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Referred: Labor and Commerce,
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1 IN THE SENATE

BY JOSEPHSON

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SENATE BILL NO. 392

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to periodic payments for future
7 damages in certain civil actions; amending Alaska
8 Rules of Civil Procedure 49 and 58; and providing for
9 an effective date."

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

11 * Section 1. AS 09.30 is amended by adding new sections to read:

12 ARTICLE 5. PERIODIC PAYMENT OF CERTAIN JUDGMENTS.

13 Sec. 09.30.400. APPLICABILITY OF AS 09.30.400 - 09.30.490. (a)

14 The provisions of AS 09.30.400 - 09.30.490 apply to the following:

15 (1) an action for damages based on medical or dental mal-
16 practice;

17 (2) an action for damages against the owner, operator, or
18 employee of a nursery based on personal injury arising out of opera-
19 tion of the nursery; and

20 (3) an action where damages for personal injury are awarded
21 on behalf of a minor.

22 (b) In this section, "nursery" has the meaning given in AS 47.-
23 35.900.

24 Sec. 09.30.410. ITEMIZED VERDICTS. In an action described by
25 AS 09.30.400, the verdict shall be itemized between amounts intended
26 to compensate for injury or losses incurred before the verdict and
27 amounts intended to compensate for losses that will be incurred in the
28 future. The future damages shall be further itemized by categories to
29 indicate amounts awarded for

- 1 (1) noneconomic damages;
- 2 (2) reasonable expenses for necessary medical, surgical,
- 3 x-ray, dental, or other health or rehabilitative services, drugs, and
- 4 therapy;
- 5 (3) lost wages or loss of earning capacity; and
- 6 (4) other economic losses.

7 Sec. 09.30.420. PERIODIC PAYMENTS FOR FUTURE DAMAGES. (a) If
8 an itemized verdict prepared under AS 09.30.410 indicates that the
9 amount intended to compensate for future damages exceeds \$250,000, the
10 court, at the request of the defendant, shall enter a judgment order-
11 ing that the portion of future damages exceeding \$250,000 be paid by
12 the defendant through purchase of an annuity contract approved by the
13 director under AS 09.30.480.

14 (b) A judgment under (a) of this section shall specify the
15 present value of the annuity contract. The present value of the
16 contract shall be determined in accordance with generally accepted
17 actuarial practices by applying the discount rate in effect at the
18 time of the award to the portion of future damages covered by the
19 contract. The court shall specify the recipient, the dollar amount of
20 the payments, the interval between payments, and the number of pay-
21 ments or the period of time over which payments shall be made. The
22 period of time over which payments shall be made may not exceed 10
23 years.

24 (c) The court, as part of its judgment under this section, shall
25 order the defendants and their insurance carriers to offer and to
26 guarantee the purchase and payment of the annuity contract. The
27 annuity contract shall provide for the payment of annual sums in equal
28 monthly installments in advance. The annual payment for the first
29 year shall be calculated by dividing the amount of future damages

1 covered under the contract by the number of years over which payment
2 will be made. The annual payment due in each succeeding year shall be
3 computed by adding 10 and one-half percent to the previous year's
4 payment.

5 Sec. 09.30.430. SECURITY FOR PAYMENT OF ANNUITY. (a) If the
6 court enters a judgment for periodic payments under AS 09.30.420, each
7 party liable for all or a portion of the judgment shall separately or
8 jointly with others post security in an amount necessary to secure
9 payment of the periodic payments. Security shall be posted within 30
10 days after the date the judgment is entered. A liability insurer
11 having a contractual obligation and another person adjudged to have an
12 obligation to pay all or part of a judgment for periodic payments
13 under AS 09.30.420 on behalf of a judgment debtor is obligated to post
14 security to the extent of its contractual or adjudged obligation if
15 the judgment debtor has not done so.

16 (b) A judgment creditor or successor in interest or a party
17 having rights under (d) of this section may move that the court find
18 that security has not been posted and maintained with regard to a
19 judgment obligation owing to the moving party under AS 09.30.400 -
20 09.30.490. Upon so finding, the court shall order that security
21 complying with this section be posted within 30 days. If security is
22 not posted within that time, and (c) of this section does not apply,
23 the court shall enter judgment against the judgment debtor for the
24 lump sum that would be awarded if AS 09.30.400 - 09.30.490 did not
25 apply.

26 (c) If a judgment debtor who is the only person liable for a
27 portion of a judgment for periodic payments under AS 09.30.420 fails
28 to post and maintain security, the right to lump-sum payment described
29 in (b) of this section applies only against that judgment debtor and

1 the portion of the judgment owed.

2 (d) If more than one party is liable for all or a portion of a
3 judgment requiring security under this section and the required secu-
4 rity is posted by one or more but fewer than all of the parties li-
5 able, the security requirements are satisfied and those posting secu-
6 rity may proceed under (b) of this section to enforce rights for
7 security or lump-sum payment to satisfy or protect rights of reim-
8 bursement from a party not posting security.

9 Sec. 09.30.440. ACTION FOR PAYMENT OF ANNUITY. If at any time
10 following entry of judgment, a judgment debtor fails to make a payment
11 in a timely fashion according to the terms of the part of the judgment
12 related to periodic payments, the judgment creditor may petition the
13 court that rendered the original judgment for an order requiring
14 payment by the judgment debtor of the outstanding payments in a lump
15 sum. In calculating the amount of the lump-sum judgment under this
16 section, the court shall total the remaining periodic payments due and
17 owing to the judgment creditor. This amount may not be converted to
18 its present value. The court may also require the payment of interest
19 on the outstanding judgment.

20 Sec. 09.30.450. EFFECT OF DEATH OF JUDGMENT CREDITOR. (a)
21 Unless otherwise agreed between the parties at the time security is
22 posted under AS 09.30.430, in an action covered under AS 09.30.410,
23 the liability for payment of periodic installments for medical,
24 dental, or other costs of health care or noneconomic loss not yet due
25 at the death of the judgment creditor terminates upon the death of the
26 judgment creditor.

27 (b) The portion of a periodic payment allocable to loss of
28 future earnings may not be reduced or terminated by reason of the
29 death of the judgment creditor, but shall be paid to persons to whom

1 the judgment creditor owed a duty of support immediately before death,
2 as provided by law at the time of death. The payments shall continue
3 for the remainder of the period as originally ordered or until the
4 duty of support ceases to exist, whichever occurs first. If the
5 judgment creditor does not owe a duty of support to any person at the
6 time of the judgment creditor's death or the duty ceases to exist
7 before all remaining payments have been made, the remaining payments
8 shall be considered part of the estate of the judgment creditor. Upon
9 petition of a party in interest, the portion of payments that become
10 part of the judgment creditor's estate may be converted to a lump sum
11 by calculating the present value of the payments.

12 Sec. 09.30.460. ADJUSTMENT OF PAYMENTS. (a) If, at any time
13 after entry of judgment under AS 09.30.420, a judgment creditor or
14 successor in interest can establish that continued payment of the
15 judgment in periodic installments will impose a hardship, the court
16 may order that the remaining payments or a portion of them shall be
17 made to the judgment creditor in a lump sum. Before entering an order
18 under this subsection the court must find that unanticipated and
19 substantial medical, dental, or other needs have arisen that warrant
20 the payment of a lump sum and that ordering a lump sum

21 (1) would not impose an unreasonable financial burden on
22 the judgment debtor;

23 (2) would accommodate the future medical and other needs of
24 the judgment creditor; and

25 (3) would further the interest of justice.

26 (b) If a lump-sum payment is ordered under (a) of this section,
27 the lump sum shall be calculated on the basis of the present value of
28 the remaining periodic payments, or portions of them, that are con-
29 verted into a lump-sum payment. The remaining future periodic

1 payments, if any, shall be reduced accordingly.

2 Sec. 09.30.470. ASSIGNMENT OF PERIODIC PAYMENTS. An assignment
3 of, or an agreement to assign, a right to periodic payments for future
4 damages contained in a judgment entered under AS 09.30.420 is enforce-
5 able only as to amounts

6 (1) to secure payment of alimony, maintenance, or child
7 support;

8 (2) for the cost of products, services, or accommodations
9 provided or to be provided by the assignee for medical, dental, or
10 other health care; or

11 (3) for attorney's fees and other expenses of litigation
12 incurred in securing the judgment.

13 Sec. 09.30.480. DUTIES OF DIRECTOR OF INSURANCE. The director
14 of the division of insurance, Department of Commerce and Economic
15 Development, shall adopt regulations for determining which insurers,
16 self-insurers, plans, or arrangements are financially qualified to
17 provide the security required under AS 09.30.430 and to be designated
18 as qualified insurers.

19 Sec. 09.30.490. SETTLEMENTS. The provisions of AS 09.30.400 -
20 09.30.490 may not be construed to limit the right of a party or an
21 insurer to settle claims as they consider appropriate and in their
22 complete discretion.

23 * Sec. 2. AS 09.55.548(a) is amended to read:

24 (a) Damages shall be awarded in accordance with principles of
25 the common law. The fact finder in a malpractice action shall render
26 any award for damages by category of loss in accordance with AS 09.-
27 30.410. A judgment that includes an award for future damages is gov-
28 erned by AS 09.30.400 - 09.30.490 [. THE COURT MAY ENTER A JUDGMENT
29 THAT FUTURE DAMAGES BE PAID IN WHOLE OR IN PART BY PERIODIC PAYMENTS

1 RATHER THAN BY A LUMP-SUM PAYMENT; THE JUDGMENT SHALL INCLUDE, IF
2 NECESSARY, OTHER PROVISIONS TO ASSURE THAT FUNDS ARE AVAILABLE AS
3 PERIODIC PAYMENTS BECOME DUE. INSURANCE FROM AN AUTHORIZED INSURER AS
4 DEFINED IN AS 21.90.080 OR FROM THE MEDICAL INDEMNITY CORPORATION OF
5 ALASKA IS SUFFICIENT ASSURANCE THAT FUNDS WILL BE AVAILABLE. ANY PART
6 OF THE AWARD WHICH IS PAID ON A PERIODIC BASIS SHALL BE ADJUSTED
7 ANNUALLY ACCORDING TO CHANGES IN THE CONSUMER PRICE INDEX IN THE
8 COMMUNITY WHERE THE CLAIMANT RESIDES]. In this subsection, future
9 damages includes damages for future medical treatment, care or cus-
10 tody, loss of future earnings, or loss of bodily function of the
11 claimant.

12 * Sec. 3. AS 09.30.410, enacted in sec. 1 of this Act, has the effect
13 of amending Alaska Rule of Civil Procedure 49 by requiring a jury to item-
14 ize a verdict in certain types of actions in order to show amounts awarded
15 for damages incurred before the verdict and amounts awarded for future
16 damages and to show special categories of future damages.

17 * Sec. 4. AS 09.30.410, 09.30.420, 09.30.440, and 09.30.460, enacted in
18 sec. 1 of this Act, have the effect of amending Alaska Rule of Civil Proce-
19 dure 58 by requiring the court to include specific items in a judgment.

20 * Sec. 5. APPLICABILITY. Sections 1 and 2 of this Act apply to causes
21 of action accruing on or after the effective date of this Act.

22 * Sec. 6. This Act takes effect immediately in accordance with AS 01.-
23 10.070(c).