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1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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CS FOR HOUSE BILL NO. 166 (L&C)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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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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Rule of Civil Procedure 68; and providing for an

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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) Civil justice in this state
11 has generally been developed by the courts on a case-by-case basis. This
12 process has resulted in some significant changes in the law, and the legis-
13 lature has periodically intervened to bring about needed reforms. The
14 purpose of this Act is to enact further reforms that create a more equita-
15 ble distribution of the cost and risk of injury.

16

(b) The legislature also finds that unnecessarily high malpractice
17 insurance premiums discourage physicians from initiating or continuing
18 their practice or offering needed services to the public. Other profes-
19 sionals, such as architects and engineers, face similar difficult choices,
20 financial instability, and risk in providing services to the public.

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(c) The legislature also finds that citizens should be encouraged to
22 serve as board members of electric or telephone cooperatives. These orga-
23 nizations serve important governmental functions, and their vitality and
24 effectiveness depend upon the willingness of experienced individuals to
25 seek leadership and decision-making roles within them. Accordingly, these
26 board members should be given some protection from liability arising from
27 an act or omission within the scope of their duties.

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(d) It is the intent of the legislature to reduce costs associated
29 with the civil justice system, while ensuring that adequate and appropriate

1 compensation for persons injured through the fault of others is available.

2 (e) The legislature wishes to help match losses with compensation by
3 helping to

4 (1) ensure that money paid to an injured person is available
5 when anticipated expenses or losses occur;

6 (2) ensure that a claimant with substantial injury requiring
7 long-term treatment will have money available for future medical care;

8 (3) reduce medical reparation system costs by eliminating those
9 portions of awards that are not needed to compensate the claimant;

10 (4) eliminate duplicate recoveries; and

11 (5) reduce the costs of litigation.

12 (f) The legislature wishes to accumulate additional information about
13 the costs to society of the civil justice, health care, and insurance
14 systems as they are presently constituted. This information is necessary
15 to determine whether the civil justice, health care, and insurance systems
16 as they are presently constituted are fairly serving victims and whether a
17 disproportionate amount of compensation dollars are absorbed by the system.

18 (g) The legislature finds that it is extremely difficult to defend
19 against a claim that has become stale after information and witnesses have
20 disappeared. The legislature finds that on the whole society is better
21 served by a reasonable statute of repose even though in a few limited
22 instances injuries may go without compensation.

23 * Sec. 2. AS 09.10.055(a) is repealed and reenacted to read:

24 (a) Notwithstanding AS 09.10.140, a person may not bring an
25 action for personal injury, death, property damage, or indemnity
26 arising from a deficiency in the construction or the design, planning,
27 supervision, or observation of construction, of an improvement to real
28 property, unless the action is brought within 15 years of the date of
29 substantial completion of the improvement to real property.

1 * Sec. 3. AS 09.10.055(d) is amended to read:

2 (d) The limitation prescribed by this section may [SHALL] not be
3 asserted by way of defense by

4 (1) a person in actual possession or control, as owner,
5 tenant, or otherwise of an improvement at the time a deficiency in an
6 improvement is [CONSTITUTES] the proximate cause of the injury or
7 death; or

8 (2) in an action for damages resulting from the design,
9 planning, supervision, or observation of construction of a facility
10 for the transportation or storage of hazardous materials [FOR WHICH IT
11 IS PROPOSED TO BRING AN ACTION].

12 * Sec. 4. AS 09.10.055(e) is amended to read:

13 (e) In this section,

14 (1) "hazardous materials" means a material or substance
15 that, when it enters into or on the surface or subsurface land, water,
16 or atmosphere of the state, presents an imminent and substantial
17 danger to the public health and welfare; "hazardous substance" in-
18 cludes oil; in this paragraph "oil" has the meaning given in AS 46.-
19 08.900;

20 (2) "person" means an individual, corporation, partnership,
21 business trust, unincorporated organization, association, or joint-
22 stock company.

23 * Sec. 5. AS 09.10 is amended by adding a new section to read:

24 Sec. 09.10.065. LIMITATION ON ACTIONS INVOLVING A PHYSICIAN.

25 (a) Notwithstanding AS 09.10.140, an action based on professional
26 negligence may not be brought against a physician by a person who is,
27 on the date of the alleged negligent act or omission

28 (1) 10 years of age or older, unless the action is brought
29 within five years of the date of injury;

1 (2) less than 10 years of age, unless the action is brought
2 within five years of the date of injury, or before the person's 12th
3 birthday, whichever period is longer.

4 (b) The limitation imposed under (a) of this section is tolled
5 during any period in which there exists

6 (1) fraud, including fraud or collusion by a parent, guard-
7 ian, insurer, or physician, resulting in the failure to bring on
8 action on behalf of an injured minor;

9 (2) intentional concealment; or

10 (3) the undiscovered presence of a foreign body, that has
11 no therapeutic or diagnostic purpose or effect, in the body of the
12 injured person and the action is based on the presence of the foreign
13 body.

14 (c) In this section,

15 (1) "physician" means a person licensed under AS 08.64;

16 (2) "professional negligence" means a negligent act or
17 omission by a physician in rendering professional services;

18 (3) "professional services" means services provided by a
19 physician that are within the scope of services for which the physi-
20 cian is licensed, and that are not prohibited under the physician's
21 license or by a hospital in which the physician practices.

22 * Sec. 6. AS 09.10.070 is amended to read:

23 Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO]
24 person may not bring an action (1) for libel, slander, assault, bat-
25 tery, seduction, or false imprisonment, or for any injury to the
26 person or rights of another not arising on contract and not specif-
27 ically provided otherwise; (2) upon a statute for a forfeiture or
28 penalty to the state; or (3) upon a liability created by statute,
29 other than a penalty or forfeiture; unless commenced within two years

1 of the accrual of the action.

2 * Sec. 7. AS 09.10.070 is amended by adding new subsections to read:

3 (b) Notwithstanding AS 09.10.140, the period of time within
4 which a person may bring an action under (a)(1) of this section may
5 not be extended for a disability described under AS 09.10.140, for
6 more than 20 years after the date of the injury. This subsection does
7 not apply if the injury is caused by an intentional act.

8 (c) The limitation of (a) of this section does not apply to an
9 action described in (a)(1) of this section if the period of limitation
10 imposed under AS 09.10.065 applies, or if a shorter period of time for
11 bringing the action is imposed under another provision of law.

12 (d) In this section, "accrual" means the date that the person
13 discovers or should have discovered the person's right to bring an
14 action.

15 * Sec. 8. AS 09.17.040(f) is amended to read:

16 (f) A judgment ordering payment of future damages by periodic
17 payment shall specify the recipient, the dollar amount of the pay-
18 ments, the interval between payments, [AND] the number of payments or
19 the period of time over which payments shall be made, and shall in-
20 clude an amount representing future payments for anticipated infla-
21 tion. Payments may be modified only in the event of the death of the
22 judgment creditor, in which case payments may not be reduced or termi-
23 nated, but shall be paid to persons to whom the judgment creditor owed
24 a duty of support, as provided by law, immediately before death. In
25 the event the judgment creditor owed no duty of support to dependents
26 at the time of the judgment creditor's death, the money remaining
27 shall be distributed in accordance with a will of the deceased judg-
28 ment creditor accepted into probate or under the intestate laws of the
29 state if the deceased had no will.

1 * Sec. 9. AS 09.17.050(a) is amended to read:

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

6 (1) a member of the board of directors or an officer of a
7 nonprofit corporation;

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

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

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

14 (5) a member of the board of directors of an electric or
15 telephone cooperative organized under AS 10.25.

16 * Sec. 10. AS 09.17.070 is repealed and reenacted to read:

17 Sec. 09.17.070. COLLATERAL BENEFITS. (a) A party defending
18 against a claim may introduce evidence of amounts received or to be
19 received by the claimant as compensation for the same injury from the
20 following collateral sources:

21 (1) 42 U.S.C. 301 - 1397 (Social Security Act);

22 (2) state or federal income disability or worker's compen-
23 sation benefits;

24 (3) health, sickness, accident, or income insurance; or

25 (4) a contract or agreement to pay medical, hospital,
26 dental, or other health care services.

27 (b) If the party defending against the claim elects to introduce
28 evidence under (a) of this section, the claimant may introduce evi-
29 dence of the amount that the claimant has

1 (1) incurred in actual attorney fees in pursuing the civil
2 action; and

3 (2) paid or contributed to secure the right to an insurance
4 benefit, contract, or agreement introduced as evidence by the party
5 defending against the claim.

6 (c) A source of collateral benefits introduced under (a) of this
7 section may not recover from the claimant an amount paid as compen-
8 sation for the injury, and may not be subrogated to the rights of the
9 claimant against the party defending against the claim.

10 * Sec. 11. AS 09.30.070 is amended by adding a new subsection to read:

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

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

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

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

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

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

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

1 (5) the receipts and expenses of the division for the year;
2 (6) recommendations of the director as to amendments or
3 supplementation of laws affecting insurance, or the office of direc-
4 tor;

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

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

10 (9) an analysis of liability insurance claims that were
11 closed following a civil action, that

12 (A) establishes a statistical data base for comparing
13 the annual percentage change in the number and amount of claims;

14 (B) determines the number and dollar amount of claims
15 closed, by year incurred; and

16 (C) compares the percentage change in direct premiums
17 written;

18 (10) an analysis of changes in the incomes of physicians
19 licensed under AS 08.64 occurring as a result of court decisions in
20 the state involving personal injury or death.

21 * Sec. 13. AS 09.10.055(b), 09.17.040(c), and AS 09.55.548 are
22 repealed.

23 * Sec. 14. REPORT. The Department of Commerce and Economic Develop-
24 ment, with the cooperation of all state agencies, shall report to the
25 legislature by the 30th day of the Second Session of the Seventeenth Alaska
26 State Legislature on closed insurance claims and insurance company fi-
27 nances. 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 measures 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. 15. AS 09.30.070(c), as added by sec. 11 of this Act, has the
19 effect of amending Alaska Rule of Civil Procedure 68 by providing that
20 prejudgment interest may not be awarded for future economic or noneconomic
21 damages.

22 * Sec. 16. APPLICABILITY. (a) This Act applies to all causes of
23 action for damages resulting from an act or omission occurring on or after
24 the effective date of this Act.

25 (b) AS 09.17.070(c), as added by sec. 10 of this Act, applies to a
26 contract or agreement entered into on or after the effective date of this
27 Act.

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