

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RULES COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 85 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability; and providing
7 for an effective date."

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

9 * Section 1. AS 09.17.010(b) is amended to read:

10 (b) The amount of noneconomic damages awarded by a court or jury
11 under (a) of this section may not exceed \$250,000 [\$500,000] for each
12 claim based on a separate incident or injury.

13 * Sec. 2. AS 09.17.020 is amended to read:

14 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
15 awarded in an action, whether in tort, contract, or otherwise, unless
16 supported by clear and convincing evidence of fraud, malice, gross
17 negligence, or reckless disregard by the defendant.

18 * Sec. 3. AS 09.17.030 is amended to read:

19 Sec. 09.17.030. 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 crime [FELONY],
23 the person has been convicted of the crime [FELONY], including con-
24 viction based on a guilty plea or plea of nolo contendere, and the
25 crime [FELONY] substantially contributed to the injury or death. This
26 subsection [SECTION] does not affect a right of action under 42 U.S.C.
27 1983.

28 * Sec. 4. AS 09.17.030 is amended by adding new subsections to read:

29 (b) This section does not apply to a person who suffers personal

1 injury or death if the person liable for the damages

2 (1) was engaged in the commission of a crime at the time
3 the personal injury or death occurred; and

4 (2) has been convicted of the crime, including conviction
5 based on a guilty plea or plea of nolo contendere.

6 (c) In this section "crime" has the meaning given in AS 11.81.-
7 900(b).

8 * Sec. 5. AS 09.17.040(d) is amended to read:

9 (d) In an action to recover damages, the court shall, at the
10 request of a [AN INJURED] party, enter judgment ordering that amounts
11 awarded a judgment creditor for future damages be paid to the maximum
12 extent feasible by periodic payments rather than by a lump-sum pay-
13 ment.

14 * Sec. 6. AS 09.17.040(f) is amended to read:

15 (f) A judgment ordering payment of future damages by periodic
16 payment shall specify the recipient, the dollar amount of the pay-
17 ments, including any increases in future payments for anticipated
18 inflation, the interval between payments, and the number of payments
19 or the period of time over which payments shall be made. Payments may
20 be modified only in the event of the death of the judgment creditor,
21 in which case payments may not be reduced or terminated, but shall be
22 paid to persons to whom the judgment creditor owed a duty of support,
23 as provided by law, immediately before death. In the event the judg-
24 ment creditor owed no duty of support to dependents at the time of the
25 judgment creditor's death, the money remaining shall be distributed in
26 accordance with a will of the deceased judgment creditor accepted into
27 probate or under the intestate laws of the state if the deceased had
28 no will.

29 * Sec. 7. AS 09.17.050(a) is amended to read:

1 (a) Unless the act or omission constituted gross negligence, a
2 person may not recover tort damages for personal injury, death, or
3 damage to property for an act or omission to act in the course and
4 scope of official duties, from [ONE OF] the following:

5 (1) a member of the board of directors or an officer of a
6 nonprofit corporation;

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

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

11 (4) a member of the governing body, a commission, or a
12 citizen's advisory committee of a municipality of the state;

13 (5) a member of the board of directors or an officer of an
14 electric or telephone cooperative organized under AS 10.25.

15 * Sec. 8. AS 09.17.070 is repealed and reenacted to read:

16 Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the
17 collateral source by law or contract must seek subrogation and except
18 death benefits paid under life insurance, a person may only recover
19 damages that exceed amounts received by that person as compensation
20 for the injuries from collateral sources, whether private, group, or
21 governmental, and whether contributory or noncontributory. Evidence
22 of collateral sources, other than a source that must by law or con-
23 tract seek subrogation and the death benefit paid under life insur-
24 ance, shall be considered by the trier of fact in determining the
25 amount of an award, and shall be considered by the court in determin-
26 ing if an award is excessive. The trier of fact shall be informed of
27 the tax implications of an award of damages. The court may take into
28 account the value of the person's rights to coverage exhausted or
29 depleted by payment of these collateral benefits by adding back a

1 reasonable estimate of their probable value, or by earmarking and
2 holding for possible periodic payment under AS 09.17.040 that amount
3 of the award that would otherwise have been deducted, to see if the
4 impairment of the person's rights actually takes place in the future.

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

7 * Sec. 9. AS 09.17.080(d) is repealed and reenacted to read:

8 (d) In an action involving hazardous waste, environmental pol-
9 lution, or violation of state or federal antitrust statutes, the court
10 shall enter judgment against each party liable on the basis of joint
11 and several liability. In all other actions the court shall enter
12 judgment against each party liable on the basis of several liability
13 in accordance with that party's percentage of fault.

14 * Sec. 10. AS 09.17 is amended by adding a new section to read:

15 Sec. 09.17.100. CIVIL LIABILITY OF ZOOS. (a) A person may not
16 recover damages for injury to person or property from a zoo or a zoo
17 operator, if the damages occurred as a result of an inherent risk of
18 attendance at a zoo, notice of the inherent risk was posted as re-
19 quired under (b) of this section, and the zoo operator exercised
20 reasonable care to prevent the injury.

21 (b) A zoo operator shall post signs at prominent places within a
22 zoo and at each zoo entrance. Each sign shall include a statement
23 warning that the zoo is not liable for injuries to person or property
24 occurring as a result of dangers or conditions inherent in attending
25 the zoo.

26 (c) In this section

27 (1) "inherent risk of attendance" means the dangers or
28 conditions that are an integral part of a zoo and the physical prox-
29 imity of wild animals;

1 (2) "zoo" means a place where wild animals are kept for
2 exhibition to the public that is

3 (A) owned by the state or a municipality; or

4 (B) owned and operated by a nonprofit organization.

5 * Sec. 11. AS 09.17.900 is amended to read:

6 Sec. 09.17.900. DEFINITIONS [DEFINITION]. In this chapter

7 (1) "economic losses" means objectively verifiable monetary
8 losses and losses consisting of the value of contributions from non-
9 wage earning roles of persons, including homemakers, retired persons,
10 and persons living a subsistence lifestyle;

11 (2) "fault" includes acts or omissions that are in any
12 measure negligent or reckless toward the person or property of the
13 actor or others, or that subject a person to strict tort liability;
14 the [. THE] term also includes breach of warranty, unreasonable
15 assumption of risk not constituting an enforceable express consent,
16 misuse of a product for which the defendant otherwise would be liable,
17 and unreasonable failure to avoid an injury or to mitigate damages;
18 legal [. LEGAL] requirements of causal relation apply both to fault
19 as the basis for liability and to contributory fault;

20 (3) "noneconomic losses" means nonmonetary damages and
21 includes pain, suffering, inconvenience, mental anguish, emotional
22 distress, and all other nonpecuniary damages.

23 * Sec. 12. AS 09.60.010 is amended to read:

24 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
25 court shall determine by rule or order the costs, if any, that may be
26 allowed a prevailing party in a civil action. Unless specifically
27 authorized by statute or by agreement between the parties, attorney
28 fees may not be awarded to a party in a civil action for personal
29 injury, death, or property damage related to or arising out of fault,

1 as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED
2 WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].

3 * Sec. 13. AS 09.65.090 is amended by adding new subsections to read:

4 (c) A member of an organization that exists for the purpose of
5 providing emergency services is not liable for civil damages for
6 injury to a person that results from an act or omission in providing
7 first aid, search, rescue, or other emergency services to the person,
8 regardless of whether the member is under a preexisting duty to render
9 assistance, if the member provided the service while acting as a
10 volunteer member of the organization; in this paragraph, "volunteer"
11 means a person who is paid not more than \$10 a day and a total of not
12 more than \$500 a year, not including ski lift tickets and reimburse-
13 ment for expenses actually incurred, for providing emergency services.

14 (d) The immunity provided under (c) of this section does not
15 apply to civil damages that result from providing or attempting to
16 provide any of the following advanced life support techniques unless
17 the person who provided them was authorized by law to provide them:

- 18 (1) electric cardiac defibrillation;
- 19 (2) administration of antiarrhythmic agents;
- 20 (3) intravenous therapy;
- 21 (4) intramuscular therapy; or
- 22 (5) use of endotracheal intubation devices.

23 * Sec. 14. AS 09.65 is amended by adding a new section to read:

24 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.

25 (a) A hospital that is required to provide services by AS 18.20 or
26 regulations implementing that chapter, or that is subject to regu-
27 lation with respect to the provision of services, is not, solely for
28 that reason, liable for civil damages as a result of an act or omis-
29 sion in administering those services by a health care provider who is

1 not an employee of the hospital.

2 (b) Compliance with the standards of a public or private licens-
3 ing or accreditation agency with respect to provision of services or
4 adoption of bylaws or regulations by the hospital governing provision
5 of services, may not be construed as an assumption of civil liability
6 by the hospital for the acts or omissions of a physician or other
7 health care provider who is not an employee of the hospital.

8 (c) This section does not preclude liability for civil damages
9 that are the proximate result of the hospital's own negligence or
10 intentional misconduct.

11 (d) In this section, "health care provider" has the meaning
12 given in AS 18.23.070, except that it does not include a hospital or
13 an employee of the hospital.

14 * Sec. 15. AS 21.06.110 is amended to read:

15 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
16 calendar year as is reasonably possible the director shall prepare and
17 deliver an annual report to the legislature and the commissioner,
18 showing, with respect to the preceding calendar year,

19 (1) a list of the authorized insurers transacting insurance
20 in Alaska, with such summary of their financial statement as the
21 director considers appropriate;

22 (2) the name of each insurer whose business was closed
23 during the year, the cause of the closing, and the amount of ascer-
24 tainable assets and liabilities of each closed business;

25 (3) the name of each insurer against which delinquency or
26 similar proceedings were instituted, and a concise statement of the
27 facts with respect to each proceeding and its present status;

28 (4) a statement in regard to examination of rating organi-
29 zations, advisory organizations, joint underwriters, and joint

1 reinsurers as required by AS 21.39.120;

2 (5) the receipts and expenses of the division for the year;

3 (6) recommendations of the director as to amendments or
4 supplementation of laws affecting insurance, or the office of direc-
5 tor;

6 (7) other pertinent information and matters the director
7 considers proper;

8 (8) an analysis of medical malpractice insurance rate
9 changes occurring as a result of court decisions in the state involv-
10 ing personal injury or death.

11 * Sec. 16. AS 46.03.822 is repealed and reenacted to read:

12 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
13 SUBSTANCES. (a) The following persons are strictly liable, jointly
14 and severally, for damages to persons or property, public or private,
15 including damage to the natural resources of the state and the costs
16 of response, containment, removal, or remedial action incurred by the
17 state or a municipality, resulting from a release of a hazardous
18 substance or, with respect to response costs, the substantial threat
19 of a release of a hazardous substance:

20 (1) the owner and the person having control over the hazar-
21 dous substance at the time of the release or threatened release;

22 (2) the owner and the operator of the facility or vessel
23 from which the release occurred or was threatened to occur; in the
24 case of an abandoned facility or vessel, the owner, the operator, and
25 any other person who controlled activities at the facility or on the
26 vessel immediately before the abandonment;

27 (3) a person who owned or operated the facility or vessel
28 from which the release occurred or was threatened to occur at the time
29 the hazardous substance was received by the facility or vessel;

1 (4) a person who owned the hazardous substance and who
2 arranged for disposal or treatment of the substance by another party
3 or entity, or arranged with a transporter to transport the substance
4 for disposal or treatment by another party or entity, at a facility or
5 incineration vessel that contained the substance and that was owned or
6 operated by the party or entity; and

7 (5) a person who transported or accepted the hazardous
8 substance for transport to the facility, vessel, or site from which
9 the release occurred or was threatened to occur, if the person select-
10 ed the facility, vessel, or site.

11 (b) In an action to recover damages, a person otherwise liable
12 is relieved from strict liability if the person proves by clear and
13 convincing evidence

14 (1) that the release or threatened release of the hazardous
15 substance to which the damages relate occurred solely as a result of

16 (A) an act of war;

17 (B) an intentional or negligent act of a third party,
18 other than a party or its employees in privity of contract with,
19 or employed by, the person, and that the person

20 (i) exercised due care with respect to the haz-
21 ardous substance; and

22 (ii) took reasonable precautions against the act
23 of the third party and against the consequences of the act;

24 or

25 (C) an act of God; and

26 (2) in relation to (1)(B) or (C) of this subsection, that
27 the person, within a reasonable period of time after the act occurred,

28 (A) discovered the release or threatened release of
29 the hazardous substance; and

1 (B) began operations to contain and clean up the
2 hazardous substance.

3 (c) For purposes of (b)(1)(B) of this section, a third party or
4 an employee of a third party is in privity of contract with the person
5 who is otherwise liable if the third party or employee and the person
6 are parties to a land contract, deed, or other instrument transferring
7 title or possession, unless the real property on which the facility in
8 question is located was acquired by the person after the disposal or
9 placement of the hazardous substance on, in, or at the facility, and
10 the person by a preponderance of the evidence establishes that the
11 person has satisfied the requirements of (b)(1)(B) of this section and
12 establishes one or more of the following circumstances:

13 (1) at the time the person acquired the facility the person
14 did not know and had no reason to know that a hazardous substance that
15 is the subject of the release or threatened release was disposed of
16 on, in, or at the facility;

17 (2) the person is a government entity that acquired the
18 facility by escheat, or through another involuntary transfer or acqui-
19 sition, or through the exercise of eminent domain authority by pur-
20 chase or condemnation;

21 (3) the person acquired the facility by inheritance or
22 bequest.

23 (d) To establish that a person had no reason to know that the
24 hazardous substance was disposed of, on, in, or at the facility, as
25 provided in (c)(1) of this section, the person must have undertaken,
26 at the time of acquisition, all appropriate inquiries into the previ-
27 ous ownership and uses of the property consistent with good commercial
28 or customary practice in an effort to minimize liability. For pur-
29 poses of this subsection the court shall take into account any

1 specialized knowledge or experience the person has; the relationship
2 of the purchase price to the value of the property if uncontaminated;
3 commonly known or reasonably ascertainable information about the
4 property; the obviousness of the presence or likely presence of con-
5 tamination at the property; and the ability to detect contamination by
6 appropriate inspection.

7 (e) This section does not diminish the liability of a person who
8 previously owned or operated a facility and who would otherwise be
9 liable; however, if the person obtained actual knowledge of the re-
10 lease or threatened release of a hazardous substance at the facility
11 and subsequently transferred ownership to another without disclosing
12 that knowledge, the person is liable under (a)(2) of this section, and
13 a defense under (b)(1)(B) of this section is not available to the
14 person.

15 (f) This section does not affect the liability of a person who,
16 by an act or omission, caused or contributed to the release or threat-
17 ened release of a hazardous substance that is the subject of the
18 action relating to the facility.

19 (g) An indemnification, hold harmless, or similar agreement or
20 conveyance is not effective to transfer liability under this section
21 from the owner or operator of a vessel or facility or from a person
22 who may be liable for a release or substantial threat of a release
23 under this section. This subsection does not bar an agreement to
24 insure, hold harmless, or indemnify a party to the agreement for
25 liability under this section. This subsection does not bar a cause of
26 action that an owner or operator or other person subject to liability
27 under this section, or a guarantor, has or would have, by reason of
28 subrogation or otherwise against a person.

29 * Sec. 17. AS 46.03.826 is amended by adding a new paragraph to read:

1 (8) "facility" includes a

2 (A) building; structure; installation; equipment; pipe
3 or pipeline, including a pipe into a sewer or publicly owned
4 treatment works; well; pit; pond; lagoon; impoundment; ditch;
5 landfill; storage container; motor vehicle; rolling stock; or
6 aircraft; or

7 (B) site or area at which a hazardous substance has
8 been deposited, stored, disposed of, placed, or otherwise locat-
9 ed.

10 * Sec. 18. AS 47.37.170(g) is repealed and reenacted to read:

11 (g) A person may not bring a civil action based on the decision
12 of a peace officer or member of the emergency service patrol to take
13 or not to take an intoxicated or incapacitated person into protective
14 custody or to release a person from protective custody as provided in
15 this section, unless the decision is made maliciously.

16 * Sec. 19. AS 09.17.010(c) and 09.17.040(c) are repealed.

17 * Sec. 20. REPORT. The Department of Law, with the assistance of the
18 Department of Commerce and Economic Development and with the cooperation of
19 all state agencies, shall report to the legislature by the 30th day of the
20 Second Session of the Sixteenth Alaska State Legislature on closed insur-
21 ance claims and insurance company finances. The report must consist of

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

23 (A) the extent to which the legal system has or has not
24 been the cause of dramatic liability insurance increases or decreases
25 and coverage reduction in crisis lines in the state;

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

27 (C) what the various specific tort reform proposals have
28 actually accomplished; and

29 (D) if the passage of this Act has resulted in a measurable

1 decrease in insurance rates in the state;

2 (2) a study of insurance company finances to determine the
3 extent to which

4 (A) dramatic liability insurance rate increases and cover-
5 age limitations in the state are, or are not, cost-justified in re-
6 lation to awards, settlements, and relevant court decisions in the
7 state involving personal injury, death, or property damage based on
8 fault; and

9 (B) legislative or regulatory actions affecting the tort
10 system in the state are necessary to resolve the state's liability
11 insurance rate increases.

12 * Sec. 21. APPLICABILITY. This Act applies to all causes of action
13 accruing on or after the effective date of this Act.

14 * Sec. 22. SEVERABILITY. If any provision of this Act, or the applica-
15 tion thereof to any person or circumstance is held invalid, the remainder
16 of this Act and the application to other persons or circumstances is not
17 affected thereby.

18 * Sec. 23. This Act takes effect immediately under AS 01.10.070(c).