

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

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 211 (Finance) am
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 \$100,000 [\$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 payments,
17 including any increases in future payments for anticipated inflation, the
18 interval between payments, and the number of payments or the period of time
19 over which payments shall be made. Payments may be modified only in the
20 event of the death of the judgment creditor, in which case payments may not
21 be reduced or terminated, but shall be paid to persons to whom the judgment
22 creditor owed a duty of support, as provided by law, immediately before
23 death. In the event the judgment creditor owed no duty of support to
24 dependents at the time of the judgment creditor's death, the money remain-
25 ing shall be distributed in accordance with a will of the deceased judgment
26 creditor accepted into probate or under the intestate laws of the state if
27 the deceased had no will.

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

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

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

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

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

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

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

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

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 AS 09.17.070 is repealed and reenacted to read:

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

1 holding for possible periodic payment under AS 09.17.040 that amount
2 of the award that would otherwise have been deducted, to see if the
3 impairment of the person's rights actually takes place in the future.

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

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

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

13 * Sec. 10. AS 09.17.900 is amended to read:

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

15 (1) "economic losses" means objectively verifiable monetary
16 losses;

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

26 (3) "noneconomic losses" means nonmonetary damages and
27 includes pain, suffering, inconvenience, mental anguish, emotional
28 distress, and all other nonpecuniary damages.

29 * Sec. 11. AS 09.60.010 is amended to read:

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

9 * Sec. 12. AS 21.06.110 is amended to read:

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

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

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

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

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

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

27 (6) recommendations of the director as to amendments or
28 supplementation of laws affecting insurance, or the office of direc-
29 tor;

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

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

6 * Sec. 13. AS 09.17.010(c) and 09.17.040(c) are repealed.

7 * Sec. 14. 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. 15. APPLICABILITY. This Act applies to all causes of action
3 accruing on or after the effective date of this Act.

4 * Sec. 16. 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. 17. This Act takes effect immediately under AS 01.10.070(c).