Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE RULES COMMITTEE

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

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 09.17.020 is amended to read:

10 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be

11 awarded in an action, whether in tort, contract, or otherwise, unless

12 supported by clear and convincing evidence <u>of fraud, malice, gross</u>

13 <u>negligence, or reckless disregard by the defendant</u>.

14 * Sec. 2. AS 09.17.030 is amended to read:

15 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A

16 person who suffers personal injury or death may not recover damages

17 for the personal injury or death if the injuries or death occurred

18 while the person was engaged in the commission of a <u>crime</u> [FELONY],

19 the person has been convicted of the <u>crime</u> [FELONY], including con-

20 viction based on a guilty plea or plea of nolo contendere, and the

21 <u>crime</u> [FELONY] substantially contributed to the injury or death. This

22 <u>subsection</u> [SECTION] does not affect a right of action under 42 U.S.C.

23 1983.

24 * Sec. 3. AS 09.17.030 is amended by adding new subsections to read:

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

26 injury or death if the person liable for the damages

27 (1) was engaged in the commission of a crime at the time

28 the personal injury or death occurred; and

29 (2) has been convicted of the crime, including conviction

1 based on a guilty plea or plea of nolo contendere.

2 (c) In this section "crime" has the meaning given in AS 11.81.-

3 900(b).

4 * Sec. 4. AS 09.17.040(d) is amended to read:

5 (d) In an action to recover damages, the court shall, at the

6 request of a [AN INJURED] party, enter judgment ordering that amounts

7 awarded a judgment creditor for future damages be paid to the maximum

8 extent feasible by periodic payments rather than by a lump-sum pay-

9 ment. If a portion of the judgment awarded is owed to an attorney

10 under a contingent fee agreement, that portion of the judgment shall

11 be reduced to present value and paid in a lump-sum payment.

12 * Sec. 5. AS 09.17.040(f) is amended to read:

13 (f) A judgment ordering payment of future damages by periodic

14 payment shall specify the recipient, the dollar amount of the pay-

15 ments, including any increases in future payments for anticipated

16 inflation, the interval between payments, and the number of payments

17 or the period of time over which payments shall be made. Payments may

18 be modified only in the event of the death of the judgment creditor,

19 in which case payments may not be reduced or terminated, but shall be

20 paid to persons to whom the judgment creditor owed a duty of support,

21 as provided by law, immediately before death. In the event the judg-

22 ment creditor owed no duty of support to dependents at the time of the

23 judgment creditor's death, the money remaining shall be distributed in

24 accordance with a will of the deceased judgment creditor accepted into

25 probate or under the intestate laws of the state if the deceased had

26 no will.

27 * Sec. 6. AS 09.17.050(a) is amended to read:

28 (a) Unless the act or omission constituted gross negligence, a

29 person may not recover tort damages for personal injury, death, or

1 damage to property for an act or omission to act in the course and
2 scope of official duties, from [ONE OF] the following:
3 (1) a member of the board of directors or an officer of a
4 nonprofit corporation;
5 (2) a member of the board of directors of a public or
6 nonprofit hospital, or a member of a citizen's advisory board of any
7 hospital;
8 (3) a member of a school board of a school district;
9 (4) a member of the governing body, a commission, or a
10 citizen's advisory committee of a municipality of the state;
11 (5) a member of the board of directors or an officer of an
12 electric or telephone cooperative organized under AS 10.25.
13 * Sec. 7. AS 09.17.070 is repealed and reenacted to read:
14 Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the
15 collateral source by law or contract may seek subrogation and except
16 death benefits paid under life insurance, a person may only recover
17 damages that exceed amounts received by that person as compensation
18 for the injuries from collateral sources, whether private, group, or
19 governmental, and whether contributory or noncontributory. Evidence
20 of collateral sources, other than a source that may by law or contract
21 seek subrogation and the death benefit paid under life insurance,
22 shall be considered by the trier of fact in determining the amount of
23 an award, and shall be considered by the court in determining if an
24 award is excessive. The trier of fact shall be informed of the tax
25 implications of an award of damages. The court may take into account
26 the value of the person's rights to coverage exhausted or depleted by
27 payment of these collateral benefits by adding back a reasonable
28 estimate of their probable value, or by earmarking and holding for
29 possible periodic payment under AS 09.17.040 that amount of the award

1 that would otherwise have been deducted, to see if the impairment of
2 the person's rights actually takes place in the future.
3 (b) This section does not apply to a medical malpractice action
4 filed under AS 09.55.
5 * Sec. 8. AS 09.17.080(d) is repealed and reenacted to read:
6 (d) In an action involving hazardous waste, environmental pol-
7 lution, or violation of state or federal antitrust statutes, the court
8 shall enter judgment against each party liable on the basis of joint
9 and several liability. In all other actions the court shall enter
10 judgment against each party liable on the basis of several liability
11 in accordance with that party's percentage of fault.
12 * Sec. 9. AS 09.17 is amended by adding a new section to read:
13 Sec. 09.17.100. CIVIL LIABILITY OF ZOOS. (a) A person may not
14 recover damages for injury to person or property from a zoo or a zoo
15 operator, if the damages occurred as a result of an inherent risk of
16 attendance at a zoo, notice of the inherent risk was posted as re-
17 quired under (b) of this section, and the zoo operator exercised
18 reasonable care to prevent the injury.
19 (b) A zoo operator shall post signs at prominent places within a
20 zoo and at each zoo entrance. Each sign shall include a statement
21 warning that the zoo is not liable for injuries to person or property
22 occurring as a result of dangers or conditions inherent in attending
23 the zoo.
24 (c) In this section
25 (1) "inherent risk of attendance" means the dangers or
26 conditions that are an integral part of a zoo and the physical prox-
27 imity of wild animals;
28 (2) "zoo" means a place where wild animals are kept for
29 exhibition to the public that is

1 (A) owned by the state or a municipality; or
2 (B) owned and operated by a nonprofit organization.
3 * Sec. 10. AS 09.60.010 is amended to read:
4 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
5 court shall determine by rule or order the costs, if any, that may be
6 allowed a prevailing party in a civil action. Unless specifically
7 authorized by statute or by agreement between the parties, attorney
8 fees may not be awarded to a party in a civil action for personal
9 injury, death, or property damage related to or arising out of fault,
10 as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED
11 WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].
12 * Sec. 11. AS 09.65 is amended by adding a new section to read:
13 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.
14 (a) A hospital that is required to provide services by AS 18.20 or
15 regulations implementing that chapter, or that is subject to regu-
16 lation with respect to the provision of services, is not, solely for
17 that reason, liable for civil damages as a result of an act or omis-
18 sion in administering those services by a health care provider who is
19 not an employee of the hospital.
20 (b) Compliance with the standards of a public or private licens-
21 ing or accreditation agency with respect to provision of services or
22 adoption of bylaws or regulations by the hospital governing provision
23 of services, may not be construed as an assumption of civil liability
24 by the hospital for the acts or omissions of a physician or other
25 health care provider who is not an employee of the hospital.
26 (c) This section does not preclude liability for civil damages
27 that are the proximate result of the hospital's own negligence or
28 intentional misconduct, including negligence in contracting with a
29 specific health care provider.

1 (d) In this section, "health care provider" has the meaning
2 given in AS 18.23.070, except that it does not include a hospital or
3 an employee of the hospital.
4 * Sec. 12. AS 21.06.110 is amended to read:
5 Sec. 21.06.110. DIRECTOR'S ANNUAL REPORT. As early in each
6 calendar year as is reasonably possible the director shall prepare and
7 deliver an annual report to the legislature and the commissioner,
8 showing, with respect to the preceding calendar year,
9 (1) a list of the authorized insurers transacting insurance
10 in Alaska, with such summary of their financial statement as the
11 director considers appropriate;
12 (2) the name of each insurer whose business was closed
13 during the year, the cause of the closing, and the amount of ascer-
14 tainable assets and liabilities of each closed business;
15 (3) the name of each insurer against which delinquency or
16 similar proceedings were instituted, and a concise statement of the
17 facts with respect to each proceeding and its present status;
18 (4) a statement in regard to examination of rating organi-
19 zations, advisory organizations, joint underwriters, and joint rein-
20 surers as required by AS 21.39.120;
21 (5) the receipts and expenses of the division for the year;
22 (6) recommendations of the director as to amendments or
23 supplementation of laws affecting insurance, or the office of direc-
24 tor;
25 (7) other pertinent information and matters the director
26 considers proper;
27 (8) an analysis of medical malpractice insurance rate
28 changes occurring as a result of court decisions in the state involv-
29 ing personal injury or death.

1 * Sec. 13. AS 46.03.822 is repealed and reenacted to read:
2 Sec. 46.03.822. STRICT LIABILITY FOR THE RELEASE OF HAZARDOUS
3 SUBSTANCES. (a) The following persons are strictly liable, jointly
4 and severally, for damages to persons or property, public or private,
5 including damage to the natural resources of the state and the costs
6 of response, containment, removal, or remedial action incurred by the
7 state or a municipality, resulting from a release of a hazardous
8 substance or, with respect to response costs, the substantial threat
9 of a release of a hazardous substance:
10 (1) the owner and the person having control over the hazar-
11 dous substance at the time of the release or threatened release;
12 (2) the owner and the operator of the facility or vessel
13 from which the release occurred or was threatened to occur; in the
14 case of an abandoned facility or vessel, the owner, the operator, and
15 any other person who controlled activities at the facility or on the
16 vessel immediately before the abandonment;
17 (3) a person who owned or operated the facility or vessel
18 from which the release occurred or was threatened to occur at the time
19 the hazardous substance was received by the facility or vessel;
20 (4) a person who owned the hazardous substance and who
21 arranged for disposal or treatment of the substance by another party
22 or entity, or arranged with a transporter to transport the substance
23 for disposal or treatment by another party or entity, at a facility or
24 incineration vessel that contained the substance and that was owned or
25 operated by the party or entity; and
26 (5) a person who transported or accepted the hazardous
27 substance for transport to the facility, vessel, or site from which
28 the release occurred or was threatened to occur, if the person select-
29 ed the facility, vessel, or site.

1 (b) In an action to recover damages, a person otherwise liable
2 is relieved from strict liability if the person proves by clear and
3 convincing evidence
4 (1) that the release or threatened release of the hazardous
5 substance to which the damages relate occurred solely as a result of
6 (A) an act of war;
7 (B) an intentional or negligent act of a third party,
8 other than a party or its employees in privity of contract with,
9 or employed by, the person, and that the person
10 (i) exercised due care with respect to the haz-
11 ardous substance; and
12 (ii) took reasonable precautions against the act
13 of the third party and against the consequences of the act;
14 or
15 (C) an act of God; and
16 (2) in relation to (1)(B) or (C) of this subsection, that
17 the person, within a reasonable period of time after the act occurred,
18 (A) discovered the release or threatened release of
19 the hazardous substance; and
20 (B) began operations to contain and clean up the
21 hazardous substance.
22 (c) For purposes of (b)(1)(B) of this section, a third party or
23 an employee of a third party is in privity of contract with the person
24 who is otherwise liable if the third party or employee and the person
25 are parties to a land contract, deed, or other instrument transferring
26 title or possession, unless the real property on which the facility in
27 question is located was acquired by the person after the disposal or
28 placement of the hazardous substance on, in, or at the facility, and
29 the person by a preponderance of the evidence establishes that the

1 person has satisfied the requirements of (b)(1)(B) of this section and
2 establishes one or more of the following circumstances:
3 (1) at the time the person acquired the facility the person
4 did not know and had no reason to know that a hazardous substance that
5 is the subject of the release or threatened release was disposed of
6 on, in, or at the facility;
7 (2) the person is a government entity that acquired the
8 facility by escheat, or through another involuntary transfer or acqui-
9 sition, or through the exercise of eminent domain authority by pur-
10 chase or condemnation;
11 (3) the person acquired the facility by inheritance or
12 bequest.
13 (d) To establish that a person had no reason to know that the
14 hazardous substance was disposed of, on, in, or at the facility, as
15 provided in (c)(1) of this section, the person must have undertaken,
16 at the time of acquisition, all appropriate inquiries into the previ-
17 ous ownership and uses of the property consistent with good commercial
18 or customary practice in an effort to minimize liability. For pur-
19 poses of this subsection the court shall take into account any spe-
20 cialized knowledge or experience the person has; the relationship of
21 the purchase price to the value of the property if uncontaminated;
22 commonly known or reasonably ascertainable information about the
23 property; the obviousness of the presence or likely presence of con-
24 tamination at the property; and the ability to detect contamination by
25 appropriate inspection.
26 (e) This section does not diminish the liability of a person who
27 previously owned or operated a facility and who would otherwise be
28 liable; however, if the person obtained actual knowledge of the re-
29 lease or threatened release of a hazardous substance at the facility

1 and subsequently transferred ownership to another without disclosing
2 that knowledge, the person is liable under (a)(2) of this section, and
3 a defense under (b)(1)(B) of this section is not available to the
4 person.
5 (f) This section does not affect the liability of a person who,
6 by an act or omission, caused or contributed to the release or threat-
7 ened release of a hazardous substance that is the subject of the
8 action relating to the facility.
9 (g) An indemnification, hold harmless, or similar agreement or
10 conveyance is not effective to transfer liability under this section
11 from the owner or operator of a vessel or facility or from a person
12 who may be liable for a release or substantial threat of a release
13 under this section. This subsection does not bar an agreement to
14 insure, hold harmless, or indemnify a party to the agreement for
15 liability under this section. This subsection does not bar a cause of
16 action that an owner or operator or other person subject to liability
17 under this section, or a guarantor, has or would have, by reason of
18 subrogation or otherwise against a person.
19 * Sec. 14. AS 46.03.826 is amended by adding a new paragraph to read:
20 (8) "facility" includes a
21 (A) building; structure; installation; equipment; pipe
22 or pipeline, including a pipe into a sewer or publicly owned
23 treatment works; well; pit; pond; lagoon; impoundment; ditch;
24 landfill; storage container; motor vehicle; rolling stock; or
25 aircraft; or
26 (B) site or area at which a hazardous substance has
27 been deposited, stored, disposed of, placed, or otherwise locat-
28 ed.
29 * Sec. 15. AS 47.37.170(g) is repealed and reenacted to read:

1 (g) A person may not bring a civil action based on the decision
2 of a peace officer or member of the emergency service patrol to take
3 or not to take an intoxicated or incapacitated person into protective
4 custody or to release a person from protective custody as provided in
5 this section, unless the decision is made maliciously.
6 * Sec. 16. AS 09.17.010(c) and 09.17.040(c) are repealed.
7 * Sec. 17. REPORT. The Department of Law, with the assistance of the
8 Department of Commerce and Economic Development and with the cooperation of
9 all state agencies, shall report to the legislature by the 30th day of the
10 Second Session of the Sixteenth Alaska State Legislature on closed insur-
11 ance claims and insurance company finances. The report must consist of
12 (1) a study of closed insurance claims to identify
13 (A) the extent to which the legal system has or has not
14 been the cause of dramatic liability insurance increases or decreases
15 and coverage reduction in crisis lines in the state;
16 (B) how victims are faring under the present system;
17 (C) what the various specific tort reform proposals have
18 actually accomplished; and
19 (D) if the passage of this Act has resulted in a measurable
20 decrease in insurance rates in the state;
21 (2) a study of insurance company finances to determine the
22 extent to which
23 (A) dramatic liability insurance rate increases and cover-
24 age limitations in the state are, or are not, cost-justified in re-
25 lation to awards, settlements, and relevant court decisions in the
26 state involving personal injury, death, or property damage based on
27 fault; and
28 (B) legislative or regulatory actions affecting the tort
29 system in the state are necessary to resolve the state's liability

1 insurance rate increases.

2 * Sec. 18. APPLICABILITY. This Act applies to all causes of action

3 accruing on or after the effective date of this Act.

4 * Sec. 19. SEVERABILITY. If any provision of this Act, or the applica-

5 tion thereof to any person or circumstance is held invalid, the remainder

6 of this Act and the application to other persons or circumstances is not

7 affected thereby.

8 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c)."

9