

HOUSE BILL NO. 292

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 4/23/93

Referred: Labor & Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49
2 and 68; and providing for an effective date."

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

4 * Section 1. AS 09.10 is amended by adding a new section to read:

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

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

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

13 (b) This section does not apply if

14 (1) the personal injury, death, or property damage was caused

1 intentionally;

2 (2) facts that would give notice of a potential cause of action are
3 intentionally concealed; or

4 (3) a shorter period of time for bringing the action is imposed under
5 another provision of law.

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

7 Sec. 09.10.065. LIMITATION ON ACTIONS AGAINST HEALTH CARE
8 PROVIDERS. (a) Notwithstanding AS 09.10.140, an action based on professional
9 negligence may not be brought against a health care provider unless

10 (1) the action is brought within two years from the date of the alleged
11 negligent act or omission; or

12 (2) if the injured person is, on the date of the alleged negligent act or
13 omission less than six years of age, the action is brought before the person's eighth
14 birthday.

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

17 (1) fraud, including fraud or collusion by a parent, guardian, insurer,
18 or health care provider, resulting in the failure to bring an action on behalf of an
19 injured minor;

20 (2) intentional concealment of facts that would give notice of a
21 potential action; or

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

25 (c) In this section,

26 (1) "health care provider" has the meaning given in AS 09.55.560;

27 (2) "professional negligence" means a negligent act or omission by a
28 health care provider in rendering professional services;

29 (3) "professional services" means services provided by a health care
30 provider that are within the scope of services for which the health care provider is
31 licensed, and that are not prohibited under the health care provider's license or by a

1 hospital in which the health care provider practices.

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

3 Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO]
4 person may not bring an action (1) for libel, slander, assault, battery, seduction, or
5 false imprisonment [, OR FOR ANY INJURY TO THE PERSON OR RIGHTS OF

6 ANOTHER NOT ARISING ON CONTRACT AND NOT SPECIFICALLY

7 PROVIDED OTHERWISE]; (2) upon a statute for a forfeiture or penalty to the state;

8 or (3) upon a liability created by statute, other than a penalty or forfeiture; unless

9 commenced within two years.

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

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

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

17 * Sec. 5. AS 09.17.010(a) is amended to read:

18 (a) In an action to recover damages for personal injury or wrongful death
19 [BASED ON NEGLIGENCE], damages for noneconomic losses shall be limited to
20 compensation for pain, suffering, inconvenience, physical impairment, disfigurement,
21 loss of enjoyment of life, and other nonpecuniary damage.

22 * Sec. 6. AS 09.17.010(b) is amended to read:

23 (b) The amount of damages awarded by a court or a jury under (a) of this
24 section may not exceed \$500,000 for each [CLAIM BASED ON A] separate incident
25 or injury.

26 * Sec. 7. AS 09.17.020 is amended to read:

27 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
28 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear
29 and convincing evidence of malice and conscious acts showing disregard of another
30 person by the person from whom the punitive damages are sought.

31 * Sec. 8. AS 09.17.020 is amended by adding a new subsection to read:

1 (b) The amount of punitive damages awarded by a court or jury under (a) of
2 this section may not exceed three times the amount of compensatory damages awarded
3 or \$200,000, whichever amount is greater.

4 * Sec. 9. AS 09.17.030 is amended to read:

5 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A
6 CRIME. A person who suffers personal injury or death may not recover damages for
7 the personal injury or death if the injuries or death occurred while the person was
8 engaged in the commission of a crime [FELONY, THE PERSON HAS BEEN
9 CONVICTED OF THE FELONY, INCLUDING CONVICTION BASED ON A
10 GUILTY PLEA OR PLEA OF NOLO CONTENDERE,] and the crime [FELONY]
11 substantially contributed to the injury or death. This subsection [SECTION] does not
12 affect a right of action under 42 U.S.C. 1983.

13 * Sec. 10. AS 09.17.030 is amended by adding a new subsection to read:

14 (b) This section does not apply to a person who suffers personal injury or
15 death if the person liable for the damages was engaged in the commission of a crime
16 at the time the personal injury or death occurred and the crime substantially
17 contributed to the injury or death.

18 * Sec. 11. AS 09.17.040(a) is amended to read:

19 (a) In every case where damages for personal injury or death are awarded by
20 the court or jury [,]

21 (1) the verdict shall be itemized between economic loss and
22 noneconomic loss, if any, as follows:

23 (A) [(1)] past economic loss;

24 (B) [(2)] past noneconomic loss;

25 (C) [(3)] future economic loss;

26 (D) [(4)] future noneconomic loss; [AND]

27 (E) [(5)] punitive damages; and

28 (2) the amount awarded for past or future economic and
29 noneconomic loss shall be reduced by the amount of federal and state income tax
30 that would be paid on the amount awarded under tax rates in effect on the date
31 of the injury or death.

1 * Sec. 12. AS 09.17.040(d) is amended to read:

2 (d) In an action to recover damages, the court shall, at the request of a [AN
3 INJURED] party, enter judgment ordering that amounts awarded a judgment creditor
4 for future damages be paid to the maximum extent feasible by periodic payments
5 rather than by a lump-sum payment. If a portion of the judgment awarded is owed
6 to an attorney under a contingent fee agreement, that portion of the judgment
7 shall be reduced to present value and paid in a lump sum.

8 * Sec. 13. AS 09.17.040(f) is amended to read:

9 (f) A judgment ordering payment of future damages for personal injury or
10 death by periodic payment shall specify the recipient, the dollar amount of the pay-
11 ments, including any increases in future payments for anticipated inflation, the
12 interval between payments, and the number of payments or the period of time over
13 which payments shall be made. Payments may be modified only in the event of the
14 death of the judgment creditor, in which case payments may not be reduced or
15 terminated, but shall be paid to persons to whom the judgment creditor owed a duty
16 of support, as provided by law, immediately before death. In the event the judgment
17 creditor owed no duty of support to dependents at the time of the judgment creditor's
18 death, the money remaining shall be distributed in accordance with a will of the
19 deceased judgment creditor accepted into probate or under the intestate laws of the
20 state if the deceased had no will.

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

22 Sec. 09.17.070. COLLATERAL BENEFITS. (a) Except when the collateral
23 source is a federally funded program that by law must seek subrogation and except for
24 death benefits paid under life insurance, a claimant in an action for personal injury or
25 death may only recover damages that exceed amounts received by the claimant, or that
26 with reasonable probability will be received in the future by the claimant, as
27 compensation for the injuries from collateral sources, whether private, group, or
28 governmental, and whether contributory or noncontributory.

29 (b) In an action for personal injury or death, a person defending a claim may
30 introduce into evidence an amount paid or payable as a benefit to the claimant as a
31 result of the personal injury or death under 42 U.S.C. 301 - 1397 (Social Security Act);

1 a state or federal disability or workers' compensation act; health, sickness, or income-
2 disability insurance; insurance that provides health benefits or income-disability
3 coverage; and a contract or agreement of a group, organization, partnership, or
4 corporation, or other collateral source, to provide, pay for, or reimburse the cost of
5 medical, hospital, dental, or other health care services or lost wages. If a person
6 defending a claim elects to introduce evidence described in this subsection, the
7 claimant may introduce evidence of the amount that the claimant has paid or
8 contributed to secure the claimant's right to an insurance or contractual benefit
9 introduced by the person defending the claim as evidence.

10 (c) Unless evidence of a collateral source has already been introduced under
11 (b) of this section, evidence of a collateral source, other than a federal program that
12 by law must seek subrogation and a death benefit paid under life insurance, is only
13 admissible after the fact finder has rendered an award. The court may take into
14 account the value of the claimant's rights to coverage exhausted or depleted by
15 payment of the collateral benefit by adding back a reasonable estimate of their
16 probable value, or by designating and holding for possible periodic payment under
17 AS 09.17.040 that amount of the award that would otherwise have been deducted, to
18 determine if the impairment of the claimant's rights actually takes place in the future.

19 (d) A person who provides a collateral benefit admissible under (a) of this
20 section may not bring an action based on the provision of the benefit and may not be
21 subrogated to the rights of a claimant against a person defending a claim.

22 * Sec. 15. AS 09.17.080(a) is amended to read:

23 (a) In all actions involving fault of more than one person [PARTY TO THE
24 ACTION], including third-party defendants and persons who have been released under
25 AS 09.17.091 [AS 09.16.040], the court, unless otherwise agreed by all parties, shall
26 instruct the jury to answer special interrogatories or, if there is no jury, shall make
27 findings, indicating

28 (1) the amount of damages each claimant would be entitled to recover
29 if contributory fault is disregarded; and

30 (2) the percentage of the total fault [OF ALL OF THE PARTIES TO
31 EACH CLAIM] that is allocated to each claimant, defendant, third-party defendant,

1 [AND] person who has been released from liability under AS 09.17.091, or other
2 person responsible for the damages to each claimant regardless of whether the
3 other person is subject to an action by the claimant [AS 09.16.040].

4 * Sec. 16. AS 09.17.080(c) is amended to read:

5 (c) The court shall determine the award of damages to each claimant in
6 accordance with the findings, subject to a reduction under AS 09.17.091
7 [AS 09.16.040], and enter judgment against each party liable. The court also shall
8 determine and state in the judgment each party's equitable share of the obligation to
9 each claimant in accordance with the respective percentages of fault.

10 * Sec. 17. AS 09.17 is amended by adding a new section to read:

11 Sec. 09.17.091. EFFECT OF RELEASE. When a release or covenant not to
12 sue or not to enforce judgment is given in good faith to one of two or more persons
13 civilly liable for the same injury or the same wrongful death

14 (1) it does not discharge any of the other persons from liability for the
15 injury or wrongful death unless its terms so provide; but it reduces the claim against
16 the others to the extent of any amount stipulated by the release or the covenant, or in
17 the amount of the consideration paid for it, whichever is the greater; and

18 (2) it discharges the person to whom it is given from all liability for
19 contribution to any other person.

20 * Sec. 18. AS 09.30.065 is amended to read:

21 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days
22 before the trial begins either the party making a claim or the party defending against
23 a claim may serve upon the adverse party an offer to allow judgment to be entered in
24 complete satisfaction of the claim for the money or property or to the effect specified
25 in the offer, with cost then accrued. If within 10 days after the service of the offer the
26 adverse party serves written notice that the offer is accepted, either party may then file
27 the offer and notice of acceptance together with proof of service, and the clerk shall
28 enter judgment. An offer not accepted within 10 days is considered withdrawn and
29 evidence of that offer is not admissible except in a proceeding to determine the form
30 of judgment after verdict. If the judgment finally entered on the claim as to which an
31 offer has been made under this section is not more favorable to the offeree than the

1 offer, the interest awarded under AS 09.30.070 and accrued up to the date judgment
2 is entered shall be adjusted as follows:

3 (1) if the offeree is the party making the claim, the interest rate shall
4 be reduced by 50 [FIVE] percent a year;

5 (2) if the offeree is the party defending against the claim, the interest
6 rate shall be increased by 50 [FIVE] percent a year.

7 * Sec. 19. AS 09.30.070(a) is amended to read:

8 (a) The rate of interest on judgments and decrees for the payment of money
9 is one percent above the 2nd Federal Reserve District discount rate in effect on
10 January 2 of the year in which the judgment or decree is entered [10.5 PERCENT
11 A YEAR], except that a judgment or decree founded on a contract in writing,
12 providing for the payment of interest until paid at a specified rate not exceeding the
13 legal rate of interest for that type of contract, bears interest at the rate specified in the
14 contract if the interest rate is set out in the judgment or decree.

15 * Sec. 20. AS 09.30.070 is amended by adding a new subsection to read:

16 (c) Prejudgment interest may not be awarded for future economic damages,
17 future noneconomic damages, or for punitive damages.

18 * Sec. 21. AS 09.55.535(k) is amended to read:

19 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180,
20 apply to arbitrations under this section if they do not conflict with the provisions of
21 this section; arbitrations under this section shall be conducted in accordance with
22 procedures established by any rules of court which may be adopted and according to
23 provisions of AS 09.55.540 - 09.55.547 [AS 09.55.540 - 09.55.548] and AS 09.55.554
24 - 09.55.560, and AS 09.65.090.

25 * Sec. 22. AS 09.55.580(c) is amended to read:

26 (c) Except as provided in (g) of this section, in [IN] fixing the amount of
27 damages to be awarded under this section, the court or jury shall consider all the facts
28 and circumstances and from them fix the award at a sum which will fairly compensate
29 for the injury resulting from the death. In determining the amount of the award, the
30 court or jury shall consider but is not limited to the following:

31 (1) deprivation of the expectation of pecuniary benefits to the

1 beneficiary or beneficiaries, without regard to age thereof, that would have resulted
2 from the continued life of the deceased and without regard to probable accumulations
3 or what the deceased may have saved during the lifetime of the deceased;

4 (2) loss of contributions for support;

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

7 (4) loss of consortium;

8 (5) loss of prospective training and education;

9 (6) medical and funeral expenses.

10 * Sec. 23. AS 09.55.580 is amended by adding a new subsection to read:

11 (g) The amount awarded by the court or jury under this section for pecuniary
12 damages may not exceed \$50,000.

13 * Sec. 24. AS 09.65 is amended by adding a new section to read:

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

15 (a) A hospital is not liable for civil damages as a result of an act or omission by a
16 health care provider who is not an employee of the hospital if the claim is based solely
17 on the grounds that the hospital

18 (1) is required to provide services by law or by regulation, or is subject
19 to regulation with respect to the provision of services;

20 (2) is required to comply or has voluntarily complied with the standards
21 of a public or private licensing or accreditation agency with respect to provision of
22 services; or

23 (3) has adopted bylaws, policies, or regulations governing the provision
24 of services.

25 (b) A hospital is not, solely for the reason that a health care provider was the
26 actual, apparent, or implied agent of the hospital, liable for civil damages caused by
27 the acts or omissions of a health care provider who is not the hospital's employee, if
28 the hospital provides notice that the health care provider is an independent contractor.
29 The notice required by this subsection must be posted conspicuously in all admitting
30 areas of the hospital, published at least annually in a newspaper of general circulation
31 in the area, and must be in substantially the following form:

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Notice of Limited Liability

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

(List specific health care providers)

The hospital is responsible for exercising reasonable care in granting staff privileges to practice in the hospital, for reviewing those privileges on a regular basis, and for taking appropriate steps to revoke or restrict privileges in appropriate circumstances. The hospital is not otherwise liable for the acts or omissions of a health care provider who is an independent contractor.

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

(d) In this section,

(1) "health care provider" has the meaning given in AS 18.23.070, except that it does not include a hospital or an employee of the hospital;

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

* Sec. 25. AS 09.17.010(c), 09.17.040(c) and AS 09.55.548 are repealed.

* Sec. 26. AS 09.17.080(a), as amended in sec. 15 of this Act, has the effect of amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatory listed in AS 09.17.080(a)(2), regarding the percentages of fault to be allocated among the parties.

* Sec. 27. AS 09.30.070(c), added by sec. 20 of this Act, has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest may not be awarded for future economic or noneconomic damages.

* Sec. 28. APPLICABILITY. This Act applies to all causes of action accruing on or after the effective date of this Act.

* Sec. 29. This Act takes effect July 1, 1993.