

Offered: 4/18/86
Referred: Finance

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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 377 (Judiciary)

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, and 68; and
8 providing for an effective date."

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

10 * Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has
11 generally been developed by the courts on a case-by-case basis. While this
12 process has resulted in some significant changes in the law, including
13 amelioration of the harshness of many common law doctrines, the legislature
14 has periodically intervened in order to bring about needed reforms. The
15 purpose of this Act is to enact further reforms in order to create a more
16 equitable distribution of the cost and risk of injury and increase the
17 availability and affordability of insurance.

18 (b) The legislature finds that boroughs, cities, and other
19 governmental entities are faced with increased exposure to lawsuits and
20 awards and dramatic increases in the cost of insurance coverage. These
21 escalating costs ultimately affect the public through higher taxes, loss of
22 essential services, and loss of the protection provided by adequate
23 insurance. In order to improve the availability and affordability of
24 quality governmental services, comprehensive reform is necessary.

25 (c) The legislature also finds comparable cost increases in
26 professional liability insurance. Escalating malpractice insurance
27 premiums discourage physicians and other health care providers from
28 initiating or continuing their practice or offering needed services to the
29 public and contribute to the rising costs of consumer health care. Other

1 professionals, such as architects and engineers, face similar difficult
2 choices, financial instability, and unlimited risk in providing services to
3 the public.

4 (d) The legislature also finds that general liability insurance is
5 becoming unavailable or unaffordable to many businesses, individuals, and
6 nonprofit organizations in amounts sufficient to cover potential losses.
7 High premiums have discouraged socially and economically desirable
8 activities and encourage many to go without adequate insurance coverage.

9 (e) It is the intent of the legislature to reduce costs associated
10 with the tort system, while ensuring that adequate and appropriate
11 compensation for persons injured through the fault of others is available.

12 * Sec. 2. AS 09 is amended by adding a new chapter to read:

13 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

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

19 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
20 be awarded in an action, whether in tort, contract, or otherwise,
21 unless supported by clear and convincing evidence. Fifty percent of
22 any punitive or exemplary damages that may be adjudged against the
23 party defending the claim shall be awarded to the benefit of the state
24 and when paid deposited in the general fund.

25 (b) The amount of punitive damages awarded to the state shall be
26 considered a part of the amount recovered by the claiming party for
27 purposes of calculating an award of attorney fees.

28 (c) Except for purposes of seeking execution on a judgment, the
29 state may not bring or be joined in an action based on punitive

1 damages that may be awarded under this section.

2 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-
3 SION OF A CRIME. A person who suffers personal injury or death may
4 not recover damages for the personal injury or death if the person is
5 determined by the fact finder to be more than 50 percent responsible
6 for the injuries or death and the person was

7 (1) intoxicated or under the influence of a controlled
8 substance listed in AS 11.71.140 - 11.71.190; or

9 (2) engaged in the commission of a felony, if the felony
10 was causally related to the injury or death in time, place, or activi-
11 ty; however, nothing in this paragraph shall affect a right of action
12 under 42 U.S.C. 1983.

13 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
14 for personal injury are awarded by the court or jury, the verdict
15 shall be itemized between economic loss and noneconomic loss, if any,
16 and economic loss shall be further itemized by category. Itemization
17 of economic loss by category includes: (1) amounts intended to com-
18 pensate for reasonable expenses that have been incurred, or which will
19 be incurred, for necessary medical, surgical, x-ray, dental, or other
20 health or rehabilitative services, drugs, and therapy; (2) amounts
21 intended to compensate for lost wages or loss of earning capacity; and
22 (3) all other economic losses claimed by the plaintiff or granted by
23 the jury. A verdict shall further determine the amounts intended to
24 compensate for injury or losses incurred before the verdict and
25 amounts intended to compensate for losses that will be incurred in the
26 future.

27 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the
28 attorney of the party filing a complaint, answer, cross-claim, or
29 counterclaim shall sign and verify the pleading and shall state in

1 the verification that the signatory believes the statements made in
2 the pleading are true. If the court finds that the signatory know-
3 ingly made a false statement in the pleading, upon motion of a party, the
4 court shall order the signatory to show cause why the signatory should
5 not be held in contempt of court.

6 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
7 based on fault seeking to recover damages for injury or death to a
8 person or harm to property, contributory fault chargeable to the
9 claimant diminishes proportionately the amount awarded as compensatory
10 damages for the injury attributable to the claimant's contributory
11 fault, but does not bar recovery.

12 Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder
13 has rendered an award to a claimant, and after the court has awarded
14 costs and attorney fees, a defendant may introduce evidence of amounts
15 received or to be received by the claimant as compensation for the
16 same injury from collateral sources that do not have a right of subro-
17 gation against the claimant by law or contract.

18 (b) If the defendant elects to introduce evidence under (a) of
19 this section, the claimant may introduce evidence of

20 (1) the amount that the actual attorney fees incurred by
21 the claimant exceed the amount of attorney fees awarded to the claim-
22 ant; and

23 (2) the amount that the claimant has paid or contributed to
24 secure the right to an insurance benefit introduced by the defendant
25 as evidence.

26 (c) If the total amount of collateral benefits introduced as
27 evidence under (a) of this section exceeds the total amount that the
28 claimant introduced as evidence under (b) of this section, the court
29 shall deduct from the amount awarded the claimant, the amount by which

1 the value of the benefits under (a) of this section exceeds the amount
2 of payments under (b) of this section.

3 (d) Notwithstanding (a) of this section, the defendant may not
4 introduce evidence of

5 (1) benefits that cannot be reduced or offset by federal
6 law;

7 (2) a deceased's life insurance policy; or

8 (3) gratuitous benefits provided to the claimant.

9 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
10 involving fault of more than one party to the action, including third-
11 party defendants and persons who have been released under AS 09.17.-
12 070, the court, unless otherwise agreed by all parties, shall instruct
13 the jury to answer special interrogatories or, if there is no jury,
14 shall make findings, indicating

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

17 (2) the percentage of the total fault of all of the parties
18 to each claim that is allocated to each claimant, defendant, third-
19 party defendant, and person who has been released from liability under
20 AS 09.17.070.

21 (b) In determining the percentages of fault, the trier of fact
22 shall consider both the nature of the conduct of each party at fault
23 and the extent of the causal relation between the conduct and the
24 damages claimed. The trier of fact may determine that two or more
25 persons are to be treated as a single party if their conduct was a
26 cause of the damages claimed and the separate act or omission of each
27 person cannot be distinguished.

28 (c) The court shall determine the award of damages to each
29 claimant in accordance with the findings, subject to a reduction under

1 AS 09.17.070, and enter judgment against each party liable. The court
2 shall also determine and state in the judgment each party's equitable
3 share of the obligation to each claimant in accordance with the
4 respective percentages of fault.

5 (d) The court shall enter judgment against each party liable on
6 the basis of joint and several liability, except that a party who is
7 allocated less than 50 percent of the total fault of all the parties
8 may not be jointly liable for more than twice the percentage of fault
9 allocated to that party.

10 Sec. 09.17.070. 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 dollar amount of the release, covenant not
17 to sue, or similar agreement.

18 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
19 acts or omissions that are in any measure negligent or reckless toward
20 the person or property of the actor or others, or that subject a
21 person to strict tort liability; the term also includes breach of
22 warranty, unreasonable assumption of risk not constituting an
23 enforceable express consent, misuse of a product for which the
24 defendant otherwise would be liable, and unreasonable failure to avoid
25 an injury or to mitigate damages; legal requirements of causal
26 relation apply both to fault as the basis for liability and to
27 contributory fault.

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

29 Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may

1 not bring an action for damages based on injury to person or property
2 when the amount in controversy is less than \$75,000, exclusive of
3 costs, interest and attorney fees, unless the controversy is first
4 arbitrated under AS 09.43.

5 * Sec. 4. AS 09.30.065 is amended to read:

6 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 30
7 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
8 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
9 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
10 making a claim or the party defending against a claim may serve upon
11 the adverse party an offer to allow judgment to be entered in complete
12 satisfaction of the claim for the money or property or to the effect
13 specified in the offer, with cost then accrued. If within 10 days
14 after the service of the offer the adverse party serves written notice
15 that the offer is accepted, either party may then file the offer and
16 notice of acceptance together with proof of service, and the clerk
17 shall enter judgment. An offer not accepted within 10 days is con-
18 sidered withdrawn and evidence of that offer is not admissible except
19 in a proceeding to determine the form of judgment after verdict. If
20 the judgment finally entered on the claim as to which an offer has
21 been made under this section is not more favorable to the offeree than
22 the offer, the interest awarded under AS 45.45.010(a) and accrued up
23 to the date judgment is entered shall be adjusted as follows:

24 (1) if the offeree is the party making the claim, the
25 interest rate shall be reduced by five [TWO] percent a year;

26 (2) if the offeree is the party defending against the
27 claim, the interest rate shall be increased by five [TWO] percent a
28 year.

29 * Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

1 (b) Except when the court finds that the parties have agreed
2 otherwise, prejudgment interest accrues from the day the cause of
3 action accrues.

4 * Sec. 6. AS 09.43.110 is amended to read:

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

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

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

12 * Sec. 7. AS 09.43.160 is amended by adding a new subsection to read:

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

18 * Sec. 8. AS 09.55.548 is repealed and reenacted to read:

19 Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages
20 in a malpractice action shall be awarded in accordance with principles
21 of the common law.

22 * Sec. 9. AS 09.60.010 is amended by adding a new subsection to read:

23 (b) The court may, upon petition by a party to a civil action,
24 determine the reasonableness of that party's attorney fee agreement.
25 The court shall take into consideration

26 (1) the time and labor required, the novelty and difficulty
27 of the questions involved, and the skill requisite to perform the
28 legal service properly;

29 (2) the likelihood, if apparent to the client, that the

1 acceptance of the particular employment will preclude other employment
2 by the attorney;

3 (3) the fee customarily charged in the locality for similar
4 legal services;

5 (4) the amount involved and the results obtained;

6 (5) the time limitations imposed by the client or by the
7 circumstances;

8 (6) the nature and length of the professional relationship
9 with the client;

10 (7) the experience, reputation, and ability of the attorney
11 or attorneys performing the services;

12 (8) whether the fee is fixed or contingent;

13 (9) whether the fixed or contingent fee agreement was in
14 writing and whether the client was aware of the right to petition the
15 court under this section.

16 * Sec. 10. AS 09.60 is amended by adding a new section to read:

17 Sec. 09.60.035. COSTS AND ATTORNEY FEES ALLOWED FOR ARBITRATION
18 APPEAL. If a party appeals an award made as a result of arbitration
19 required by AS 09.10.075, and the appellate court increases or de-
20 creases the award by more than 10 percent, the prevailing party on
21 appeal shall also be awarded actual costs and attorney fees incurred
22 as a result of the appeal.

23 * Sec. 11. AS 22.10.020(d) is amended to read:

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

1 trial de novo, in whole or in part.

2 * Sec. 12. AS 22.15.030(a) is amended to read:

3 (a) The district court has jurisdiction of civil cases and
4 proceedings as follows:

5 (1) for the recovery of money or damages when the amount
6 claimed exclusive of costs, interest and attorney fees does not exceed
7 \$25,000;

8 (2) for the recovery of specific personal property, when
9 the value of the property claimed and the damages for the detention do
10 not exceed \$25,000;

11 (3) for the recovery of a penalty or forfeiture, whether
12 given by statute or arising out of contract, not exceeding \$25,000;

13 (4) to give judgment without action upon the confession of
14 the defendant for any of the cases specified in this section, except
15 for a penalty or forfeiture imposed by statute;

16 (5) for establishing the fact of death of any person in the
17 manner prescribed in AS 09.55.020 - 09.55.060;

18 (6) for the recovery of the possession of premises in the
19 manner provided under AS 09.45.070 - 09.45.160 when the value of the
20 property or of the arrears and damage to the property does not exceed
21 \$25,000;

22 (7) for the foreclosure of a lien when the amount in con-
23 troversy does not exceed \$25,000;

24 (8) for the recovery of money or damages in motor vehicle
25 tort cases when the amount claimed exclusive of costs, interest and
26 attorney fees does not exceed \$25,000;

27 (9) over civil actions for taking utility service and for
28 damages to or interference with a utility line filed under AS 42.20.-
29 030;

1 (10) over cases involving injunctive relief for domestic
2 violence under AS 25.35.010 and 25.35.020;

3 (11) over an appeal by a party to an arbitration award under
4 AS 09.43.160(c) when the amount claimed exclusive of costs, interest,
5 and attorney fees does not exceed \$25,000.

6 * Sec. 13. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050,
7 and 09.16.060 are repealed.

8 * Sec. 14. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
9 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
10 the jury to answer the special interrogatories listed in AS 09.17.060
11 regarding the amount of damages and the percentages of fault to be allo-
12 cated among the parties and to itemize the verdict regarding economic and
13 noneconomic loss as specified in AS 09.17.030.

14 * Sec. 15. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
15 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
16 specific findings regarding the amount of damages and the percentages of
17 fault to be allocated among the parties.

18 * Sec. 16. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
19 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
20 the court to include a specific item in its judgment.

21 * Sec. 17. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
22 amending Alaska Rule of Civil Procedure 11 by requiring verification of
23 pleadings.

24 * Sec. 18. AS 09.30.065 as amended by sec. 4 of this Act has the effect
25 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
26 interest accrues from the day the cause of action accrues.

27 * Sec. 19. APPLICABILITY. Sections 1 - 13 of this Act apply to all
28 causes of action accruing after the effective date of this Act.

29 * Sec. 20. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).