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BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 377 (L&C)

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 49, 52, 58, 68, and 82; and
8 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 for each claim based on a
19 separate incident or injury.

20 Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages
21 for personal injury are awarded by the court or jury, the verdict
22 shall be itemized between economic loss and noneconomic loss, if any,
23 and economic loss shall be further itemized by category. Itemization
24 of economic loss by category includes: (1) amounts intended to com-
25 pensate for reasonable expenses that have been incurred, or which will
26 be incurred, for necessary medical, surgical, x-ray, dental, or other
27 health or rehabilitative services, drugs, and therapy; (2) amounts
28 intended to compensate for lost wages or loss of earning capacity; and
29 (3) all other economic losses claimed by the plaintiff or granted by

1 the jury. A verdict shall further determine the amounts intended to
2 compensate for injury or losses incurred before the verdict and
3 amounts intended to compensate for losses that will be incurred in the
4 future.

5 Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover
6 damages for personal injury, the court shall, at the request of a
7 judgment creditor, enter judgment ordering that amounts awarded for
8 future damages be paid to the maximum extent feasible by periodic
9 payments rather than by a lump-sum payment if the award equals or
10 exceeds \$50,000 in future damages. The court may require a judgment
11 debtor to post security adequate to assure full payment of future
12 damages awarded by judgment.

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

24 (c) If the court finds that the judgment debtor has exhibited a
25 continuing pattern of failing to make payments under (b) of this
26 section, the court shall find the judgment debtor in contempt of court
27 and, in addition to the required periodic payments, shall order the
28 judgment debtor to pay the judgment creditor any damages caused by the
29 failure to make periodic payments, including costs and attorney fees.

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

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

9 Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action
10 based on fault seeking to recover damages for injury or death to
11 person or harm to property, contributory fault chargeable to the
12 claimant diminishes proportionately the amount awarded as compensatory
13 damages for an injury attributable to the claimant's contributory
14 fault, but does not bar recovery.

15 Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions
16 involving fault of more than one party to the action, including third-
17 party defendants and persons who have been released under AS 09.17.-
18 060, the court, unless otherwise agreed by all parties, shall instruct
19 the jury to answer special interrogatories or, if there is no jury,
20 shall make findings, indicating

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

23 (2) the percentage of the total fault of all of the parties
24 to each claim that is allocated to each claimant, defendant, third-
25 party defendant, and person who has been released from liability under
26 AS 09.17.060; for this purpose the court may determine that two or
27 more persons are to be treated as a single party.

28 (b) In determining the percentages of fault, the trier of fact
29 shall consider both the nature of the conduct of each party at fault

1 and the extent of the causal relation between the conduct and the
2 damages claimed.

3 (c) The court shall determine the award of damages to each
4 claimant in accordance with the findings, subject to a reduction under
5 AS 09.17.060, and enter judgment against each party liable on the
6 basis of rules of several liability. The court also shall determine
7 and state in the judgment each party's equitable share of the obliga-
8 tion to each claimant in accordance with the respective percentages of
9 fault.

10 Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to
11 sue, or similar agreement entered into by a claimant and a person
12 liable discharges that person from liability to the claimant, but it
13 does not discharge another person liable upon the same claim unless
14 the release, covenant not to sue, or similar agreement provides for
15 discharge. However, the claim of the releasing person against other
16 persons is reduced by the amount of the released person's equitable
17 share of the obligation, determined in accordance with the provisions
18 of AS 09.17.050.

19 Sec. 09.17.900. DEFINITIONS. In this chapter

20 (1) "fault" includes acts or omissions that are in any
21 measure negligent or reckless toward the person or property of the
22 actor or others, or that subject a person to strict tort liability;
23 the term also includes breach of warranty, unreasonable assumption of
24 risk not constituting an enforceable express consent, misuse of a
25 product for which the defendant otherwise would be liable, and unrea-
26 sonable failure to avoid an injury or to mitigate damages; legal
27 requirements of causal relation apply both to fault as the basis for
28 liability and to contributory fault;

29 (2) "future damages" includes damages for future medical

1 treatment, care or custody; loss of future earning capacity; or any
2 future noneconomic loss.

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

4 Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED.
5 A person may not bring an action for damages based on personal injury
6 when the amount in controversy is less than \$100,000, exclusive of
7 costs, interest and attorney fees, unless the controversy is first
8 arbitrated under AS 09.43.

9 * Sec. 3. AS 09.30.065 is amended to read:

10 Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day
11 following the filing of an answer in a civil action, and on the fifth
12 day following the day discovery closes as ordered by the court, [EI-
13 THER THE PARTY MAKING A CLAIM OR] the party defending against a claim
14 may serve upon the party making the claim [ADVERSE PARTY] an offer to
15 allow judgment to be entered in complete satisfaction of the claim
16 against that defending party for the money or property or to the
17 effect specified in the offer, with cost then accrued. If within 10
18 days after the service of the offer the claiming [ADVERSE] party
19 serves written notice that the offer is accepted, either party may
20 then file the offer and notice of acceptance together with proof of
21 service, and the clerk shall enter judgment. An offer not accepted
22 within 10 days is considered withdrawn and evidence of that offer is
23 not admissible except in a proceeding to determine the form of judg-
24 ment after verdict. If the judgment finally entered on the claim as
25 to which an offer has been made under this section is not more favor-
26 able to the claiming party [OFFEREE] than the offer, the claim may not
27 bear interest from the date of the offer to the date of judgment [THE
28 INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE
29 JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

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

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

5 * Sec. 4. AS 09.43.110 is amended to read:

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

8 (1) within the time limits imposed by AS 09.43.120 and
9 09.43.130 grounds are urged for vacating or modifying or correcting
10 the award, in which case the court shall proceed as provided in
11 AS 09.43.120 and 09.43.130; or

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

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

14 (c) An award made as a result of arbitration required by AS 09.-
15 10.075 may be appealed to the proper court. The appeal shall be filed
16 within 60 days after notice of an award is made under AS 09.43.080.
17 The court shall grant a trial de novo if an appeal is filed under this
18 subsection.

19 * Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

20 (b) Notwithstanding (a) of this section, the court may not award
21 attorney fees to a prevailing party in an action for damages to the
22 person or to property in the absence of a specific finding that the
23 party at fault acted with malice, in bad faith, or with reckless
24 disregard of the rights of another in causing the injury. In this
25 subsection, "reckless disregard of the rights of another" means a lack
26 of consideration of the rights of another in a manner that is reason-
27 ably likely to cause damage to the person or property of another.

28 * Sec. 7. AS 22.10.020(d) is amended to read:

29 (d) The superior court has jurisdiction in all matters appealed

1 to it (1) from a subordinate court; (2) by a party to an arbitration
2 award under AS 09.43.160(c); [,] or (3) an administrative agency when
3 appeal is provided by law. The hearings on appeal from a final order
4 or judgment of a subordinate court or administrative agency shall be
5 on the record unless the superior court, in its discretion, grants a
6 trial de novo, in whole or in part.

7 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
8 09.16.060 are repealed.

9 * Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have
10 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
11 jury to answer the special interrogatories listed in AS 09.17.050 regarding
12 the amount of damages and the percentages of fault to be allocated among
13 the parties and to itemize the verdict regarding economic and noneconomic
14 loss as specified in AS 09.17.020.

15 * Sec. 10. AS 09.17.050 enacted in sec. 1 of this Act has the effect of
16 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
17 specific findings regarding the amount of damages and the percentages of
18 fault to be allocated among the parties.

19 * Sec. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of
20 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by
21 requiring the court to include a specific item in its judgment.

22 * Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect
23 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
24 interest stops accruing from the date of an offer by a defending party that
25 a claiming party fails to increase at judgment.

26 * Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect
27 of amending Alaska Rule of Civil Procedure 82 by allowing costs and attor-
28 ney fees in an action for personal injury or property damage only after a
29 specific finding of malice, bad faith, or reckless disregard of the rights

1 of another in causing the injury.

2 * Sec. 14. **APPLICABILITY.** Sections 1 - 7 of this Act apply to all
3 causes of action accruing after the effective date of this Act.

4 * Sec. 15. **LEGISLATIVE INTENT.** The legislature intends that the
5 changes made in this Act to the code of civil procedure should be reviewed
6 three years after the effective date of the Act, to determine if additional
7 modifications or changes are necessary. To achieve effective review, the
8 legislature requests that the governor direct the division of insurance to
9 monitor the effect of this Act on premiums being charged for liability
10 insurance and to report the effect to the legislature no later than
11 March 1, in 1987, 1988, and 1989.

12 * Sec. 16. This Act takes effect immediately in accordance with AS 01.-
13 10.070(c).