

CS FOR HOUSE BILL NO. 158(FIN) am(ct rls pfld)(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/27/95

Offered: 3/22/95

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil actions; amending Alaska Rule of Civil Procedure 95."**

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

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

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

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

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

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

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

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

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

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

27 Sec. 09.10.055. STATUTE OF REPOSE OF EIGHT YEARS. (a)

28 Notwithstanding the disability of minority described under AS 09.10.140(a), a person

29 may not bring an action for personal injury, death, or property damage unless

30 commenced within eight 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 or building codes; or

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

6 (b) This section does not apply if

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

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

12 (B) an intentional act or gross negligence;

13 (C) fraud or fraudulent misrepresentation;

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

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

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

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

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

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

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

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

4 * **Sec. 3.** AS 09.10.070 is amended to read:

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

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

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

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

21 * **Sec. 5.** AS 09.17.010 is repealed and reenacted to read:

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

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

31 (c) In an action for personal injury, the damages awarded by a court or jury

1 that are described under (b) of this section may not exceed \$500,000 when the
2 claimant, as a result of the injury,

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

6 (B) has lost both arms or both legs or an arm and a leg;

7 (C) has permanently impaired cognitive capacity, is incapable
8 of making independent, responsible decisions, and is permanently incapable of
9 independently performing the activities of normal, daily living;

10 (D) is both deaf and blind; or

11 (E) has third degree burns over one half or more of the
12 claimant's body.

13 (d) The limit under (b) or (c) of this section shall adjust annually to reflect the
14 difference in the Consumer Price Index for all urban consumers for all items for the
15 Anchorage metropolitan area compiled by the Bureau of Labor Statistics, United States
16 Department of Labor, for the preceding calendar year. The index for the first half of
17 1995 is the reference base index.

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

24 (f) Multiple injuries sustained as a result of a single incident shall be treated
25 as a single injury for purposes of this section.

26 * **Sec. 6.** AS 09.17.020 is amended to read:

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

31 * **Sec. 7.** AS 09.17.020 is amended by adding new subsections to read:

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

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

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

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

14 (e) **Except as provided in this subsection, if a judgment is paid by periodic**
15 **payments, the** [THE] court **shall** [MAY] require security be posted [,] in order to
16 ensure that funds are available [AS PERIODIC PAYMENTS BECOME DUE]. The
17 court may not require security to be posted if **the state, a self-insured municipality,**
18 **or** an authorized insurer, as defined in AS 21.90.900, acknowledges to the court its
19 obligation to discharge the judgment.

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

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

1 state if the deceased had no will. **In this subsection, "inflation" means the change**
2 **in the Consumer Price Index for Anchorage, all items index, compiled by the**
3 **Bureau of Labor Statistics, United States Department of Labor.**

4 * **Sec. 10.** AS 09.17.070 is repealed and reenacted to read:

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

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

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

13 (3) the collateral source is the payment of a dependent child's medical
14 bills by the injured child's parent which does not result from insurance coverage; or

15 (4) the benefit consists of death benefits paid under life insurance; or

16 (5) the benefit consists of workers' compensation benefits received
17 under AS 23.30.

18 (b) A person defending a claim may introduce into evidence an amount paid
19 or payable as a benefit to the claimant as a result of the personal injury or death under
20 42 U.S.C. 301 - 1397 (Social Security Act); a state or federal disability act; health,
21 sickness, disability, accident, or income-disability insurance; insurance that provides
22 health benefits or income-disability coverage; and a contract or agreement of a group,
23 organization, partnership, or corporation, or other collateral source, to provide, pay for,
24 or reimburse the cost of medical, hospital, dental, or other health care services,
25 disability, or lost wages. However, evidence of a collateral source that is a federally
26 funded program that by law must seek subrogation or that has a right of subrogation
27 under federal law, evidence of death benefits paid under life insurance, or evidence of
28 workers' compensation benefits received under AS 23.30, may not be introduced under
29 this subsection. If a person defending a claim elects to introduce evidence described
30 in this subsection, the claimant may introduce evidence of the amount that the claimant
31 has paid or contributed to secure the claimant's right to the collateral benefit, including

1 the cost to the claimant resulting from depleted or exhausted coverage.

2 (c) A person who provides a collateral benefit admissible under (b) of this
3 section may not recover any amount against the claimant as reimbursement for those
4 benefits and may not be subrogated to the rights of a claimant against a person
5 defending a claim.

6 * **Sec. 11.** AS 09.17.080(a) is amended to read:

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

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

13 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
14 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,
15 [AND] person who has been released from liability under AS 09.16.040, **or other**
16 **person responsible for the damages to each claimant regardless of whether the**
17 **other person, including an employer, is or could have been named as a party to**
18 **the action.**

19 * **Sec. 12.** AS 09.17.080(c) is amended to read:

20 (c) The court shall determine the award of damages to each claimant in
21 accordance with the findings, subject to a reduction under AS 09.16.040, and enter
22 judgment against each party liable. The court also shall determine and state in the
23 judgment each party's equitable share of the obligation to each claimant in accordance
24 with the respective percentages of fault **as determined under (a) of this section. An**
25 **assessment of a percentage of fault against a person who is not a party may only**
26 **be used as a measure for accurately determining the percentages of fault of a**
27 **named party. Assessment of a percentage of fault against a person who is not a**
28 **party does not subject that person to civil liability in that action and may not be**
29 **used as evidence of civil liability in another action.**

30 * **Sec. 13.** AS 09.30.065 is amended to read:

31 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days

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

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

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

21 * **Sec. 14.** AS 09.30.070(a) is amended to read:

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

30 * **Sec. 15.** AS 09.30.070 is amended by adding a new subsection to read:

31 (c) Prejudgment interest may not be awarded for future economic damages,

1 future noneconomic damages, or for punitive damages.

2 * **Sec. 16.** AS 09.55.535(k) is amended to read:

3 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180,
4 apply to arbitrations under this section if they do not conflict with the provisions of
5 this section; arbitrations under this section shall be conducted in accordance with
6 procedures established by any rules of court which may be adopted and according to
7 provisions of AS 09.55.540 - 09.55.547 [AS 09.55.540 - 09.55.548] and AS 09.55.554
8 - 09.55.560, and AS 09.65.090.

9 * **Sec. 17.** AS 09.55 is amended by adding a new section to read:

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

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

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

20 * **Sec. 18.** AS 09.55.560 is amended by adding new paragraphs to read:

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

23 (5) "professional services" means services provided by a health care
24 provider.

25 * **Sec. 19.** AS 09.65 is amended by adding a new section to read:

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

27 (a) A hospital is not liable for civil damages as a result of an act or omission by a
28 health care provider who is not an employee or actual agent of the hospital if the
29 hospital provides notice that the health care provider is an independent contractor. The
30 notice required by this subsection must be posted conspicuously in all admitting areas
31 of the hospital, published at least annually in a newspaper of general circulation in the

1 area, and must be in substantially the following form:

2 Notice of Limited Liability

3 The following health care providers are independent contractors
4 and are not employees of the hospital:

5 (List specific health care providers)

6 The hospital is responsible for exercising reasonable care in granting staff privileges
7 to practice in the hospital, for reviewing those privileges on a regular basis, and for
8 taking appropriate steps to revoke or restrict privileges in appropriate circumstances.

9 The hospital is not otherwise liable for the acts or omissions of a health care provider
10 who is an independent contractor.

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

13 (c) In this section,

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

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

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

24 * **Sec. 20.** AS 09.65.210 is repealed and reenacted to read:

25 Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A
26 FELONY. (a) A person who suffers personal injury or property damage may not
27 recover damages for the personal injury or property damage if the injury occurred
28 while the person was committing or attempting to commit a felony, or fleeing from the
29 commission of a felony and the person has been convicted of the felony, including
30 conviction based on a guilty plea or plea of nolo contendere, and the felony
31 substantially contributed to the injury or property damage.

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

6 * **Sec. 21.** AS 09.68 is amended by adding a new section to read:

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

30 * **Sec. 22.** AS09.55.548 is repealed.

31 * **Sec. 23.** AS 09.68.125, as enacted in sec. 21 of this Act, has the effect of amending

1 Alaska Rule of Civil Procedure 95, by requiring imposition of sanctions for certain failures
2 to sign pleadings, motions, or other papers.

3 * **Sec. 24.** SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
4 application of a provision of this Act to any person or circumstance is held invalid, the
5 remainder of this Act and the application to other persons shall not be affected.

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