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1 IN THE SENATE

2 SENATE BILL NO. 211

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability; amending Alaska
7 Rule of Civil Procedure 82; and providing for an
8 effective date."

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

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

11 (b) The amount of noneconomic damages awarded by a court or jury
12 under (a) of this section may not exceed \$100,000 [\$500,000] for each
13 claim based on a separate incident or injury.

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

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

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

20 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
21 person who suffers personal injury or death may not recover damages
22 for the personal injury or death if the injuries or death occurred
23 while the person was engaged in the commission of a crime [FELONY],
24 the person has been convicted of the crime [FELONY], including con-
25 viction based on a guilty plea or plea of nolo contendere, and the
26 crime [FELONY SUBSTANTIALLY] contributed to the injury or death. This
27 section does not affect a right of action under 42 U.S.C. 1983.

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

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

1 request of a [AN INJURED] party, enter judgment ordering that amounts
2 awarded a judgment creditor for future damages be paid to the maximum
3 extent feasible by periodic payments rather than by a lump-sum pay-
4 ment.

5 * Sec. 5. AS 09.17.050(a) is amended to read:

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

10 (1) a member of the board of directors or an officer of a
11 nonprofit corporation;

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

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

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

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

20 * Sec. 6. AS 09.17.070 is repealed and reenacted to read:

21 Sec. 09.17.070. COLLATERAL BENEFITS. Except when the collateral
22 source is a federal program that by law must seek subrogation and
23 except death benefits paid under life insurance, a person may only
24 recover damages that exceed amounts received by that person as compen-
25 sation for the injuries from collateral sources, whether private,
26 group, or governmental, and whether contributory or noncontributory.
27 Evidence of collateral sources, other than a federal program that must
28 by law seek subrogation and the death benefit paid under life insur-
29 ance, shall be considered by the trier of fact in determining the

1 amount of an award, and shall be considered by the court in determin-
2 ing if an award is excessive. The trier of fact shall be informed of
3 the tax implications of an award of damages. The court may take into
4 account the value of the person's rights to coverage exhausted or
5 depleted by payment of these collateral benefits by adding back a
6 reasonable estimate of their probable value, or by earmarking and
7 holding for possible periodic payment under AS 09.17.040 that amount
8 of the award that would otherwise have been deducted, to see if the
9 impairment of the person's rights actually takes place in the future.

10 * Sec. 7. AS 09.17.080(d) is amended to read:

11 (d) The court shall enter judgment against each party liable on
12 the basis of [JOINT AND] several liability [, EXCEPT THAT A PARTY WHO
13 IS ALLOCATED LESS THAN 50 PERCENT OF THE TOTAL FAULT ALLOCATED TO ALL
14 THE PARTIES MAY NOT BE JOINTLY LIABLE FOR MORE THAN TWICE THE PERCENT-
15 AGE OF FAULT ALLOCATED TO THAT PARTY].

16 * Sec. 8. AS 09.17.900 is amended to read:

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

18 (1) "economic losses" means objectively verifiable monetary
19 losses;

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

29 (3) "noneconomic losses" means subjective, nonpecuniary

1 damages and includes pain, suffering, inconvenience, physical impair-
2 ment, disfigurement, mental anguish, emotional distress, and all other
3 nonpecuniary damages.

4 * Sec. 9. AS 09.60.010 is amended to read:

5 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
6 court shall determine by rule or order the costs, if any, that may be
7 allowed a prevailing party in a civil action. Unless specifically
8 authorized by statute or by agreement between the parties, attorney
9 fees may not be awarded to a party in a civil action for personal
10 injury, death, or property damage related to or arising out of fault,
11 as defined in AS 09.17.900 [, UNLESS THE CIVIL ACTION IS CONTESTED
12 WITHOUT TRIAL, OR FULLY CONTESTED AS DETERMINED BY THE COURT].

13 * Sec. 10. AS 09.16; AS 09.17.010(c), 09.17.040(c), and AS 09.55.548(b)
14 are repealed.

15 * Sec. 11. AS 09.60.010, as amended in sec. 9 of this Act, has the
16 effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the
17 award of attorney fees to the prevailing party in certain civil actions
18 based on fault, unless allowed by statute or by agreement of the parties.

19 * Sec. 12. Sections 1 - 10 of this Act apply to all causes of action
20 accruing after the effective date of this Act.

21 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).