

Offered: 3/24/88  
Referred: Rules

5-0554N

Original sponsors: Faiks, Abood,  
Bennett, et al.

1 IN THE SENATE BY THE FINANCE COMMITTEE  
2 CS FOR SENATE BILL NO. 211 (Finance)  
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 \$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 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 subsection [SECTION] does not affect a right of action under 42 U.S.C.  
28 1983.  
29 \* Sec. 4. AS 09.17.030 is amended by adding new subsections to read:

1 (b) This section does not apply to a person who suffers personal  
2 injury or death if the person liable for the damages

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

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

7 (c) In this section "crime" has the meaning given in AS 11.81.-  
8 900(b).

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

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

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

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

20 (1) a member of the board of directors or an officer of a  
21 nonprofit corporation;

22 (2) a member of the board of directors of a public or  
23 nonprofit hospital, or a member of a citizen's advisory board of any  
24 hospital;

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

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

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

1 \* Sec. 7. AS 09.17.070 is repealed and reenacted to read:

2       Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the  
3 collateral source by law or contract must seek subrogation and except  
4 death benefits paid under life insurance, a person may only recover  
5 damages that exceed amounts received by that person as compensation  
6 for the injuries from collateral sources, whether private, group, or  
7 governmental, and whether contributory or noncontributory. Evidence  
8 of collateral sources, other than a source that must by law or con-  
9 tract seek subrogation and the death benefit paid under life insur-  
10 ance, shall be considered by the trier of fact in determining the  
11 amount of an award, and shall be considered by the court in determin-  
12 ing if an award is excessive. The trier of fact shall be informed of  
13 the tax implications of an award of damages. The court may take into  
14 account the value of the person's rights to coverage exhausted or  
15 depleted by payment of these collateral benefits by adding back a  
16 reasonable estimate of their probable value, or by earmarking and  
17 holding for possible periodic payment under AS 09.17.040 that amount  
18 of the award that would otherwise have been deducted, to see if the  
19 impairment of the person's rights actually takes place in the future.

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

22 \* Sec. 8. AS 09.17.080(d) is repealed and reenacted to read:

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

29 \* Sec. 9. AS 09.17.900 is amended to read:

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

2           (1) "economic losses" means objectively verifiable monetary  
3 losses;

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

13           (3) "noneconomic losses" means nonmonetary damages and  
14 includes pain, suffering, inconvenience, mental anguish, emotional  
15 distress, and all other nonpecuniary damages.

16 \* Sec. 10. AS 09.60.010 is amended to read:

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

25 \* Sec. 11. AS 21.06.110 is amended to read:

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

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

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

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

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

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

14 (6) recommendations of the director as to amendments or  
15 supplementation of laws affecting insurance, or the office of direc-  
16 tor;

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

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

22 \* Sec. 12. AS 09.17.010(c) and 09.17.040(c) are repealed.

23 \* Sec. 13. REPORT. The Department of Law, with the assistance of the  
24 Department of Commerce and Economic Development and with the cooperation of  
25 all state agencies, shall report to the legislature by the 30th day of the  
26 Second Session of the Sixteenth Alaska State Legislature on closed insur-  
27 ance claims and insurance company finances. The report must consist of

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

29 (A) the extent to which the legal system has or has not

1       been the cause of dramatic liability insurance increases or decreases  
2       and coverage reduction in crisis lines in the state;

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

4               (C) what the various specific tort reform proposals have  
5       actually accomplished; and

6               (D) if the passage of this Act has resulted in a measurable  
7       decrease in insurance rates in the state;

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

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

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

18       \* Sec. 14. COURT RULE CHANGE. AS 09.60.010, as amended in sec. 10 of  
19       this Act, has the effect of amending Alaska Rule of Civil Procedure 82 by  
20       prohibiting the award of attorney fees to the prevailing party in certain  
21       civil actions based on fault, unless allowed by statute or by agreement of  
22       the parties.

23       \* Sec. 15. APPLICABILITY. This Act applies to all causes of action  
24       accruing on or after the effective date of this Act.

25       \* Sec. 16. SEVERABILITY. If any provision of this Act, or the applica-  
26       tion thereof to any person or circumstance is held invalid, the remainder  
27       of this Act and the application to other persons or circumstances is not  
28       affected thereby.

29       \* Sec. 17. This Act takes effect immediately under AS 01.10.070(c).