining shall be distributed in accordance with a will of the
20 deceased judgment creditor accepted into probate or under the intestate laws of the
21 state if the deceased had no will. **In this subsection, "inflation" means the change**
22 **in the Consumer Price Index for Anchorage, all items index, compiled by the**
23 **Bureau of Labor Statistics, United States Department of Labor.**

24 * **Sec. 13.** AS 09.17.070 is repealed and reenacted to read:

25 Sec. 09.17.070. COLLATERAL BENEFITS. (a) A claimant in an action for
26 personal injury or death may only recover damages that exceed amounts received by
27 the claimant, or that with reasonable probability will be received in the future by the
28 claimant, as compensation for the injuries from collateral sources, whether private,
29 group, or governmental, and whether contributory or noncontributory, except when

30 (1) the collateral source is a federally funded program that by law must
31 seek subrogation;

1 (2) the collateral source has a right of subrogation under federal law;
2 or

3 (3) the benefit consists of death benefits paid under life insurance.

4 (b) A person defending a claim may introduce into evidence an amount paid
5 or payable as a benefit to the claimant as a result of the personal injury or death under
6 42 U.S.C. 301 - 1397 (Social Security Act); a state or federal disability or workers'
7 compensation act; health, sickness, disability, accident, or income-disability insurance;
8 insurance that provides health benefits or income-disability coverage; and a contract
9 or agreement of a group, organization, partnership, or corporation, or other collateral
10 source, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other
11 health care services, disability, or lost wages. However, evidence of a collateral source
12 that is a federally funded program that by law must seek subrogation or that has a right
13 of subrogation under federal law, or evidence of death benefits paid under life
14 insurance, may not be introduced under this subsection. If a person defending a claim
15 elects to introduce evidence described in this subsection, the claimant may introduce
16 evidence of the amount that the claimant has paid or contributed to secure the
17 claimant's right to the collateral benefit, including the cost to the claimant resulting
18 from depleted or exhausted coverage.

19 (c) Notwithstanding AS 23.30, a person who provides a collateral benefit
20 admissible under (b) of this section may not recover any amount against the claimant
21 as reimbursement for those benefits and may not be subrogated to the rights of a
22 claimant against a person defending a claim.

23 * **Sec. 14.** AS 09.17.080(a) is amended to read:

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

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

31 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO

1 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
2 [AND] person who has been released from liability under **AS 09.17.091, or other**
3 **person responsible for the damages to each claimant regardless of whether the**
4 **other person, including an employer, is or could have been named as a party to**
5 **the action** [AS 09.16.040].

6 * **Sec. 15.** AS 09.17.080(c) is amended to read:

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

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

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

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

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

28 * **Sec. 17.** AS 09.30.065 is amended to read:

29 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days
30 before the trial begins either the party making a claim or the party defending against
31 a claim may serve upon the adverse party an offer to allow judgment to be entered in

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

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

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

19 * **Sec. 18.** AS 09.30.070(a) is amended to read:

20 (a) **Notwithstanding AS 45.45.010, the** [THE] rate of interest on judgments
21 and decrees for the payment of money, **including prejudgment interest,** is **three**
22 **percent above the 12th Federal Reserve District discount rate in effect on**
23 **January 2 of the year in which the judgment or decree is entered** [10.5 PERCENT
24 A YEAR], except that a judgment or decree founded on a contract in writing,
25 providing for the payment of interest until paid at a specified rate not exceeding the
26 legal rate of interest for that type of contract, bears interest at the rate specified in the
27 contract if the interest rate is set out in the judgment or decree.

28 * **Sec. 19.** AS 09.30.070 is amended by adding a new subsection to read:

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

31 * **Sec. 20.** AS 09.55.535(k) is amended to read:

1 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180,
2 apply to arbitrations under this section if they do not conflict with the provisions of
3 this section; arbitrations under this section shall be conducted in accordance with
4 procedures established by any rules of court which may be adopted and according to
5 provisions of AS 09.55.540 - 09.55.547 [AS 09.55.540 - 09.55.548] and AS 09.55.554
6 - 09.55.560, and AS 09.65.090.

7 * **Sec. 21.** AS 09.55 is amended by adding new sections to read:

8 Sec. 09.55.551. **MEDICAL EXPERT WITNESS QUALIFICATION.** In an
9 action based upon professional negligence brought against a health care provider, a
10 person may not testify as an expert witness on the issue of the appropriate medical
11 standard of care unless the witness is a health care provider or is licensed as a health
12 care provider in another state or country and

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

15 (2) is certified by a board recognized by the State Medical Board as
16 having acknowledged expertise and training directly related to the particular health care
17 or matter at issue; and

18 (3) within one year of the date of the alleged occurrence giving rise to
19 the claim, was in active practice as a health care provider or devoted a substantial
20 portion of time teaching at an accredited school in the same discipline or school of
21 practice as the defendant or in an area directly related to a matter at issue.

22 Sec. 09.55.552. **MEDICAL BOARD OVERSIGHT OF MEDICAL EXPERT**
23 **WITNESSES.** A physician who testifies as an expert witness in this state in an action
24 based on professional negligence brought against another physician is authorized to
25 practice medicine in this state for the purpose of providing testimony as an expert
26 witness and is subject to the authority of the State Medical Board and the provisions
27 of AS 08.64.

28 Sec. 09.55.553. **MEDICAL EXPERT WITNESSES.** (a) In an action based
29 upon professional negligence brought against a health care provider, the court may
30 allow cross-examination of a medical expert witness as to the

31 (1) amount of compensation that the witness is receiving for the

1 witness's consultation and testimony;

2 (2) proportion of the witness's professional time devoted to expert
3 witness activities; and

4 (3) frequency with which the witness testifies for either plaintiffs or
5 defendants.

6 (b) Expert medical testimony may not be admitted in court if the testimony

7 (1) has been obtained under an agreement with a third party who
8 receives a contingency fee for

9 (A) providing a medical expert for review of medical injury
10 claims;

11 (B) locating medical expert witnesses; or

12 (C) arranging the provision of medical expert testimony; or

13 (2) is provided by a medical expert witness who has agreed to provide
14 medical testimony on a contingency fee basis.

15 * **Sec. 22.** AS 09.55.560 is amended by adding new paragraphs to read:

16 (4) "professional negligence" means a negligent act or omission by a
17 health care provider in rendering professional services;

18 (5) "professional services" means services provided by a health care
19 provider that are within the scope of services for which the health care provider is
20 licensed and that are not prohibited under the health care provider's license or by a
21 hospital in which the health care provider practices.

22 * **Sec. 23.** AS 09.60 is amended by adding a new section to read:

23 Sec. 09.60.080. CONTINGENT ATTORNEY FEE AGREEMENTS. If an
24 attorney contracts for or collects a contingency fee in connection with an action for
25 personal injury, death, or property damage and the damages awarded by a court or jury
26 include an award of punitive damages, the contingent fee due the attorney shall be
27 calculated after that portion of punitive damages due the state under AS 09.17.020(d)
28 has been deducted from the total award of damages.

29 * **Sec. 24.** AS 09.65 is amended by adding a new section to read:

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

31 (a) A hospital is not liable for civil damages as a result of an act or omission by a

1 health care provider who is not an employee or actual agent of the hospital if the
2 hospital provides notice that the health care provider is an independent contractor. The
3 notice required by this subsection must be posted conspicuously in all admitting areas
4 of the hospital, published at least annually in a newspaper of general circulation in the
5 area, and must be in substantially the following form:

6 Notice of Limited Liability

7 The following health care providers are independent contractors
8 and are not employees of the hospital:

9 (List specific health care providers)

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

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

17 (c) In this section,

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

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

23 (3) "independent contractor" means a licensed health care provider who
24 is a member of a hospital's medical staff or who has otherwise been granted specified
25 privileges to render health care services directly or indirectly to patients at the hospital,
26 but who is not an employee or actual agent of the hospital in connection with the
27 rendition of the health care services.

28 * **Sec. 25.** AS 09.65.210 is amended to read:

29 Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A
30 CRIME. A person who suffers personal injury or death may not recover damages for
31 the personal injury or death if the injuries or death occurred while the person was

1 **committing or attempting to commit a felony, or fleeing from** [ENGAGED IN] the
2 commission of a felony, [THE PERSON HAS BEEN CONVICTED OF THE
3 FELONY, INCLUDING CONVICTION BASED ON A GUILTY PLEA OR PLEA
4 OF NOLO CONTENDERE,] and the **action** [FELONY] substantially contributed to
5 the injury or death. [THIS SECTION DOES NOT AFFECT A RIGHT OF ACTION
6 UNDER 42 U.S.C. 1983.]

7 * **Sec. 26.** AS 09.68 is amended by adding a new section to read:

8 Sec. 09.68.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER
9 PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party
10 represented by an attorney shall be signed by at least one attorney of record in the
11 attorney’s individual name, whose address shall be stated. A party who is not
12 represented by an attorney shall sign the party’s pleading, motion, or other paper and
13 state the party’s address. Except when otherwise specifically provided by the Alaska
14 Rules of Civil Procedure or statute, pleadings need not be verified or accompanied by
15 affidavit. The signature of an attorney or party constitutes a certificate by the signer
16 that the signer has read the pleading, motion, or other paper; that to the best of the
17 signer’s knowledge, information, and belief formed after reasonable inquiry it is well
18 grounded in fact and is warranted by existing law or a good faith argument of the
19 extension, modification, or reversal of existing law; and that it is not interposed for any
20 improper purpose, including to harass or to cause unnecessary delay or needless
21 increase in the cost of litigation. If a pleading, motion, or other paper is not signed,
22 it shall be stricken unless it is signed promptly after the omission is called to the
23 attention of the pleader or movant. If it is alleged or appears that a pleading, motion,
24 or other paper is signed in violation of this section, the court, upon motion or upon its
25 own initiative, may set the matter for hearing. If the court determines that a pleading,
26 motion, or other paper is signed in violation of this section, the court shall impose
27 upon the person who signed it, a represented party, or both, an appropriate sanction
28 that may include an order to pay to the other party the amount of the reasonable
29 expenses incurred because of the filing of the pleading, motion, or other paper,
30 including costs and attorney fees, and monetary sanctions not to exceed \$10,000.

31 * **Sec. 27.** AS 09.55.548 is repealed.

1 * **Sec. 28.** AS 09.17.080(a), as amended by sec. 14 of this Act, has the effect of amending
2 Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatory
3 listed in AS 09.17.080(a)(2), regarding the percentages of fault to be allocated among the
4 parties.

5 * **Sec. 29.** AS 09.30.065, as amended by sec. 17 of this Act, has the effect of amending
6 Alaska Rule of Civil Procedure 68 by providing that if a judgment is not more favorable to
7 the offeree than the offer, the offeree shall pay costs as allowed under the Alaska Rules of
8 Civil Procedure and reasonable attorney fees incurred by the offeror, and by deleting interest
9 adjustments.

10 * **Sec. 30.** AS 09.30.070(c), added by sec. 19 of this Act, has the effect of amending
11 Alaska Rule of Civil Procedure 68 by providing that prejudgment interest may not be awarded
12 for future economic or noneconomic damages.

13 * **Sec. 31.** AS 09.55.551, enacted by sec. 21 of this Act, has the effect of amending Alaska
14 Rule of Evidence 702 by requiring certain qualifications from a person testifying as an expert
15 medical witness.

16 * **Sec. 32.** AS 09.55.553(b), enacted by sec. 21 of this Act, has the effect of amending
17 Alaska Rule of Evidence 702 by prohibiting certain testimony by a medical expert.

18 * **Sec. 33.** AS 09.68.125, as enacted in sec. 26 of this Act, has the effect of amending
19 Alaska Rule of Civil Procedure 95, by requiring imposition of sanctions for certain failures
20 to sign pleadings, motions, or other papers.

21 * **Sec. 34.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
22 application of a provision of this Act to any person or circumstance is held invalid, the
23 remainder of this Act and the application to other persons shall not be affected.

24 * **Sec. 35.** APPLICABILITY. This Act applies to all causes of action accruing on or after
25 the effective date of this Act.

26 * **Sec. 36.** This Act takes effect July 1, 1995.