

Introduced: 2/18/86  
Referred: Labor and Commerce,  
Judiciary and Finance

1 IN THE SENATE

BY V. FISCHER

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SENATE BILL NO. 444

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - SECOND SESSION

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A BILL

6 For an Act entitled: "An Act relating to civil actions; and amending

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Alaska Rules of Civil Procedure 49 and 58; and pro-

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viding for an effective date."

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

10 \* Section 1. AS 08.08 is amended by adding a new section to read:

11 Sec. 08.08.235. LIMITATION OF CONTINGENCY FEES IN TORT CASES.

12 (a) A person engaged in the practice of law in the state may not  
13 contract for or collect a contingency fee that exceeds the following  
14 limits for representing a person seeking damages for personal injury  
15 or property damage in connection with an action based on fault:

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(1) 40 percent of the first \$50,000 recovered;

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(2) 33 1/3 percent of the next \$50,000 recovered;

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(3) 25 percent of the next \$100,000 recovered;

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(4) 10 percent of the amount by which the recovery exceeds

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\$200,000.

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(b) The limits in (a) of this section apply whether the recovery  
22 is by settlement, arbitration, or judgment.

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(c) If periodic payments are awarded to a claimant under AS 09.-  
25 30.400 - 09.30.490, the court shall place a total value on the peri-  
26 odic payments based on the projected life expectancy of the claimant  
27 and include the total value in computing the total award from which  
attorneys' fees are calculated under this section.

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(d) In this section "recovered" means the net sum recovered  
after deducting the costs incurred for prosecution or settlement of

1 the claim; deductible costs do not include the costs of medical care  
2 incurred by the plaintiff or the office overhead costs of the attor-  
3 ney.

4 \* Sec. 2. AS 09.30 is amended by adding a new section to read:

5 Sec. 09.30.080. LIMITATION ON NONECONOMIC DAMAGES. In an action  
6 seeking damages for personal injury or property damage, a claimant may  
7 not recover damages for noneconomic losses in excess of \$500,000. In  
8 applying the limits of this section, damages for loss of consortium,  
9 loss of society and companionship, and destruction of the parent-child  
10 relationship that are recovered by a claimant who did not sustain  
11 bodily injury shall be added to noneconomic damages recovered by a  
12 claimant who did incur bodily injury if both claims arose out of the  
13 same conduct and are substantially related.

14 \* Sec. 3. AS 09.30 is amended by adding new sections to read:

15 ARTICLE 5. PERIODIC PAYMENT OF CERTAIN JUDGMENTS.

16 Sec. 09.30.400. APPLICABILITY OF AS 09.30.400 - 09.30.490. The  
17 provisions of AS 09.30.400 - 09.30.490 apply to an action based on  
18 fault where damages for personal injury or property damage are award-  
19 ed.

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

26 (1) noneconomic damages;

27 (2) reasonable expenses for necessary medical, surgical,  
28 x-ray, dental, or other health or rehabilitative services, drugs, and  
29 therapy;

1 (3) lost wages or loss of earning capacity; and

2 (4) other economic losses.

3 Sec. 09.30.420. PERIODIC PAYMENTS FOR FUTURE DAMAGES. (a) If  
4 an itemized verdict prepared under AS 09.30.410 indicates that the  
5 amount intended to compensate for future damages exceeds \$50,000, the  
6 court, at the request of the defendant, shall enter a judgment order-  
7 ing that the portion of future damages exceeding \$50,000 be paid by  
8 the defendant through purchase of an annuity contract approved by the  
9 director under AS 09.30.480.

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

20 (c) The court, as part of its judgment under this section, shall  
21 order the defendants and their insurance carriers to offer and to  
22 guarantee the purchase and payment of the annuity contract. The  
23 annuity contract shall provide for the payment of annual sums in equal  
24 monthly installments in advance. The annual payment for the first  
25 year shall be calculated by dividing the amount of future damages  
26 covered under the contract by the number of years over which payment  
27 will be made. The annual payment due in each succeeding year shall be  
28 computed by adding 10 and one-half percent to the previous year's  
29 payment.

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

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

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

27           (d) If more than one party is liable for all or a portion of a  
28 judgment requiring security under this section and the required secu-  
29 rity is posted by one or more but fewer than all of the parties

1        liable, the security requirements are satisfied and those posting  
2        security may proceed under (b) of this section to enforce rights for  
3        security or lump-sum payment to satisfy or protect rights of reim-  
4        bursement from a party not posting security.

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

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

23            (b) The portion of a periodic payment allocable to loss of  
24        future earnings may not be reduced or terminated by reason of the  
25        death of the judgment creditor, but shall be paid to persons to whom  
26        the judgment creditor owed a duty of support immediately before death,  
27        as provided by law at the time of death. The payments shall continue  
28        for the remainder of the period as originally ordered or until the  
29        duty of support ceases to exist, whichever occurs first. If the

1 judgment creditor does not owe a duty of support to any person at the  
2 time of the judgment creditor's death or the duty ceases to exist  
3 before all remaining payments have been made, the remaining payments  
4 shall be considered part of the estate of the judgment creditor. Upon  
5 petition of a party in interest, the portion of payments that become  
6 part of the judgment creditor's estate may be converted to a lump sum  
7 by calculating the present value of the payments.

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

17 (1) would not impose an unreasonable financial burden on  
18 the judgment debtor;

19 (2) would accommodate the future medical and other needs of  
20 the judgment creditor; and

21 (3) would further the interest of justice.

22 (b) If a lump-sum payment is ordered under (a) of this section,  
23 the lump sum shall be calculated on the basis of the present value of  
24 the remaining periodic payments, or portions of them, that are con-  
25 verted into a lump-sum payment. The remaining future periodic pay-  
26 ments, if any, shall be reduced accordingly.

27 Sec. 09.30.470. ASSIGNMENT OF PERIODIC PAYMENTS. An assignment  
28 of, or an agreement to assign, a right to periodic payments for future  
29 damages contained in a judgment entered under AS 09.30.420 is

1 enforceable only as to amounts

2 (1) to secure payment of alimony, maintenance, or child  
3 support;

4 (2) for the cost of products, services, or accommodations  
5 provided or to be provided by the assignee for medical, dental, or  
6 other health care; or

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

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

15 Sec. 09.30.490. SETTLEMENTS. The provisions of AS 09.30.400 -  
16 09.30.490 may not be construed to limit the right of a party or an  
17 insurer to settle claims as they consider appropriate and in their  
18 complete discretion.

19 \* Sec. 4. AS 09.55.548(a) is amended to read:

20 (a) Damages shall be awarded in accordance with principles of  
21 the common law. The fact finder in a malpractice action shall render  
22 any award for damages by category of loss in accordance with AS 09.-  
23 30.410. A judgment that includes an award for future damages is gov-  
24 erned by AS 09.30.400 - 09.30.490 [. THE COURT MAY ENTER A JUDGMENT  
25 THAT FUTURE DAMAGES BE PAID IN WHOLE OR IN PART BY PERIODIC PAYMENTS  
26 RATHER THAN BY A LUMP-SUM PAYMENT; THE JUDGMENT SHALL INCLUDE, IF  
27 NECESSARY, OTHER PROVISIONS TO ASSURE THAT FUNDS ARE AVAILABLE AS  
28 PERIODIC PAYMENTS BECOME DUE. INSURANCE FROM AN AUTHORIZED INSURER AS  
29 DEFINED IN AS 21.90.080 OR FROM THE MEDICAL INDEMNITY CORPORATION OF

1 ALASKA IS SUFFICIENT ASSURANCE THAT FUNDS WILL BE AVAILABLE. ANY PART  
2 OF THE AWARD WHICH IS PAID ON A PERIODIC BASIS SHALL BE ADJUSTED  
3 ANNUALLY ACCORDING TO CHANGES IN THE CONSUMER PRICE INDEX IN THE  
4 COMMUNITY WHERE THE CLAIMANT RESIDES]. In this subsection, future  
5 damages includes damages for future medical treatment, care or cus-  
6 tody, loss of future earnings, or loss of bodily function of the  
7 claimant.

8 \* Sec. 5. AS 09.30.410, enacted in sec. 3 of this Act; and  
9 AS 09.55.548(a), as amended by sec. 4 of this Act, have the effect of  
10 amending Alaska Rule of Civil Procedure 49 by requiring a jury to itemize a  
11 verdict in certain types of actions in order to show amounts awarded for  
12 damages incurred before the verdict and amounts awarded for future damages  
13 and to show special categories of future damages.

14 \* Sec. 6. AS 08.08.235(c), enacted in sec. 1 of this Act; AS 09.30.080,  
15 enacted in sec. 2 of this Act; AS 09.30.410, 09.30.420, 09.30.440, and  
16 09.30.460, enacted in sec. 3 of this Act; and AS 09.55.548(a) as amended by  
17 sec. 4 of this Act, have the effect of amending Alaska Rule of Civil Proce-  
18 dure 58 by requiring the court to include specific items in a judgment.

19 \* Sec. 7. APPLICABILITY. Sections 1 - 4 of this Act apply to causes of  
20 action accruing on or after the effective date of this Act.

21 \* Sec. 8. This Act takes effect immediately in accordance with AS 01.-  
22 10.070(c).