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BY KELLY, ABOOD, BENNETT, COGHILL,  
DEVRIES, FAIKS, P. FISCHER, KERTTULA,  
STURGULEWSKI AND ZHAROFF

1 IN THE SENATE

2

SENATE BILL NO. 377

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska  
7 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;  
8 and providing for an effective date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 \* Section 1. AS 09 is amended by adding a new chapter to read:

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
13 recover damages for personal injury based on negligence, damages for  
14 noneconomic losses shall be limited to compensation for pain, suffer-  
15 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-  
16 ment of life and other nonpecuniary damage.

17 (b) The amount of damages awarded by a court or jury under (a)  
18 of this section may not exceed \$250,000.

19 Sec. 09.17.020. PUNITIVE DAMAGES. In an action, whether in  
20 tort, contract, or otherwise, in which a party seeks to recover dam-  
21 ages, any punitive or exemplary damages that may be adjudged against  
22 the party defending the claim shall be awarded to the benefit of the  
23 state and when paid deposited in the general fund.

24 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
25 for personal injury are awarded by the court or jury, the verdict  
26 shall be itemized between economic loss and noneconomic loss, if any,  
27 and economic loss shall be further itemized by category. Itemization  
28 of economic loss by category includes: (1) amounts intended to com-  
29 pensate for reasonable expenses that have been incurred, or which will

1 be incurred, for necessary medical, surgical, x-ray, dental, or other  
2 health or rehabilitative services, drugs, and therapy; (2) amounts  
3 intended to compensate for lost wages or loss of earning capacity; and  
4 (3) all other economic losses claimed by the plaintiff or granted by  
5 the jury. A verdict shall further determine the amounts intended to  
6 compensate for injury or losses incurred before the verdict and  
7 amounts intended to compensate for losses that will be incurred in the  
8 future.

9 Sec. 09.17.040. PERIODIC PAYMENTS. (a) In an action to recover  
10 damages for personal injury, the court shall, at the request of a  
11 party, enter judgment ordering that amounts awarded a judgment credi-  
12 tor for future damages be paid to the maximum extent feasible by  
13 periodic payments rather than by a lump-sum payment if the award  
14 equals or exceeds \$50,000 in future damages. In entering judgment  
15 ordering the payment of future damages by periodic payments, the court  
16 shall make a specific finding as to the dollar amount of periodic  
17 payments that will compensate the judgment creditor for future dam-  
18 ages. The court may require a judgment debtor to post security ade-  
19 quate to assure full payment of future damages awarded by judgment.

20 (b) A judgment ordering payment of future damages by periodic  
21 payments shall specify the recipient, the dollar amount of the pay-  
22 ments, the interval between payments, and the number of payments or  
23 the period of time over which payments shall be made. Payments shall  
24 be modified only in the event of the death of the judgment creditor,  
25 in which case payments may not be reduced or terminated, but shall be  
26 paid to persons to whom the judgment creditor owed a duty of support,  
27 as provided by law, immediately before death. The court that rendered  
28 the original judgment, may, upon petition of a party in interest,  
29 modify the judgment to award and apportion the unpaid future damages

1 in accordance with this section.

2 (c) If the court finds that the judgment debtor has exhibited a  
3 continuing pattern of failing to make payments, under (b) of this  
4 section, the court shall find the judgment debtor in contempt of court  
5 and, in addition to the required periodic payments, shall order the  
6 judgment debtor to pay the judgment creditor any damages caused by the  
7 failure to make periodic payments, including costs and attorney fees.

8 (d) Following expiration of all obligations specified in the  
9 periodic payment judgment, the obligation of the judgment debtor to  
10 make further payments shall cease and security given under (a) of this  
11 section shall revert to the judgment debtor.

12 (e) A certified copy of a judgment or order of the court issued  
13 under this section may be recorded under AS 09.30.010, but may not  
14 become a lien upon real property before the date that payment becomes  
15 due.

16 Sec. 09.17.050. VERIFICATION OF CLAIMS. Every complaint, cross-  
17 claim, and counterclaim shall be signed and verified by the claiming  
18 party or the attorney of the claiming party and shall bear a statement  
19 that the person signing the claim believes the statements made in the  
20 claim are true. If the court finds that a statement made in the  
21 complaint, cross-claim, or counterclaim is untrue, and upon motion of  
22 a party defending against the claim, the person signing the claim  
23 shall be compelled to show cause why the person signing the claim  
24 should not be held in contempt of court.

25 Sec. 09.17.060. COLLATERAL BENEFITS. (a) The defendant, in an  
26 action for personal injury, may introduce evidence of an amount paid  
27 or payable as a benefit to the plaintiff as a result of the personal  
28 injury under the United States Social Security Act, a state or federal  
29 income disability or workers' compensation act, a health, sickness, or

1 income-disability insurance, accident insurance that provides health  
2 benefits or income-disability coverage, and a contract or agreement of  
3 a group, organization, partnership, or corporation to provide, pay for  
4 or reimburse the cost of medical, hospital, dental, or other health  
5 care services. If the defendant elects to introduce evidence under  
6 this section, the plaintiff may introduce evidence of an amount that  
7 the plaintiff has paid or contributed to secure the right to an insur-  
8 ance benefit concerning which the defendant has introduced evidence.

9 (b) Collateral benefits introduced under (a) of this section may  
10 not be used to recover an amount against the plaintiff nor may the  
11 source of the benefits be subrogated to the rights of the plaintiff  
12 against a defendant.

13 Sec. 09.17.070. EFFECT OF CONTRIBUTORY FAULT. In an action  
14 based on fault seeking to recover damages for injury or death to  
15 person or harm to property, contributory fault chargeable to the  
16 claimant diminishes proportionately the amount awarded as compensatory  
17 damages for an injury attributable to the claimant's contributory  
18 fault, but does not bar recovery.

19 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions  
20 involving fault of more than one party to the action, including  
21 third-party defendants and persons who have been released under  
22 AS 09.17.090, the court, unless otherwise agreed by all parties, shall  
23 instruct the jury to answer special interrogatories or, if there is no  
24 jury, shall make findings, indicating

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

27 (2) the percentage of the total fault of all of the parties  
28 to each claim that is allocated to each claimant, defendant, third-  
29 party defendant, and person who has been released from liability under

1 AS 09.17.090; for this purpose the court may determine that two or  
2 more persons are to be treated as a single party.

3 (b) In determining the percentages of fault, the trier of fact  
4 shall consider both the nature of the conduct of each party at fault  
5 and the extent of the causal relation between the conduct and the  
6 damages claimed.

7 (c) The court shall determine the award of damages to each  
8 claimant in accordance with the findings, subject to a reduction under  
9 AS 09.17.090, and enter judgment against each party liable on the  
10 basis of rules of several liability. The court also shall determine  
11 and state in the judgment each party's equitable share of the obliga-  
12 tion to each claimant in accordance with the respective percentages of  
13 fault.

14 Sec. 09.17.090. EFFECT OF RELEASE. A release, covenant not to  
15 sue, or similar agreement entered into by a claimant and a person  
16 liable discharges that person from liability to the claimant, but it  
17 does not discharge another person liable upon the same claim unless  
18 the release, covenant not to sue, or similar agreement provides for  
19 discharge. However, the claim of the releasing person against other  
20 persons is reduced by the amount of the released person's equitable  
21 share of the obligation, determined in accordance with the provisions  
22 of AS 09.17.080.

23 Sec. 09.17.900. DEFINITIONS. In this chapter

24 (1) "fault" includes acts or omissions that are in any  
25 measure negligent or reckless toward the person or property of the  
26 actor or others, or that subject a person to strict tort liability;  
27 the term also includes breach of warranty, unreasonable assumption of  
28 risk not constituting an enforceable express consent, misuse of a  
29 product for which the defendant otherwise would be liable, and

1 unreasonable failure to avoid an injury or to mitigate damages; legal  
2 requirements of causal relation apply both to fault as the basis for  
3 liability and to contributory fault;

4 (2) "future damages" includes damages for future medical  
5 treatment, care or custody; loss of future earning capacity; or any  
6 future noneconomic loss.

7 \* Sec. 2. AS 09.10 is amended by adding a new section to read:

8 Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED.

9 A person may not bring an action for damages based on personal injury  
10 when the amount in controversy is less than \$50,000, exclusive of  
11 costs, interest and attorney fees, unless the controversy is first  
12 arbitrated under AS 09.43.

13 \* Sec. 3. AS 09.30.065 is amended to read:

14 Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day  
15 following the filing of an answer in a civil action, and on the fifth  
16 day following the day discovery closes as ordered by the court,  
17 [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a  
18 claim may serve upon the party making the claim [ADVERSE PARTY] an  
19 offer to allow judgment to be entered in complete satisfaction of the  
20 claim against that defending party for the money or property or to the  
21 effect specified in the offer, with cost then accrued. If within 10  
22 days after the service of the offer the claiming [ADVERSE] party  
23 serves written notice that the offer is accepted, either party may  
24 then file the offer and notice of acceptance together with proof of  
25 service, and the clerk shall enter judgment. An offer not accepted  
26 within 10 days is considered withdrawn and evidence of that offer is  
27 not admissible except in a proceeding to determine the form of judg-  
28 ment after verdict. If the judgment finally entered on the claim as  
29 to which an offer has been made under this section is not more

1 favorable to the claiming party [OFFEREE] than the offer, the claim  
2 shall bear no interest from the date of the offer to the date of  
3 judgment [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO  
4 THE DATE JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

5 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE  
6 INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

7 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE  
8 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

9 \* Sec. 4. AS 09.43.110 is amended to read:

10 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of  
11 a party, the court shall confirm an award unless

12 (1) within the time limits imposed by AS 09.43.120 and  
13 09.43.130 grounds are urged for vacating or modifying or correcting  
14 the award, in which case the court shall proceed as provided in  
15 AS 09.43.120 and 09.43.130; or

16 (2) an appeal is taken under AS 09.43.160(c).

17 \* Sec. 5. AS 09.43.160 is amended by adding a new subsection to read:

18 (c) An award made as a result of arbitration required by  
19 AS 09.10.075 may be appealed to the superior court. The appeal shall  
20 be filed within 60 days after notice of an award is made under  
21 AS 09.43.080. The court shall grant a trial de novo if an appeal is  
22 filed under this subsection.

23 \* Sec. 6. AS 09.55.580(a) is amended to read:

24 (a) When the death of a person is caused by the wrongful act or  
25 omission of another, the personal representatives of the former may  
26 maintain an action therefor against the latter, if the former might  
27 have maintained an action, had the person lived, against the latter  
28 for an injury done by the same act or omission and if the decedent is  
29 survived by a spouse, children or other dependents. The action shall

1 be commenced within two years after the death, and the damages therein  
2 shall be the damages the court or jury may consider fair and just.  
3 The amount recovered, if any, shall be exclusively for the benefit of  
4 the decedent's spouse and children when the decedent is survived by a  
5 spouse or children, or other dependents. When the decedent is sur-  
6 vived by no spouse or children or other dependents, the action shall  
7 be dismissed [THE AMOUNT RECOVERED SHALL BE ADMINISTERED AS OTHER  
8 PERSONAL PROPERTY OF THE DECEDENT BUT SHALL BE LIMITED TO PECUNIARY  
9 LOSS]. When the plaintiff prevails, the trial court shall determine  
10 the allowable costs and expenses of the action and may, in its dis-  
11 cretion, require notice and hearing thereon. The amount recovered  
12 shall be distributed only after payment of all costs and expenses of  
13 suit and debts and expenses of administration.

14 \* Sec. 7. AS 09.60.010 is amended by adding a new subsection to read:

15 (b) Notwithstanding (a) of this section, the court may not award  
16 attorney fees to a prevailing party in an action for damages to the  
17 person or to property in the absence of a specific finding that the  
18 party at fault acted with malice, in bad faith, or with reckless  
19 disregard of the rights of another in causing the injury.

20 \* Sec. 8. AS 22.10.020(d) is amended to read:

21 (d) The superior court has jurisdiction in all matters appealed  
22 to it (1) from a subordinate court; (2) by a party to an arbitration  
23 award under AS 09.43.160(c); [,] or (3) an administrative agency when  
24 appeal is provided by law. The hearings on appeal from a final order  
25 or judgment of a subordinate court or administrative agency shall be  
26 on the record unless the superior court, in its discretion, grants a  
27 trial de novo, in whole or in part.

28 \* Sec. 9. AS 09.16 is repealed.

29 \* Sec. 10. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act

1 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring  
2 the jury to answer the special interrogatories listed in AS 09.17.080  
3 regarding the amount of damages and the percentages of fault to be  
4 allocated among the parties and to itemize the verdict regarding economic  
5 and noneconomic loss as specified in AS 09.17.030.

6 \* Sec. 11. AS 09.17.080 enacted in sec. 1 of this Act has the effect of  
7 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
8 specific findings regarding the amount of damages and the percentages of  
9 fault to be allocated among the parties.

10 \* Sec. 12. AS 09.17.030, 09.17.040 and 09.17.080 enacted in sec. 1 of  
11 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by  
12 requiring the court to include a specific item in its judgment.

13 \* Sec. 13. AS 09.17.050 enacted in sec. 1 of this Act has the effect of  
14 amending Alaska Rule of Civil Procedure 11 by requiring verification of  
15 claims, counterclaims, and cross-claims.

16 \* Sec. 14. AS 09.30.065 as amended by sec. 3 of this Act has the effect  
17 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
18 interest stops accruing from the date of an offer by a defending party  
19 which a claiming party fails to increase at judgment.

20 \* Sec. 15. AS 09.60.010 as amended by sec. 7 of this Act has the effect  
21 of amending Alaska Rule of Civil Procedure 82 by allowing costs and attor-  
22 ney fees only after a specific finding of malice, bad faith, or reckless  
23 disregard of the rights of another in causing the injury.

24 \* Sec. 16. APPLICABILITY. Sections 1 - 8 of this Act apply to all  
25 causes of action accruing after the effective date of this Act.

26 \* Sec. 17. This Act takes effect immediately in accordance with AS 01.-  
27 10.070(c).