

Offered: 3/4/88
Referred: Finance

5-0554X

Original sponsors: Faiks, Abood,
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1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 211 (Judiciary)
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; 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 \$250,000 [\$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 disregard 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. In
28 this section "crime" has the meaning given in AS 11.81.900(b).

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

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

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

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

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

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

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

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

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

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 AS 09.17.070 is repealed and reenacted to read:

22 Sec. 09.17.070. COLLATERAL BENEFITS. Except when the collateral
23 source by law or contract must seek subrogation and except death
24 benefits paid under life insurance, a person may only recover damages
25 that exceed amounts received by that person as compensation for the
26 injuries from collateral sources, whether private, group, or govern-
27 mental, and whether contributory or noncontributory. Evidence of
28 collateral sources, other than a source that must by law or contract
29 seek subrogation and the death benefit paid under life insurance,

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

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

12 (d) In an action involving hazardous waste, environmental pol-
13 lution, or violation of state or federal antitrust statutes, the court
14 shall enter judgment against each party liable on the basis of joint
15 and several liability. In all other actions the court shall enter
16 judgment against each party liable on the basis of joint and several
17 liability, except that a party who is allocated less than 50 percent
18 of the total fault allocated to all the parties may not be jointly
19 liable for more than one and one-half times the percentage of fault
20 allocated to that party.

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

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

23 (1) "economic losses" means objectively verifiable monetary
24 losses;

25 (2) "fault" includes acts or omissions that are in any
26 measure negligent or reckless toward the person or property of the
27 actor or others, or that subject a person to strict tort liability;
28 the [. THE] term also includes breach of warranty, unreasonable
29 assumption of risk not constituting an enforceable express consent,

1 misuse of a product for which the defendant otherwise would be liable,
2 and unreasonable failure to avoid an injury or to mitigate damages;
3 legal [. LEGAL] requirements of causal relation apply both to fault
4 as the basis for liability and to contributory fault;

5 (3) "noneconomic losses" means nonmonetary damages and
6 includes pain, suffering, inconvenience, mental anguish, emotional
7 distress, and all other nonpecuniary damages.

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

9 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. The supreme
10 court shall determine by rule or order the costs, if any, that may be
11 allowed a prevailing party in a civil action. Unless specifically
12 authorized by statute or by agreement between the parties, attorney
13 fees may not be awarded to a party in a civil action for personal
14 injury, death, or property damage related to or arising out of fault,
15 as defined in AS 09.17.900, unless the court determines that the
16 action, claim, or defense was frivolous and brought without reasonable
17 cause [THE CIVIL ACTION IS CONTESTED WITHOUT TRIAL, OR FULLY CONTESTED
18 AS DETERMINED BY THE COURT].

19 * Sec. 10. AS 21.06.110 is amended to read:

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

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

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

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

4 (4) a statement in regard to examination of rating organi-
5 zations, advisory organizations, joint underwriters, and joint rein-
6 surers as required by AS 21.39.120;

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

8 (6) recommendations of the director as to amendments or
9 supplementation of laws affecting insurance, or the office of direc-
10 tor;

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

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

16 * Sec. 11. AS 09.55.548(b) is repealed.

17 * Sec. 12. 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. 13. COURT RULE CHANGE. AS 09.60.010, as amended in sec. 9 of
13 this Act, has the effect of amending Alaska Rule of Civil Procedure 82 by
14 prohibiting the award of attorney fees to the prevailing party in certain
15 civil actions based on fault, unless allowed by statute or by agreement of
16 the parties.

17 * Sec. 14. APPLICABILITY. This Act applies to all causes of action
18 accruing on or after the effective date of this Act.

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

23 * Sec. 16. This Act takes effect immediately under AS 01.10.070(c).