

SENATE CS FOR CS FOR HOUSE BILL NO. 158(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/8/96

Referred: L&C, FIN

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 Rules
2 of Civil Procedure, repealing Rule 72.1, Alaska Rules of Civil Procedure, and
3 amending Rule 601, Alaska Rules of Evidence; and providing for an effective
4 date."

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

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

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

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

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

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

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

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

5 (D) eliminate duplicate recoveries;

6 (E) reduce the costs of litigation;

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

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

11 (4) 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 (5) 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 (6) clarify the circumstances in which hospitals are held directly liable for the
17 actions of health care providers not employed by the hospital;

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

20 (8) 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 (9) 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 15 YEARS. (a) Notwithstanding
28 the disability of minority described under AS 09.10.140(a), a person may not bring an
29 action for personal injury, death, or property damage unless commenced within 15
30 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;

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

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 presence of a foreign body in the body of the injured person
29 and the action is based on the presence of the foreign body.

30 (d) In this section, "substantial completion" means the date when construction
31 is sufficiently completed to allow the owner or a person authorized by the owner to

1 occupy the improvement or to use the improvement in the manner for which it was
2 intended.

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

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

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

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

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

19 * **Sec. 5.** AS 09.17.020 is amended to read:

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

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

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

28 (c) The limit under (b) of this section does not apply to punitive damages
29 awarded by a court or jury against a person who, as proven by a preponderance of the
30 evidence, was attempting to commit or committing a felony if the person bringing the
31 action was a victim of that offense and the offense substantially contributed to the

1 injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

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

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

7 (e) **If a judgment is paid by periodic payments, the** [THE] court **shall**
8 [MAY] require security be posted [,] in order to ensure that funds are available as
9 periodic payments become due. [THE COURT MAY 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,** the
17 interval between payments, and the number of payments or the period of time over
18 which payments shall be made. Payments may be modified only in the event of the
19 death of the judgment creditor, in which case payments may not be reduced or
20 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
21 of support, as provided by law, immediately before death. In the event the judgment
22 creditor owed no duty of support to dependents at the time of the judgment creditor's
23 death, the money remaining shall be distributed in accordance with a will of the
24 deceased judgment creditor accepted into probate or under the intestate laws of the
25 state if the deceased had no will. **In this subsection, "inflation" means the change**
26 **in the Consumer Price Index for Anchorage, all items index, compiled by the**
27 **Bureau of Labor Statistics, United States Department of Labor.**

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

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

1 * **Sec. 10.** AS 09.30.065 is amended to read:

2 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days
3 before the trial begins either the party making a claim or the party defending against a
4 claim may serve upon the adverse party an offer to allow judgment to be entered in
5 complete satisfaction of the claim for the money or property or to the effect specified in
6 the offer, with costs then accrued. If within 10 days after the service of the offer the
7 adverse party serves written notice that the offer is accepted, either party may then file
8 the offer and notice of acceptance together with proof of service, and the clerk shall enter
9 judgment. An offer not accepted within 10 days is considered withdrawn and evidence
10 of that offer is not admissible except in a proceeding to determine the form of judgment
11 after verdict. If the judgment finally entered on the claim as to which an offer has been
12 made under this section is **at least five percent less** [NOT MORE] favorable to the
13 offeree than the offer, **the offeree shall pay costs as allowed under the Alaska Rules**
14 **of Civil Procedure and all reasonable attorney fees incurred by the offeror from the**
15 **date the offer was made. This section does not apply to an offer made by a**
16 **defendant in an action in which there are two or more defendants, unless all the**
17 **defendants join in the offer** [THE INTEREST AWARDED UNDER AS 09.30.070
18 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED SHALL BE
19 ADJUSTED AS FOLLOWS:

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

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

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

26 (a) **Notwithstanding AS 45.45.010, the** [THE] rate of interest on judgments and
27 decrees for the payment of money, **including prejudgment interest, is three percent**
28 **above the interest rate set by the United States Bureau of the Public Debt for five-**
29 **year treasury notes in effect on the day on which the judgment or decree is entered**
30 [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in
31 writing, providing for the payment of interest until paid at a specified rate not exceeding
32 the legal rate of interest for that type of contract, bears interest at the rate specified in

1 the contract if the interest rate is set out in the judgment or decree.

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

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

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

7 (1) amount in controversy, excluding interest, costs, and attorney fees,
8 exceeds \$100,000; this paragraph does not apply if, for purposes of arbitration only, the
9 person bringing the claim waives the amount in controversy that exceeds \$100,000;

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

12 (3) action

13 (A) is a class action;

14 (B) seeks equitable or declaratory relief;

15 (C) concerns the title to real property;

16 (D) is a probate action;

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

18 (F) involves divorce or domestic relations;

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

20 (c) The court shall maintain a list of attorneys with at least five years of civil
21 practice experience, or retired judges, who have consented to serve as arbitrators. From
22 the list of attorneys or retired judges the court shall appoint an arbitrator to review the
23 claim and conduct the hearing. Each party may exercise a peremptory challenge of an
24 arbitrator appointed by the court.

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

32 (e) The arbitrator shall set a date for a hearing on the claim. The hearing date

1 shall be as soon as feasible, but not more than 60 days after the selection of the
2 arbitrator, except as allowed by the arbitrator.

3 (f) The arbitrator shall conduct the hearing as necessary to ascertain facts in a
4 timely manner. A witness may testify telephonically if allowed by the arbitrator. The
5 Alaska Rules of Evidence do not apply to an arbitration hearing, except as determined
6 by the arbitrator or by the Alaska Supreme Court. The Alaska Supreme Court shall
7 establish a list of documents that shall be presumptively admissible in an arbitration
8 hearing without prior establishment of authenticity or foundation, including bills, reports,
9 medical records, or photographs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 Notice of Limited Liability

19 The following health care providers are independent contractors
20 and are not employees of the hospital:

21 (List specific health care providers)

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

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

29 (c) A hospital is not immune from liability under (a) of this section for an act
30 or omission of a health care provider who is an independent contractor unless the
31 health care provider has liability insurance coverage in the amount of at least
32 \$2,500,000 per incident and the coverage is in effect and applicable to those health

1 care services that the hospital is required to provide by law or by accreditation
2 requirements.

3 (d) In this section,

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

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

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

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

15 Sec. 09.65.210. DAMAGES RESULTING FROM COMMISSION OF A
16 FELONY. (a) A person who suffers personal injury or property damage may not
17 recover damages for the personal injury or property damage if the injury occurred while
18 the person was committing or attempting to commit a felony, or fleeing from the
19 commission of a felony, and the person has been convicted of the felony, including
20 conviction based on a guilty plea or plea of nolo contendere, and the felony substantially
21 contributed to the injury or property damage.

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

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

28 Sec. 09.68.125. SIGNING OF PLEADINGS, MOTIONS, AND OTHER
29 PAPERS; SANCTIONS. Every pleading, motion, and other paper of a party represented
30 by an attorney shall be signed by at least one attorney of record in the attorney's
31 individual name, whose address shall be stated. A party who is not represented by an
32 attorney shall sign the party's pleading, motion, or other paper and state the party's

1 address. Except when otherwise specifically provided by the Alaska Rules of Civil
2 Procedure or statute, pleadings need not be verified or accompanied by affidavit. The
3 signature of an attorney or party constitutes a certificate by the signer that the signer has
4 read the pleading, motion, or other paper; that to the best of the signer's knowledge,
5 information, and belief formed after reasonable inquiry it is well grounded in fact and
6 is warranted by existing law or a good faith argument of the extension, modification, or
7 reversal of existing law; and that it is not interposed for any improper purpose, including
8 to harass or to cause unnecessary delay or needless increase in the cost of litigation. If
9 a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed
10 promptly after the omission is called to the attention of the pleader or movant. If it is
11 alleged or appears that a pleading, motion, or other paper is signed in violation of this
12 section, the court, upon motion or upon its own initiative, may set the matter for hearing.
13 If the court determines that a pleading, motion, or other paper is signed in violation of
14 this section, the court shall impose upon the person who signed it, a represented party,
15 or both, an appropriate sanction that may include an order to pay to the other party the
16 amount of the reasonable expenses incurred because of the filing of the pleading, motion,
17 or other paper, including costs and attorney fees, and monetary sanctions not to exceed
18 \$10,000.

19 * **Sec. 18.** AS 08.64.326(a)(12); AS 08.68.270(10); AS 09.55.536, 09.55.548, 09.55.560(2),
20 and 09.55.560(3) are repealed.

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

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

25 * **Sec. 20.** AS 09.30.065, as amended by sec. 10 of this Act, has the effect of amending Rule
26 68, Alaska Rules of Civil Procedure, by changing the provisions governing offers of judgment
27 and by providing that the rule does not apply to an offer in a civil action in which there are two
28 or more defendants, unless all defendants join in the offer.

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

30 * **Sec. 22.** AS 09.55.535(i), enacted in sec. 12 of this Act, has the effect of amending Rule
31 601, Alaska Rules of Evidence, by prohibiting the use of an arbitrator as a witness in a
32 subsequent trial.

1 * **Sec. 23.** AS 09.55.535(i), enacted in sec. 12 of this Act, has the effect of amending Rule
2 82(b), Alaska Rules of Civil Procedure, by allowing the award of reasonable attorney fees in
3 certain actions.

4 * **Sec. 24.** AS 09.68.125, as enacted in sec. 17 of this Act, has the effect of amending Rule
5 95, Alaska Rules of Civil Procedure, by requiring imposition of sanctions for certain failures to
6 sign pleadings, motions, or other papers.

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

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

12 * **Sec. 27.** This Act takes effect only if, on or before December 31, 1999, the director of the
13 division of insurance certifies to the lieutenant governor and to the revisor of statutes that the
14 liability insurance rates filed with the division of insurance have been reduced by at least 10
15 percent from those rates filed on January 1, 1995. In this section, "liability insurance" has the
16 meaning given in AS 21.12.070(a)(2).

17 * **Sec. 28.** If the condition described in sec. 27 of this Act is fulfilled, this Act takes effect
18 30 days after the date of the certification described in sec. 27 of this Act.