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1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR 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; 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. AS 09 is amended by adding a new chapter to read:

12 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

13 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
14 recover damages for personal injury based on negligence, damages for
15 noneconomic losses shall be limited to \$1,000,000 for each person
16 injured.

17 (b) The limit under (a) of this section does not apply to dam-
18 ages for physical impairment or disfigurement.

19 Sec. 09.17.020. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
20 person who suffers personal injury or death may not recover damages
21 for the personal injury or death if the injuries or death occurred
22 while the person was engaged in the commission of a felony, the person
23 has been convicted of the felony, including conviction based on a
24 guilty plea or plea of nolo contendere, and the felony substantially
25 contributed to the injury or death. This section does not affect a
26 right of action under 42 U.S.C. 1983.

27 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
28 for personal injury are awarded by the court or jury, the verdict
29 shall be itemized between economic loss and noneconomic loss, if any,

1 as follows:

- 2 (1) past economic loss;
- 3 (2) past noneconomic loss;
- 4 (3) future economic loss;
- 5 (4) future noneconomic loss; and
- 6 (5) punitive damages.

7 Sec. 09.17.040. PERIODIC PAYMENTS. (a) In an action to recover
8 damages, the court shall, at the request of an injured party, enter
9 judgment ordering that amounts awarded a judgment creditor for future
10 damages be paid to the maximum extent feasible by periodic payments
11 rather than by a lump-sum payment if the award equals or exceeds
12 \$100,000 in future damages.

13 (b) The court may require security be posted, in order to ensure
14 that funds are available as periodic payments become due. The court
15 may not require security to be posted if an authorized insurer, as
16 defined in AS 21.90.900, acknowledges to the court its obligation to
17 discharge the judgment.

18 (c) A judgment ordering payment of future damages by periodic
19 payment shall specify the recipient, the dollar amount of the pay-
20 ments, the interval between payments, and the number of payments or
21 the period of time over which payments shall be made. Periodic pay-
22 ments shall be cumulatively adjusted annually by applying each year
23 the annual rate of change in the consumer price index for all urban
24 consumers for the Anchorage Metropolitan Area as published by the
25 Bureau of Labor Statistics of the United States Department of Labor
26 for the immediately preceding year. Payments may be modified only in
27 the event of the death of the judgment creditor, in which case pay-
28 ments may not be reduced or terminated, but shall be paid to persons
29 to whom the judgment creditor owed a duty of support, as provided by

1 law, immediately before death. If the judgment creditor owed no duty
2 of support to dependents at the time of the judgment creditor's death,
3 the money remaining shall be distributed in accordance with a will of
4 the deceased judgment creditor accepted into probate or under the
5 intestate laws of the state if the deceased had no will.

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

12 Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
13 OFFICERS. (a) Unless the act or omission constituted gross negli-
14 gence, a person may not recover tort damages for personal injury,
15 death, or damage to property for an act or omission to act in the
16 course and scope of official duties, as a member or officer of the
17 following:

18 (1) a member of the board of directors or an officer of a
19 nonprofit corporation;

20 (2) a member of the board of directors of a public or
21 nonprofit hospital, or a member of a citizen's advisory board of any
22 hospital;

23 (3) a member of a school board of a school district;

24 (4) a member of the governing body, a commission, or a
25 citizen's advisory committee of a municipality of the state.

26 (b) Notwithstanding (a) of this section, the duties and liabil-
27 ities of a director or officer of a nonprofit corporation to the
28 corporation or the corporation's shareholders may not be limited or
29 modified.

1 (c) In this section "nonprofit corporation" means a corporation
2 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
3 or (4) (Internal Revenue Code).

4 Sec. 09.17.060. EFFECT OF CONTRIBUTORY FAULT. In an action
5 based on fault seeking to recover damages for injury or death to a
6 person or harm to property, contributory fault chargeable to the
7 claimant diminishes proportionately the amount awarded as compensatory
8 damages for the injury attributable to the claimant's contributory
9 fault, but does not bar recovery.

10 Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder
11 has rendered an award to a claimant, and after the court has awarded
12 costs and attorney fees, a defendant may introduce evidence of amounts
13 received or to be received by the claimant as compensation for the
14 same injury from collateral sources that do not have a right of subro-
15 gation by law or contract.

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

18 (1) the amount that the actual attorney fees incurred by
19 the claimant in obtaining the award exceed the amount of attorney fees
20 awarded to the claimant by the court; and

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

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

1 (d) Notwithstanding (a) of this section, the defendant may not
2 introduce evidence of

3 (1) benefits that under federal law cannot be reduced or
4 offset;

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

6 (3) gratuitous benefits provided to the claimant.

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

9 Sec. 09.17.080. 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.-
12 090, 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 09.17.090.

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 09.17.090, and enter judgment against each party liable. The court
2 also shall determine and state in the judgment each party's equitable
3 share of the obligation to each claimant in accordance with the re-
4 spective 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 allocated to all the
8 parties may not be jointly liable for more than twice the percentage
9 of fault allocated to that party.

10 Sec. 09.17.090. EFFECT OF RELEASE. When a release or covenant
11 not to sue or not to enforce judgment is given in good faith to one of
12 two or more persons liable in tort for the same injury or the same
13 wrongful death

14 (1) it does not discharge any of the other tortfeasors from
15 liability for the injury or wrongful death unless its terms so pro-
16 vide; but it reduces the claim against the others to the extent of any
17 amount stipulated by the release or the covenant, or in the amount of
18 the consideration paid for it, whichever is the greater; and

19 (2) it discharges the tortfeasor to whom it is given from
20 all liability for contribution to any other tortfeasor.

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

1 * Sec. 2. AS 09.30.065 is amended to read:

2 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
3 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
4 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
5 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
6 making a claim or the party defending against a claim may serve upon
7 the adverse party an offer to allow judgment to be entered [IN COM-
8 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the
9 effect specified in the offer, with costs [COST] then accrued. If
10 within 10 days after the service of the offer the adverse party serves
11 written notice that the offer is accepted, either party may then file
12 the offer and notice of acceptance together with proof of service, and
13 the clerk shall enter judgment. An offer not accepted within 10 days
14 is considered withdrawn and evidence of that offer is not admissible
15 except in a proceeding to determine costs and attorney fees [THE FORM
16 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the
17 claim as to which an offer has been made under this section is not
18 more favorable to the offeree than the offer, the offeree shall pay
19 costs incurred after service of the offer, and the court may also
20 require payment of reasonable actual attorney fees incurred after
21 service of the offer, and the interest awarded under AS 45.45.010(a)
22 and accrued up to the date judgment is entered shall be adjusted as
23 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. 3. AS 09.30.065 is amended by adding new subsections to read:

1 (b) The fact that an offer is made but not accepted does not
2 preclude a subsequent offer. When the liability of one party to
3 another has been determined by verdict, order, or judgment, but the
4 amount or extent of the liability remains to be determined by further
5 proceedings, the party adjudged liable may make an offer of judgment,
6 which shall have the same effect as an offer made before trial if it
7 is served within a reasonable time not less than 10 days before the
8 commencement of hearings to determine the amount or extent of liability.
9

10 (c) Except for civil commitment and child custody actions, this
11 section applies to all civil actions.

12 * Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:

13 (b) Except when the court finds that the parties have agreed
14 otherwise, prejudgment interest accrues from the day the cause of
15 action accrues.

16 * Sec. 5. AS 09.55.548(a) is repealed and reenacted to read:

17 (a) Except as provided in AS 09.17, damages in a malpractice
18 action shall be awarded in accordance with principles of the common
19 law.

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

21 (b) In making an award of attorney fees to a prevailing party,
22 the court shall consider the actual attorney fees incurred by each
23 party in the civil action. Actual attorney fees shall be supported by
24 affidavit from the attorney representing each party.

25 * Sec. 7. AS 09.63 is amended by adding a new section to read:

26 Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as
27 provided in (b) of this section, every complaint, answer, cross-claim,
28 and counterclaim shall be signed and verified by the party or the
29 attorney of the party filing the pleading and shall bear a statement

1 that the person signing the pleading believes the statements made in
2 the pleading are true. If the court finds that a statement made in
3 the complaint, answer, cross-claim, or counterclaim was knowingly
4 untrue, upon motion of a party, the person signing the pleading may be
5 compelled to show cause why the person signing the pleading should not
6 be held in contempt of court.

7 (b) For good cause, a complaint, answer, cross-claim or coun-
8 ter-claim may be filed without verification; provided, however, that
9 verification of the pleading by the party or attorney of the party
10 shall be made within 15 days of the filing of the pleading.

11 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
12 09.16.060 are repealed.

13 * Sec. 9. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act have
14 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
15 jury to answer the special interrogatories listed in AS 09.17.080 regarding
16 the amount of damages and the percentages of fault to be allocated among
17 the parties and to itemize the verdict regarding economic, noneconomic, and
18 punitive damages as specified in AS 09.17.030.

19 * Sec. 10. AS 09.17.080 enacted in sec. 1 of this Act has the effect of
20 amending Alaska rule of Civil Procedure 52 by requiring the court to make
21 specific findings regarding the amount of damages and the percentages of
22 fault to be allocated among the parties.

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

26 * Sec. 12. AS 09.63.045 enacted in sec. 7 of this Act has the effect of
27 amending Alaska Rule of Civil Procedure 11 by requiring verification of
28 claims, answers, counterclaims, and cross-claims.

29 * Sec. 13. AS 09.30.070(b) as added by sec. 4 of this Act has the

1 effect of amending Alaska Rule of Civil Procedure 68 by providing that
2 prejudgment interest accrues from the day the cause of action accrues.

3 * Sec. 14. AS 09.60.010 as amended by sec. 6 of this Act has the effect
4 of amending Alaska Rule of Civil Procedure 82 by requiring the court to
5 consider the actual attorney fees incurred in the civil action.

6 * Sec. 15. APPLICABILITY. Sections 1 - 8 of this Act apply to all
7 causes of action accruing after the effective date of this Act.

8 * Sec. 16. (a) The Department of Law shall collect and analyze infor-
9 mation pertaining to the insurance crisis and its relation to the civil
10 justice system in Alaska. The study may include an analysis of closed
11 insurance claim files and insurance company finances.

12 (b) All state agencies shall cooperate fully with the Department of
13 Law in the collection and analysis of information necessary to conduct the
14 study under (a) of this section.

15 (c) The Department of Law shall report its findings under this sec-
16 tion to the legislature no later than the 30th day of the First Session of
17 the Fifteenth Alaska Legislature.

18 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).