

Offered: 5/7/86
Referred: Rules

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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 377 (Judiciary) am H

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. FUTURE DAMAGES. (a) The court shall reduce a
8 lump-sum award of future damages to its present value. In reducing
9 the award to present value, the court shall consider inflation and the
10 estimated future earning capacity of the injured person.

11 (b) The court may enter a judgment that future damages be paid
12 in whole or in part by periodic payments rather than by a lump-sum
13 payment; the judgment shall include, if necessary, other provisions to
14 assure that funds are available as periodic payments become due.
15 Insurance from an authorized insurer as defined in AS 21.90.900 or
16 from the Medical Indemnity Corporation of Alaska is sufficient
17 assurance that funds will be available.

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. Payments may be
22 modified only as provided in (d) of this section or in the event of
23 the death of the judgment creditor, in which case payments may not be
24 reduced or terminated, but shall be paid to persons to whom the judg-
25 ment creditor owed a duty of support, as provided by law, immediately
26 before death. In the event the judgment creditor owed no duty of
27 support to dependents at the time of the judgment creditor's death,
28 the money remaining shall be distributed in accordance with a will of
29 the deceased judgment creditor or under the intestate laws of the

1 state if the deceased had no will.

2 (d) The court that rendered the original judgment may, upon
3 petition of the judgment creditor, modify the judgment to award
4 additional damages if the judgment creditor incurs medical expenses
5 that were not included in the original judgment and could not have
6 been reasonably anticipated at the time of trial.

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

13 (f) If at any time following entry of judgment, a judgment
14 debtor fails to make a payment in a timely fashion according to the
15 terms of the part of the judgment related to periodic payments, the
16 judgment creditor may petition the court that rendered the original
17 judgment for an order requiring payment by the judgment debtor of the
18 outstanding payments in a lump sum. In calculating the amount of the
19 lump-sum judgment under this section, the court shall total the
20 remaining periodic payments due and owing to the judgment creditor.
21 This amount may not be converted to its present value. The court may
22 also require the payment of interest on the outstanding judgment.

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

29 (1) a member of the board of directors or an officer of a

1 nonprofit corporation;

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

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

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

8 (b) Notwithstanding (a) of this section, the duties and liabil-
9 ities of a director or officer of a nonprofit corporation to the
10 corporation or the corporation's shareholders may not be limited or
11 modified.

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

15 Sec. 09.17.060. EFFECT OF CONTRIBUTORY FAULT. In an action
16 based on fault seeking to recover damages for injury or death to a
17 person or harm to property, contributory fault chargeable to the
18 claimant diminishes proportionately the amount awarded as compensatory
19 damages for the injury attributable to the claimant's contributory
20 fault, but does not bar recovery.

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

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

29 (1) the amount that the actual attorney fees incurred by

1 the claimant in obtaining the award exceed the amount of attorney fees
2 awarded to the claimant by the court; and

3 (2) the amount that the claimant has paid or contributed to
4 secure the right to an insurance benefit introduced by the defendant
5 as evidence.

6 (c) If the total amount of collateral benefits introduced as
7 evidence under (a) of this section exceeds the total amount that the
8 claimant introduced as evidence under (b) of this section, the court
9 shall deduct from the total award the amount by which the value of the
10 nonsubrogated sum awarded under (a) of this section exceeds the amount
11 of payments under (b) of this section.

12 (d) Notwithstanding (a) of this section, the defendant may not
13 introduce evidence of

14 (1) benefits that under federal law cannot be reduced or
15 offset;

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

17 (3) gratuitous benefits provided to the claimant.

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

20 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions
21 involving fault of more than one party to the action, including third-
22 party defendants and persons who have been released under AS 09.17.-
23 090, the court, unless otherwise agreed by all parties, shall instruct
24 the jury to answer special interrogatories or, if there is no jury,
25 shall make findings, indicating

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

28 (2) the percentage of the total fault of all of the parties
29 to each claim that is allocated to each claimant, defendant, third-

1 party defendant, and person who has been released from liability under
2 AS 09.17.090.

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. The trier of fact may determine that two or more
7 persons are to be treated as a single party if their conduct was a
8 cause of the damages claimed and the separate act or omission of each
9 person cannot be distinguished.

10 (c) The court shall determine the award of damages to each
11 claimant in accordance with the findings, subject to a reduction under
12 AS 09.17.090, and enter judgment against each party liable. The court
13 also shall determine and state in the judgment each party's equitable
14 share of the obligation to each claimant in accordance with the re-
15 spective percentages of fault.

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

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

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

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

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

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

13 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
14 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
15 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
16 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
17 making a claim or the party defending against a claim may serve upon
18 the adverse party an offer to allow judgment to be entered [IN COM-
19 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the
20 effect specified in the offer, with costs [COST] then accrued. If
21 within 10 days after the service of the offer the adverse party serves
22 written notice that the offer is accepted, either party may then file
23 the offer and notice of acceptance together with proof of service, and
24 the clerk shall enter judgment. An offer not accepted within 10 days
25 is considered withdrawn and evidence of that offer is not admissible
26 except in a proceeding to determine costs and attorney fees [THE FORM
27 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the
28 claim as to which an offer has been made under this section is not
29 more favorable to the offeree than the offer, the offeree shall pay

1 costs incurred after service of the offer, and the court may also
2 require payment of reasonable actual attorney fees incurred after
3 service of the offer, and the interest awarded under AS 45.45.010(a)
4 and accrued up to the date judgment is entered shall be adjusted as
5 follows:

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

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

11 * Sec. 3. AS 09.30.065 is amended by adding new subsections to read:

12 (b) The fact that an offer is made but not accepted does not
13 preclude a subsequent offer. When the liability of one party to
14 another has been determined by verdict, order, or judgment, but the
15 amount or extent of the liability remains to be determined by further
16 proceedings, the party adjudged liable may make an offer of judgment,
17 which shall have the same effect as an offer made before trial if it
18 is served within a reasonable time not less than 10 days before the
19 commencement of hearings to determine the amount or extent of liability.
20

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

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

24 (b) Except when the court finds that the parties have agreed
25 otherwise, prejudgment interest accrues from the day the cause of
26 action accrues.

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

28 (a) Except as provided in AS 09.17, damages in a malpractice
29 action shall be awarded in accordance with principles of the common

1 law.

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

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

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

8 Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as
9 provided in (b) of this section, every complaint, answer, cross-claim,
10 and counterclaim shall be signed and verified by the party or the
11 attorney of the party filing the pleading and shall bear a statement
12 that the person signing the pleading believes the statements made in
13 the pleading are true. If the court finds that a statement made in
14 the complaint, answer, cross-claim, or counterclaim was knowingly
15 untrue, upon motion of a party, the person signing the pleading may be
16 compelled to show cause why the person signing the pleading should not
17 be held in contempt of court.

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

22 * Sec. 8. AS 22.15.030(a) is amended to read:

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

25 (1) for the recovery of money or damages when the amount
26 claimed exclusive of costs, interest and attorney fees does not exceed
27 \$35,000 [\$25,000];

28 (2) for the recovery of specific personal property, when
29 the value of the property claimed and the damages for the detention

1 do not exceed \$35,000 [\$25,000];

2 (3) for the recovery of a penalty or forfeiture, whether
3 given by statute or arising out of contract, not exceeding \$35,000
4 [\$25,000];

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

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

10 (6) for the recovery of the possession of premises in the
11 manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE
12 PROPERTY OR] of the arrears and damage to the property does not exceed
13 \$35,000 [\$25,000];

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

16 (8) for the recovery of money or damages in motor vehicle
17 tort cases when the amount claimed exclusive of costs, interest and
18 attorney fees does not exceed \$35,000 [\$25,000];

19 (9) over civil actions for taking utility service and for
20 damages to or interference with a utility line filed under AS 42.20.-
21 030;

22 (10) over cases involving injunctive relief for domestic
23 violence under AS 25.35.010 and 25.35.020.

24 * Sec. 9. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
25 09.16.060 are repealed.

26 * Sec. 10. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act
27 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
28 the jury to answer the special interrogatories listed in AS 09.17.080
29 regarding the amount of damages and the percentages of fault to be

1 allocated among the parties and to itemize the verdict regarding economic,
2 noneconomic, and punitive damages as specified in AS 09.17.030.

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

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

10 * Sec. 13. AS 09.63.045 enacted in sec. 7 of this Act has the effect of
11 amending Alaska Rule of Civil Procedure 11 by requiring verification of
12 claims, answers, counterclaims, and cross-claims.

13 * Sec. 14. AS 09.30.070(b) as added by sec. 4 of this Act has the
14 effect of amending Alaska Rule of Civil Procedure 68 by providing that
15 prejudgment interest accrues from the day the cause of action accrues.

16 * Sec. 15. AS 09.60.010 as amended by sec. 6 of this Act has the effect
17 of amending Alaska Rule of Civil Procedure 82 by requiring the court to
18 consider the actual attorney fees incurred in the civil action.

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

21 * Sec. 17. (a) The Department of Law shall collect and analyze infor-
22 mation pertaining to the insurance crisis and its relation to the civil
23 justice system in Alaska. The study may include an analysis of closed
24 insurance claim files and insurance company finances.

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

28 (c) The Department of Law shall report its findings under this sec-
29 tion to the legislature no later than the 30th day of the First Session of

1 the Fifteenth Alaska Legislature.

2 * Sec. 18. This Act takes effect immediately in accordance with AS 01.-

3 10.070(c).