

SENATE BILL NO. 123

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Introduced: 2/19/93  
Referred: HES, JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; and providing for an effective date."

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

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

4 Sec. 09.10.065. LIMITATION ON ACTIONS BY CERTAIN MINORS  
5 AGAINST HEALTH CARE PROVIDERS. (a) Notwithstanding AS 09.10.140, an  
6 action based on professional negligence may not be brought against a health care  
7 provider by a person who is, on the date of the alleged negligent act or omission less  
8 than two years of age, unless the action is brought before the person's eighth birthday.

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

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

14 (2) intentional concealment; or

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

4 (c) In this section,

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

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

8 (3) "professional services" means services provided by a health care  
9 provider that are within the scope of services for which the health care provider is  
10 licensed, and that are not prohibited under the health care provider's license or by a  
11 hospital in which the health care provider practices.

12 \* Sec. 2. AS 09.30.070(a) is amended to read:

13 (a) The rate of interest on judgments and decrees for the payment of money  
14 is 10.5 percent a year, except that a judgment or decree

15 (1) founded on a contract in writing, providing for the payment of  
16 interest until paid at a specified rate not exceeding the legal rate of interest for that  
17 type of contract, bears interest at the rate specified in the contract if the interest rate  
18 is set out in the judgment or decree; or

19 (2) resulting from medical malpractice bears a prejudgment rate  
20 of interest equal to the 12th Federal Reserve district discount rate as determined  
21 under AS 45.45.010(b).

22 \* Sec. 3. AS 09.55.535 is repealed and reenacted to read:

23 Sec. 09.55.535. MANDATORY ARBITRATION. (a) A person who files an  
24 action for damages against a health care provider resulting from medical malpractice,  
25 shall also submit the claim to the court for arbitration.

26 (b) When a claim is submitted as required by (a) of this section, the court shall  
27 appoint an arbitrator to review the claim. The arbitrator appointed to review the claim  
28 shall interview the parties and examine all records or materials relating to the claim  
29 and may compel the attendance of witnesses, interview the parties, or consult with  
30 medical specialists.

31 (c) An arbitrator appointed under this section shall conduct a prehearing

1 settlement conference within 30 days after the appointment. The arbitrator shall  
2 establish a period for discovery and a date for a hearing. The hearing date may not  
3 be more than 120 days after the settlement conference.

4 (d) An arbitrator shall render a decision within 30 days after hearing a claim  
5 under (c) of this section. The decision must contain findings of fact and conclusions  
6 of law. The decision of the arbitrator may be rejected by a party.

7 (e) If the decision of the arbitrator is rejected by a party, the action may  
8 proceed in the appropriate court. The arbitrator's decision is admissible evidence in  
9 that action and may be used by a party to support or oppose a claim of damages.

10 (f) The provisions of AS 09.43.010 - 09.43.180 (Uniform Arbitration Act)  
11 apply to an arbitration under this section, if the provisions do not conflict with the  
12 provisions of this section.

13 \* Sec. 4. AS 09.55.536 is amended to read:

14 Sec. 09.55.536. EXPERT ADVISOR [ADVISORY PANEL]. (a) In an action  
15 for damages due to personal injury or death based upon the provision of professional  
16 services by a health care provider [WHEN THE PARTIES HAVE NOT AGREED TO  
17 ARBITRATION OF THE CLAIM UNDER AS 09.55.535,] the court shall appoint  
18 within 20 days after filing of answer to a summons and complaint an expert medical  
19 advisor [A THREE-PERSON EXPERT ADVISORY PANEL] unless the court decides  
20 that an expert advisory opinion is not necessary for a decision in the case. When the  
21 action is filed the court shall, by order, determine the professions or specialties to be  
22 represented by the medical expert [ON THE EXPERT ADVISORY PANEL], giving  
23 the parties the opportunity to object or make suggestions.

24 (b) The expert advisor [ADVISORY PANEL] may compel the attendance of  
25 witnesses, interview the parties, physically examine the injured person if alive, consult  
26 with the specialists or learned works they consider appropriate, and compel the  
27 production of and examine all relevant hospital, medical, or other records or materials  
28 relating to the health care in issue. The advisor [PANEL] may meet in camera, but  
29 shall maintain a record of any testimony or oral statements of witnesses, and shall keep  
30 copies of all written statements received [IT RECEIVES].

31 (c) Not more than 30 days after selection of the advisor, the advisor [PANEL,

1 IT] shall make a written report to the parties and to the court, answering the following  
2 questions and other questions submitted to the advisor [PANEL] by the court:

- 3 (1) What was the disorder for which the plaintiff came to medical care?  
4 (2) What would have been the probable outcome without medical care?  
5 (3) Was the treatment selected appropriate for the case?  
6 (4) Did an injury arise from the medical care?  
7 (5) What is the nature and extent of the medical injury?  
8 (6) What specifically caused the medical injury?  
9 (7) Was the medical injury caused by unskillful care?  
10 (8) If a medical injury had not occurred, how would the plaintiff's  
11 condition differ from the plaintiff's present condition?

12 (d) In any case in which the answer to one or more of the questions submitted  
13 to the advisor [PANEL] depends upon the resolution of factual questions which are  
14 not the proper subject of expert opinion, the report shall so state and may answer  
15 questions based upon hypothetical facts that are fully set out in the opinion. The  
16 report must [SHALL] include copies of all written statements, opinions, or records  
17 relied upon by the advisor [PANEL] and either a transcription or other record of any  
18 oral statements or opinions; must [SHALL] specify any medical or scientific authority  
19 relied upon by the advisor [PANEL]; and must [SHALL] include the results of any  
20 physical or mental examination performed on the plaintiff. The advisor [EACH  
21 MEMBER] shall sign the report and the signature constitutes the advisor's  
22 [MEMBER'S] adoption of all statements and opinions contained in it [; HOWEVER,  
23 A MEMBER MAY, INSTEAD OF SIGNING THE REPORT, SUBMIT A  
24 CONCURRING OR DISSENTING REPORT WHICH COMPLIES WITH THE  
25 REQUIREMENTS OF THIS SUBSECTION]. An advisor [A MEMBER] may not  
26 attest to any portion of the report as to which the advisor [MEMBER] is not qualified  
27 to give expert testimony.

28 (e) The report of the advisor [PANEL WITH ANY DISSENTING OR  
29 CONCURRING OPINION] is admissible in evidence to the same extent as though its  
30 contents were orally testified to by the person or persons preparing it. The court shall  
31 delete any portion that would not be admissible because of lack of foundation for

1 opinion testimony, or otherwise. Either party may submit testimony to support or refute  
2 the report. The jury shall be instructed in general terms that the report shall be  
3 considered and evaluated in the same manner as any other expert testimony. The  
4 expert advisor [ANY MEMBER OF THE PANEL] may be called by any party and  
5 may be cross-examined as to the contents of the report [OR OF THAT MEMBER'S  
6 DISSENTING OR CONCURRING OPINION].

7 (f) Discovery [NO DISCOVERY] may not be undertaken in a case until the  
8 report of the expert advisor [ADVISORY PANEL] is received. However, the court  
9 may relax this prohibition upon a showing of good cause by a [ANY] party. If the  
10 advisor [PANEL] has not completed its report within the 30-day period prescribed in  
11 (c) of this section, the court may, upon application, grant [IT] an additional 30 days.

12 (g) The expert advisor is [MEMBERS OF A PANEL ARE] entitled to travel  
13 expenses and per diem in accordance with state law pertaining to members of boards  
14 and commissions for all time spent in preparing its report. If an advisor [A PANEL  
15 MEMBER] is called upon as a witness at trial or upon deposition, the advisor  
16 [MEMBER] is entitled to payment of an expert witness fee, which may not exceed  
17 \$150 per day. All expenses incurred by the advisor [PANEL] shall be paid by the  
18 court. However, in any case in which the court determines that a party has made a  
19 patently frivolous claim or a patently frivolous denial of liability, it shall order that all  
20 costs of the expert advisor [ADVISORY PANEL] be borne by the party making that  
21 claim or denial.

22 (h) Parties to the case and their counsel may not initiate communication out  
23 of court with an expert advisor [MEMBERS OF THE PANEL] on the subject matter  
24 of its inquiry and report or cause or solicit others to do so, except through ordinary  
25 discovery proceedings.

26 \* Sec. 5. APPLICABILITY. This Act applies to a cause of action that accrues after  
27 June 30, 1993.

28 \* Sec. 6. (a) This Act takes effect only if an Act establishing the Alaska Health Care  
29 Authority, relating to the delivery, quality, access, and financing of health care, requiring the  
30 establishment of health care expenditure limits, relating to approval of disability insurance  
31 rates, relating to issuance of certificates of need and relating to health insurance of small

1 employers, is passed by the Eighteenth Alaska State Legislature during its First Regular  
2 Session and is signed into law by the governor.

3 (b) If the condition described in (a) of this section is fulfilled, this Act takes effect  
4 July 1, 1993.