

Offered: 4/30/86
Referred: Rules

Original sponsors: Kelly, Abood,
Bennett, et al

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 377 (Finance)

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; directing the
7 Department of Law to conduct a study; amending Alaska
8 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;
9 and providing for an effective date."

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

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

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

26 (c) The legislature also finds comparable cost increases in profes-
27 sional liability insurance. Escalating malpractice insurance premiums
28 discourage physicians and other health care providers from initiating or
29 continuing their practice or offering needed services to the public and

1 contribute to the rising costs of consumer health care. Other profession-
2 als, such as architects and engineers, face similar difficult choices,
3 financial instability, and unlimited risk in providing services to the
4 public.

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

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

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

14 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

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

20 (b) The amount of damages awarded by a court or jury under (a)
21 of this section may not exceed \$500,000 for each claim based on a
22 separate incident or injury.

23 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
24 be awarded in an action, whether in tort, contract, or otherwise,
25 unless the claimant proves by clear and convincing evidence that the
26 party defending the claim caused injury to the claimant by an act
27 constituting the commission of a felony under state or federal law, or
28 the act constituted deliberate or malicious conduct.

29 (b) A person may not claim punitive damages in a civil action,

1 unless the claimant first establishes a prima facie claim under (a) of
2 this section.

3 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMIS-
4 SION OF A CRIME. (a) A person who suffers personal injury or death
5 may not bring an action to recover damages for the personal injury or
6 death if the injuries or death occurred while the person was

7 (1) voluntarily under the influence of intoxicating liquor
8 or under the influence of a controlled substance listed in AS 11.71.-
9 140 - 11.71.190 and the condition of being under the influence of the
10 intoxicating liquor or controlled substance contributed more than 50
11 percent to the person's injuries or death; if there was 0.10 percent
12 or more by weight of alcohol in the person's blood or 0.10 grams or
13 more of alcohol per 210 liters of the person's breath, it is presumed
14 that the person was under the influence of intoxicating liquor; or

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

19 (b) The provisions of (a)(1) of this section do not apply to a
20 person who suffers personal injury or death caused by the intentional
21 act of another person or persons.

22 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
23 for personal injury are awarded by the court or jury, the verdict
24 shall be itemized between economic loss and noneconomic loss, if any,
25 as follows:

- 26 (1) past economic loss;
27 (2) past noneconomic loss;
28 (3) future economic loss;
29 (4) future noneconomic loss; and

1 (5) punitive damages.

2 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover
3 damages, the court shall, at the request of a party, enter judgment
4 ordering that amounts awarded a judgment creditor for future damages
5 be paid to the maximum extent feasible by periodic payments rather
6 than by a lump-sum payment if the award equals or exceeds \$100,000 in
7 future damages.

8 (b) The court may require security be posted, in order to ensure
9 that funds are available as periodic payments become due. The court
10 may not require security to be posted if an authorized insurer, as
11 defined in AS 21.90.900, acknowledges to the court its obligation to
12 discharge the judgment.

13 (c) A judgment ordering payment of future damages by periodic
14 payment 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. Periodic pay-
17 ments shall be cumulatively adjusted annually by applying each year
18 the annual rate of change in the consumer price index for all urban
19 consumers for the Anchorage Metropolitan Area as published by the
20 Bureau of Labor Statistics of the United States Department of Labor
21 for the immediately preceding year. Payments may be modified only in
22 the event of the death of the judgment creditor, in which case pay-
23 ments may not be reduced or terminated, but shall be paid to persons
24 to whom the judgment creditor owed a duty of support, as provided by
25 law, immediately before death. In the event the judgment creditor
26 owed no duty of support to dependents at the time of the judgment
27 creditor's death, the money remaining shall be distributed in accor-
28 dance with a will of the deceased judgment creditor accepted into
29 probate or under the intestate laws of the state if the deceased had

1 no will.

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

8 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the
9 attorney of the party shall sign and verify each complaint, answer,
10 cross-claim, and counterclaim that the party files. The verification
11 must include a statement that the person signing the pleading believes
12 the statements made in the pleading are true. If the court finds that
13 a statement made in the complaint, answer, cross-claim, or counter-
14 claim was knowingly untrue, and upon motion of a party the person
15 signing the pleading shall be compelled to show cause why the person
16 signing the pleading should not be held in contempt of court.

17 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
18 OFFICERS. (a) Unless the act or omission constituted gross negli-
19 gence, a person may not recover damages for an act or omission to act,
20 in the course and scope of official duties, from the following:

- 21 (1) a member of the board of directors or an officer of a
22 nonprofit corporation;
- 23 (2) a member of the board of directors of a public or
24 nonprofit hospital or a community-based advisory board of a hospital;
- 25 (3) a member of a school board of a school district;
- 26 (4) a member of a governing board, commission, or citizen
27 advisory committee of a municipality in the state.

28 (b) Notwithstanding (a) of this section, the duties and liabil-
29 ities of a director or officer of a nonprofit corporation to the

1 corporation or the corporation's shareholders may not be limited or
2 modified.

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

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

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

17 (1) the amount that the actual attorney fees incurred by
18 the claimant exceed the amount of the attorney fees awarded to the
19 claimant; and

20 (2) the amount that the claimant has paid or contributed to
21 secure the right to an insurance benefit introduced by the defendant
22 as evidence.

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

29 (d) Notwithstanding (a) of this section, the defendant may not

1 introduce evidence of

- 2 (1) benefits that cannot be reduced or offset by federal
3 law;
4 (2) a deceased's life insurance policy; or
5 (3) gratuitous benefits provided to the claimant.

6 (e) This section does not apply to a medical malpractice action
7 filed under AS 09.55.

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

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

16 (2) the percentage of the total fault of all of the parties
17 to each claim that is allocated to each claimant, defendant, third-
18 party defendant, and person who has been released from liability under
19 AS 09.17.070; for this purpose the court may determine that two or
20 more persons are to be treated as a single party.

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.

25 (c) The court shall determine the award of damages to each
26 claimant in accordance with the findings, subject to a reduction under
27 AS 09.17.070, and enter judgment against each party liable on the
28 basis of rules of several liability. The court shall also determine
29 and state in the judgment each party's equitable share of the

1 obligation to each claimant in accordance with the respective
2 percentages of fault.

3 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
4 sue, or similar agreement entered into by a claimant and a person
5 liable discharges that person from liability to the claimant, but it
6 does not discharge another person liable upon the same claim unless
7 the release, covenant not to sue, or similar agreement provides for
8 discharge. However, the claim of the releasing person against other
9 persons is reduced by the amount of the released person's equitable
10 share of the obligation, determined in accordance with the provisions
11 of AS 09.17.060.

12 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
13 not contract for or collect a contingency fee for representing a
14 person seeking damages in connection with an action for personal
15 injury based on negligence in excess of 25 percent of the amount
16 recovered.

17 (b) If periodic payments for future damages are awarded, the
18 present value of the periodic payments must be included in computing
19 the total award from which attorney fees are calculated under this
20 section.

21 (c) An attorney may not contract for or receive a fee for de-
22 fending a person against a claim for damages in connection with an
23 action for personal injury based on negligence, in excess of 25 per-
24 cent of the amount recovered or if no amount is recovered by the
25 plaintiff, 25 percent of the amount in controversy.

26 (d) The limitations in (a) - (c) of this section apply whether
27 the recovery is by settlement, arbitration, or judgment.

28 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
29 acts or omissions that are in any measure negligent or reckless toward

1 the person or property of the actor or others, or that subject a
2 person to strict tort liability; the term also includes breach of
3 warranty, unreasonable assumption of risk not constituting an enforce-
4 able express consent, misuse of a product for which the defendant
5 otherwise would be liable, and unreasonable failure to avoid an injury
6 or to mitigate damages; legal requirements of causal relation apply
7 both to fault as the basis for liability and to contributory fault.

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

9 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
10 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
11 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
12 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
13 making a claim or the party defending against a claim may serve upon
14 the adverse party an offer to allow judgment to be entered in complete
15 satisfaction of the claim for the money or property or to the effect
16 specified in the offer, with cost then accrued. If within 10 days
17 after the service of the offer the adverse party serves written notice
18 that the offer is accepted, either party may then file the offer and
19 notice of acceptance together with proof of service, and the clerk
20 shall enter judgment. An offer not accepted within 10 days is con-
21 sidered withdrawn and evidence of that offer is not admissible except
22 in a proceeding to determine the form of judgment after verdict. If
23 the judgment finally entered on the claim as to which an offer has
24 been made under this section is not more favorable to the offeree than
25 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
26 and accrued up to the date judgment is entered shall be adjusted as
27 follows:

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

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

4 * Sec. 4. AS 09.30.070 is amended to read:

5 Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on
6 judgments and decrees for the payment of money is equal to the 12th
7 Federal Reserve district discount rate as determined under AS 45.45.-
8 010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded
9 on a contract in writing, providing for the payment of interest until
10 paid at a specified rate not exceeding the legal rate of interest for
11 that type of contract, bears interest at the rate specified in the
12 contract if the interest rate is set out in the judgment or decree.

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

14 (b) Except when the court finds that the parties have agreed
15 otherwise, prejudgment interest accrues from the day process is served
16 on the defendant or the day the defendant received written notifica-
17 tion of the claim, whichever is earlier. Evidence to be considered by
18 the finder of fact may include the amount of the prejudgment interest
19 that may be added to the award.

20 * Sec. 6. AS 09.55.548(a) is repealed and reenacted to read:

21 (a) Except as provided in (b) of this section and AS 09.17,
22 damages in a malpractice shall be awarded in accordance with
23 principles of the common law.

24 * Sec. 7. AS 09.60.010 is repealed and reenacted to read:

25 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
26 PARTY. The supreme court shall determine by rule or order the costs,
27 if any, that may be allowed a prevailing party in a civil action.
28 Unless specifically authorized by statute or by agreement between the
29 parties, attorney fees may not be awarded to a party in a civil action

1 for personal injury, death or property damage related to or arising
2 out of fault, as defined in AS 09.17.900.

3 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
4 09.16.060 are repealed.

5 * Sec. 9. AS 09.17.030 and 09.17.060 enacted in sec. 2 of this Act have
6 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
7 jury to answer the special interrogatories listed in AS 09.17.060 regarding
8 the amount of damages and the percentages of fault to be allocated among
9 the parties and to itemize the verdict regarding economic and noneconomic
10 loss as specified in AS 09.17.030.

11 * Sec. 10. AS 09.17.060 enacted in sec. 2 of this Act has the effect of
12 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
13 specific findings regarding the amount of damages and the percentages of
14 fault to be allocated among the parties.

15 * Sec. 11. AS 09.17.030 and 09.17.060 enacted in sec. 2 of this Act
16 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
17 the court to include a specific item in its judgment.

18 * Sec. 12. AS 09.17.040 enacted in sec. 2 of this Act has the effect of
19 amending Alaska Rule of Civil Procedure 11 by requiring verification of
20 certain pleadings.

21 * Sec. 13. AS 09.17.080 enacted in sec. 2 of this Act has the effect of
22 amending Alaska Rule of Civil Procedure 82 by limiting the amount that
23 could be awarded as attorney fees in an action for personal injury or
24 property damage.

25 * Sec. 14. AS 09.30.070(b) as added by sec. 5 of this Act has the
26 effect of amending Alaska Rule of Civil Procedure 68 by providing that
27 prejudgment interest accrues from the day process is served on the defen-
28 dant or the day the defendant receives written notice of the claim.

29 * Sec. 15. AS 09.60.010 as amended by sec. 7 of this Act has the effect

1 of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of
2 attorney fees in certain civil actions based on fault, unless allowed by
3 statute or by agreement of the parties.

4 * Sec. 16. APPLICABILITY. Sections 1 - 8 of this Act apply to all
5 causes of action accruing after the effective date of this Act, except that
6 AS 09.17.055(a) enacted in sec. 2 of this Act applies to all contracts for
7 the provision of collateral benefits that are formed or renewed after the
8 effective date of this Act.

9 * Sec. 17. SEVERABILITY. If any provision of this Act, or the applica-
10 tion thereof to any person or circumstance is held invalid, the remainder
11 of this Act and the application to other persons or circumstances shall not
12 be affected thereby.

13 * Sec. 18. The Department of Law, with the assistance of the Department
14 of Commerce and Economic Development, shall contract for

15 (1) a study of closed insurance claims to identify

16 (A) the extent to which the legal system has or has not
17 been the cause of dramatic liability insurance increases and coverage
18 reduction in crisis lines in Alaska;

19 (B) how victims are faring under the present system; and

20 (C) what the various specific tort reform proposals will
21 actually accomplish;

22 (2) a study of insurance company finances to determine

23 (A) the extent to which dramatic liability insurance rate
24 increases and coverage limitations in Alaska are, or are not, cost-
25 justified in relation to awards, settlements, and relevant court
26 decisions in Alaska involving personal injury, death, or property
27 damage based on fault; and

28 (B) the extent to which legislative or regulatory actions
29 affecting the tort system in Alaska are necessary to resolve the

1 state's liability insurance crisis.

2 * Sec. 19. Except for AS 09.17.080, added by sec. 2 of this Act, this
3 Act takes effect immediately in accordance with AS 01.10.070(c).

4 * Sec. 20. AS 09.17.080, added by sec. 2 of this Act, only takes effect
5 if sec. 15 of this Act does not pass each house of the legislature by at
6 least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes
7 effect immediately under AS 01.10.070(c).