

HOUSE BILL NO. 58

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES PORTER, Cowdery

Introduced: 1/13/97

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

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

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

5 * **Section 1.** AS 09.10.055 is repealed and reenacted to read:

6 **Sec. 09.10.055. Statute of repose of eight years.** (a) Notwithstanding the
7 disability of minority described under AS 09.10.140(a), a person may not bring an
8 action for personal injury, death, or property damage unless commenced within eight
9 years of the earlier of the date of

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

14 (2) the last act alleged to have caused the personal injury, death, or

1 property damage.

2 (b) This section does not apply if

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

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

8 (B) an intentional act or gross negligence;

9 (C) fraud or fraudulent misrepresentation;

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

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

17 (2) the facts that would give notice of a potential cause of action are
18 intentionally concealed;

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

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

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

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

31 * **Sec. 2.** AS 09.10.070(a) is amended to read:

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

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

9 **Sec. 09.10.075. Limitation on actions involving injury to person or**
 10 **property.** (a) Notwithstanding the disability of minority described under
 11 AS 09.10.140(a), a person may not bring an action for personal injury, death, property
 12 damage, or injury to the rights of another not arising on contract unless the action is
 13 brought within two years of the accrual of the action.

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

16 * **Sec. 4.** AS 09.17.010 is repealed and reenacted to read:

17 **Sec. 09.17.010. Noneconomic damages.** (a) In an action to recover damages
 18 for personal injury or wrongful death, all damage claims for noneconomic losses shall
 19 be limited to compensation for pain, suffering, inconvenience, physical impairment,
 20 disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary
 21 damage.

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

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

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

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

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

4 (D) is both deaf and blind; or

5 (E) has third degree burns over one-half or more of the
6 claimant's body.

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

13 (e) Multiple injuries sustained by one person as a result of a single incident
14 shall be treated as a single injury for purposes of this section.

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

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

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

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

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

29 (d) If a person receives an award of punitive damages, the court shall require
30 that 75 percent of the award be deposited into the general fund of the state. This
31 subsection does not grant the state the right to file or join a civil action to recover

1 punitive damages.

2 * **Sec. 7.** AS 09.17.070 is repealed and reenacted to read:

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

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

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

11 (3) the collateral source is the payment of a dependent child's medical
12 bills by the injured child's parent that does not result from insurance coverage;

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

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

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

31 (c) A person who provides a collateral benefit admissible under (b) of this

1 section may not recover an amount against the claimant as reimbursement for those
2 benefits and may not be subrogated to the rights of a claimant against a person
3 defending a claim.

4 * **Sec. 8.** AS 09.17.080(a) is amended to read:

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

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

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

18 * **Sec. 9.** AS 09.17.080(b) is amended to read:

19 (b) In determining the percentages of fault, the trier of fact shall consider both
20 the nature of the conduct of each **person** [PARTY] at fault, and the extent of the
21 causal relation between the conduct and the damages claimed. The trier of fact may
22 **assign a percentage of fault to** [DETERMINE THAT] two or more persons [ARE TO
23 BE TREATED AS A SINGLE PARTY] if their conduct was a cause of the damages
24 claimed and the separate act or omission of each person cannot be distinguished.

25 * **Sec. 10.** AS 09.17.080(c) is amended to read:

26 (c) The court shall determine the award of damages to each claimant in
27 accordance with the findings [, SUBJECT TO A REDUCTION UNDER
28 AS 09.16.040,] and enter judgment against each party liable. The court also shall
29 determine and state in the judgment each party's equitable share of the obligation to
30 each claimant in accordance with the respective percentages of fault **as determined
31 under (a) of this section. An assessment of a percentage of fault against a person**

who is not a party may only be used as a measure for accurately determining the percentages of fault of a named party. Assessment of a percentage of fault against a person who is not a party does not subject that person to civil liability in that action and may not be used as evidence of civil liability in another action.

* **Sec. 11.** AS 09.20 is amended by adding a new section to read:

Sec. 09.20.185. Expert witness qualification. (a) Except as provided under (b) of this section, in an action based on professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness is a professional who is licensed in this state or in another state or country and is

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

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

(b) The provisions of (a) of this section do not apply to a person who is testifying on the appropriate standard of care in a profession that is not licensed in this state, or another state or country, and who the court determines is qualified as an expert witness.

(c) In this section, "professional negligence" means a negligent act or omission in rendering professional services.

* **Sec. 12.** AS 09.30.070 is amended by adding a new subsection to read:

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

* **Sec. 13.** AS 09.55.535(k) is amended to read:

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

* **Sec. 14.** AS 09.65 is amended by adding a new section to read:

1 person who suffers personal injury or property damage may not recover damages for
2 the personal injury or property damage if the injury occurred while the person was
3 attempting to commit or committing a felony, or fleeing from the commission of a
4 felony, and the felony substantially contributed to the injury or property damage.

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

10 * **Sec. 16.** AS 09.55.548 is repealed.

11 * **Sec. 17.** AS 09.17.080(a), as amended by sec. 8 of this Act, has the effect of amending
12 Rule 49, Alaska Rules of Civil Procedure, by requiring the jury to answer the special
13 interrogatory listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated
14 among the claimants, defendants, third-party defendants, persons who have been released from
15 liability, or other person who is responsible for the damages.

16 * **Sec. 18.** AS 09.20.185, enacted by sec. 11 of this Act, has the effect of amending
17 Rule 702, Alaska Rules of Evidence, by requiring certain qualifications from a person
18 testifying as an expert witness.

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

22 * **Sec. 20.** APPLICABILITY. This Act applies to all causes of action accruing on or after
23 the effective date of this Act, except that this Act does not apply to a cause of action resulting
24 from the Exxon Valdez oil spill occurring on March 24, 1989.

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

28 * **Sec. 22.** This Act takes effect July 1, 1997.