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1 IN THE HOUSE

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HOUSE BILL NO. 166

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to civil actions; amending Alaska

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Rules of Civil Procedure 68 and 82; and providing for

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an effective date."

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

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* Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has

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generally been developed by the courts on a case-by-case basis. While this

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process has resulted in some significant changes in the law, including

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amelioration of the harshness of many common law doctrines, the legislature

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has periodically intervened in order to bring about needed reforms. The

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purpose of this Act is to enact further reforms in order to create a more

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equitable distribution of the cost and risk of injury and increase the

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availability and affordability of insurance.

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(b) The legislature finds that boroughs, cities, and other govern-

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mental entities are faced with increased exposure to lawsuits and awards

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and dramatic increases in the cost of insurance coverage. These escalating

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costs ultimately affect the public through higher taxes, loss of essential

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services, and loss of the protection provided by adequate insurance. In

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order to improve the availability and affordability of quality governmental

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services, comprehensive reform is necessary.

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(c) The legislature also finds comparable cost increases in profes-

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sional liability insurance. Escalating malpractice insurance premiums

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discourage physicians and other health care providers from initiating or

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continuing their practice or offering needed services to the public and

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contribute to the rising costs of consumer health care. Other

1 professionals, such as architects and engineers, face similar difficult
2 choices, financial instability, and unlimited risk in providing services to
3 the public.

4 (d) The legislature also finds that general liability insurance is
5 becoming unavailable or unaffordable to many businesses, individuals, and
6 nonprofit organizations in amounts sufficient to cover potential losses.
7 High premiums have discouraged socially and economically desirable activ-
8 ities and encourage many to go without adequate insurance coverage.

9 (e) The legislature also finds that citizens should be encouraged to
10 serve as board members and officers of public corporations and electric or
11 telephone cooperatives. These organizations serve important governmental
12 functions, and their vitality and effectiveness depend upon the willingness
13 of experienced individuals to seek leadership and decision-making roles
14 within them. Accordingly, these board members and officers should be
15 protected from liability arising from an act or omission within the scope
16 of their duties, unless the act or omission constitutes gross negligence.

17 (f) It is the intent of the legislature to reduce costs associated
18 with the tort system, while ensuring that adequate and appropriate compen-
19 sation for persons injured through the fault of others is available.

20 * Sec. 2. AS 09.10 is amended by adding a new section to read:

21 Sec. 09.10.052. CERTAIN ACTIONS THAT MUST BE BROUGHT IN SIX
22 YEARS. (a) Notwithstanding AS 09.10.140, a person may not bring an
23 action for personal injury, death, or property damage unless the
24 action is brought within six years of the earliest of

25 (1) the date a product alleged to have caused the personal
26 injury, death, or property damage was purchased;

27 (2) the date of substantial completion of the construction
28 alleged to have caused the personal injury, death, or property damage;

29 or

1 (3) the date of the last act alleged to have caused the
2 personal injury, death, or property damage.

3 (b) This section does not apply if

4 (1) the personal injury, death, or property damage was
5 caused intentionally; or

6 (2) a shorter period of time for bringing the action is
7 imposed under another provision of law.

8 * Sec. 3. AS 09.10.070 is amended to read:

9 Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO]
10 person may not bring an action (1) for libel, slander, assault, bat-
11 tery, seduction, or false imprisonment [, OR FOR ANY INJURY TO THE
12 PERSON OR RIGHTS OF ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIF-
13 ICALLY PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or
14 penalty to the state; or (3) upon a liability created by statute,
15 other than a penalty or forfeiture; unless commenced within two years.

16 * Sec. 4. AS 09.10 is amended by adding a new section to read:

17 Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO PERSON
18 OR PROPERTY. (a) Notwithstanding AS 09.10.140, a person may not
19 bring an action for personal injury, death, or property damage unless
20 the action is brought within two years of the accrual of the action.

21 (b) This section does not apply if a shorter period of time for
22 bringing the action is imposed under another provision of law.

23 * Sec. 5. AS 09.17.020 is amended to read:

24 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
25 awarded in an action, whether in tort, contract, or otherwise, unless
26 supported by clear and convincing evidence of malice, bad motive, or
27 reckless indifference to the interests of another and conscious acts
28 showing deliberate disregard by the defendant.

29 * Sec. 6. AS 09.17.030 is amended to read:

1 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
2 person who suffers personal injury or death may not recover damages
3 for the personal injury or death if the injuries or death occurred
4 while the person was engaged in the commission of a crime [FELONY],
5 the person has been convicted of the crime [FELONY], including con-
6 viction based on a guilty plea or plea of nolo contendere, and the
7 crime [FELONY] substantially contributed to the injury or death. This
8 subsection [SECTION] does not affect a right of action under 42 U.S.C.
9 1983.

10 * Sec. 7. AS 09.17.030 is amended by adding new subsections to read:

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

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

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

17 (c) In this section "crime" has the meaning given in AS 11.81.-
18 900(b).

19 * Sec. 8. AS 09.17.040(d) is amended to read:

20 (d) In an action to recover damages, the court shall, at the
21 request of a [AN INJURED] party, enter judgment ordering that amounts
22 awarded a judgment creditor for future damages be paid to the maximum
23 extent feasible by periodic payments rather than by a lump-sum pay-
24 ment. If a portion of the judgment awarded is owed to an attorney
25 under a contingent fee agreement, that portion of the judgment shall
26 be reduced to present value and paid in a lump sum.

27 * Sec. 9. AS 09.17.040(f) is amended to read:

28 (f) A judgment ordering payment of future damages by periodic
29 payment shall specify the recipient, the dollar amount of the

1 payments, including any increases in future payments for anticipated
2 inflation, the interval between payments, and the number of payments
3 or the period of time over which payments shall be made. Payments may
4 be modified only in the event of the death of the judgment creditor,
5 in which case payments may not be reduced or terminated, but shall be
6 paid to persons to whom the judgment creditor owed a duty of support,
7 as provided by law, immediately before death. In the event the judg-
8 ment creditor owed no duty of support to dependents at the time of the
9 judgment creditor's death, the money remaining shall be distributed in
10 accordance with a will of the deceased judgment creditor accepted into
11 probate or under the intestate laws of the state if the deceased had
12 no will.

13 * Sec. 10. AS 09.17.050(a) is amended to read:

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

18 (1) a member of the board of directors or an officer of a
19 nonprofit or public corporation;

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

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

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

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

28 * Sec. 11. AS 09.17.070 is repealed and reenacted to read:

29 Sec. 09.17.070. COLLATERAL BENEFITS. Except when the collateral

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

18 * Sec. 12. AS 09.30.070(a) is amended to read:

19 (a) The rate of interest on judgments and decrees for the payment
20 of money is eight [10.5] percent a year, except that a judgment or
21 decree founded on a contract in writing, providing for the payment of
22 interest until paid at a specified rate not exceeding the legal rate
23 of interest for that type of contract, bears interest at the rate
24 specified in the contract if the interest rate is set out in the
25 judgment or decree.

26 * Sec. 13. AS 09.30.070 is amended by adding a new subsection to read:

27 (c) Prejudgment interest may not be awarded for future economic
28 or noneconomic damages.

29 * Sec. 14. AS 09.55.580(c) is amended to read:

1 (c) Except as provided in (g) of this section, in [IN] fixing
2 the amount of damages to be awarded under this section, the court or
3 jury shall consider all the facts and circumstances and from them fix
4 the award at a sum which will fairly compensate for the injury result-
5 ing from the death. In determining the amount of the award, the court
6 or jury shall consider but is not limited to the following:

7 (1) deprivation of the expectation of pecuniary benefits to
8 the beneficiary or beneficiaries, without regard to age thereof, that
9 would have resulted from the continued life of the deceased and with-
10 out regard to probable accumulations of what the deceased may have
11 saved during the lifetime of the deceased;

12 (2) loss of contributions for support;

13 (3) loss of assistance or services irrespective of age or
14 relationship of decedent to the beneficiary or beneficiaries;

15 (4) loss of consortium;

16 (5) loss of prospective training and education;

17 (6) medical and funeral expenses.

18 * Sec. 15. AS 09.55.580 is amended by adding a new subsection to read:

19 (g) The amount awarded by the court or jury for nonpecuniary
20 damages may not exceed \$50,000.

21 * Sec. 16. AS 09.60.010 is amended to read:

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

1 * Sec. 17. AS 09.65 is amended by adding a new section to read:

2 Sec. 09.65.096. CIVIL LIABILITY OF HOSPITALS FOR NONEMPLOYEES.

3 (a) A hospital that is required to provide services by AS 18.20 or
4 regulations implementing that chapter, or that is subject to regu-
5 lation with respect to the provision of services, is not, solely for
6 that reason, liable for civil damages as a result of an act or omis-
7 sion in administering those services by a health care provider who is
8 not an employee of the hospital.

9 (b) Compliance with the standards of a public or private licens-
10 ing or accreditation agency with respect to provision of services, or
11 adoption by the hospital of bylaws or regulations governing provision
12 of services, may not be construed as an assumption of civil liability
13 by the hospital for the acts or omissions of a health care provider
14 who is not an employee of the hospital.

15 (c) A hospital is not, solely for reason that a health care
16 provider was the actual, apparent, or implied agent of the hospital,
17 liable for civil damages caused by the acts or omissions of a health
18 care provider who is not the hospital's employee, if the hospital
19 provides notice that the health care provider is an independent con-
20 tractor. The notice required by this subsection must be posted con-
21 spicuously in all admitting areas of the hospital, published at least
22 annually in a newspaper of general circulation in the area, and must
23 be in substantially the following form:

24 Notice of Limited Liability

25 The following health care providers are independent
26 contractors and are not employees of the hospital:

27 (List specific health care providers)

28 The hospital is responsible for exercising reasonable care in
29 granting staff privileges to practice in the hospital, for reviewing

1 those privileges on a regular basis, and for taking appropriate steps
2 to revoke or restrict privileges in appropriate circumstances. The
3 hospital is not otherwise liable for the acts or omissions of a health
4 care provider who is an independent contractor.

5 (d) This section does not preclude liability for civil damages
6 that are the proximate result of the hospital's own negligence or
7 intentional misconduct.

8 (e) In this section,

9 (1) "health care provider" has the meaning given in AS 18.-
10 23.070, except that it does not include a hospital or an employee of
11 the hospital;

12 (2) "hospital" has the meaning given in AS 18.20.130 and
13 includes a governmentally owned or operated hospital.

14 * Sec. 18. AS 21.06.110 is amended to read:

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

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

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

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

28 (4) a statement in regard to examination of rating organi-
29 zations, advisory organizations, joint underwriters, and joint

1 reinsurers as required by AS 21.39.120;

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

3 (6) recommendations of the director as to amendments or
4 supplementation of laws affecting insurance, or the office of direc-
5 tor;

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

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

11 * Sec. 19. AS 47.37.170(g) is repealed and reenacted to read:

12 (g) A person may not bring an action for damages against a peace
13 officer, or members of the emergency service patrol, based on the
14 performance or failure to perform a duty imposed under this section,
15 unless the act or omission of the peace officer or member of the
16 emergency service patrol is grossly negligent, reckless or intention-
17 al.

18 * Sec. 20. AS 09.17.010(c), 09.17.040(c) and AS 09.55.548 are repealed.

19 * Sec. 21. REPORT. The Department of Commerce and Economic Develop-
20 ment, with the cooperation of all state agencies, shall report to the
21 legislature by the 30th day of the Second Session of the Seventeenth Alaska
22 State Legislature on closed insurance claims and insurance company fi-
23 nances. The report must consist of

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

25 (A) the extent to which the legal system has or has not
26 been the cause of dramatic liability insurance increases or decreases
27 and coverage reduction in crisis lines in the state;

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

29 (C) what the various specific tort reform measures have

1 actually accomplished; and

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

4 (2) a study of insurance company finances to determine the
5 extent to which

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

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

14 * Sec. 22. AS 09.30.070(c) as added by sec. 13 of this Act, has the
15 effect of amending Alaska Rule of Civil Procedure 68 by providing that
16 prejudgment interest may not be awarded for future economic or noneconomic
17 damages.

18 * Sec. 23. AS 09.60.010 as amended by sec. 16 of this Act, has the
19 effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the
20 award of attorney fees in a civil action for personal injury, death, or
21 property damage, unless allowed by statute or by agreement of the parties.

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

24 * Sec. 25. This Act takes effect immediately under AS 01.10.070(c).