

SENATE BILL NO. 254

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR PEARCE

Introduced: 1/18/94
Referred: L&C, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 49,
2 68, and 82; and providing for an effective date."

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

4 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that
5 (1) civil justice in this state has generally been developed by the courts on a
6 case-by-case basis; this process has resulted in some significant changes in the law, and the
7 legislature has periodically intervened to bring about needed reforms;
8 (2) the level of malpractice insurance premiums discourage physicians,
9 architects, engineers, attorneys, and other professionals from initiating or continuing their
10 practice or offering needed services to the public;
11 (3) society as a whole cannot afford the price of lawsuits years after
12 construction, manufacture, the delivery of services and other actions; the widespread use of
13 claims made insurance policies makes it impossible to adequately and economically insure
14 against actions for an unlimited period of time; likewise it is extremely difficult to defend

1 against a claim that has become stale after information and witnesses have disappeared;

2 (4) on the whole society is better served with a statute of repose even though
3 in a few limited instances injuries may go without compensation;

4 (5) hospitals that comply with the disclosure requirements set out in this Act
5 should not be liable for the negligence of independent contractors; to this extent this Act is
6 intended to overrule the case of Jackson v. Powers, 743 P.2d 1376 (Alaska 1987);

7 (6) the issues in the Act were intended to be addressed in a comprehensive
8 way in 1986; however, the legislation passed in 1986 fell short of accomplishing the goals of
9 the legislature and the problems that existed in 1986 still exist in 1993.

10 (b) It is the purpose of this Act to

11 (1) enact further reforms that create a more equitable distribution of the cost
12 and risk of injury;

13 (2) reduce costs associated with the civil justice system, while ensuring that
14 adequate and appropriate compensation for persons injured through the fault of others is
15 available;

16 (3) help match losses with compensation by helping to

17 (A) ensure that money paid to an injured person is available when
18 anticipated expenses or losses occur;

19 (B) ensure that a claimant with substantial injury requiring long-term
20 treatment will have money available for future medical care;

21 (C) reduce reparation system costs by eliminating those portions of
22 awards that are not needed to compensate the claimant;

23 (D) eliminate duplicate recoveries; and

24 (E) reduce the costs of litigation;

25 (4) ensure that in actions involving the fault of more than one person, the fault
26 of each claimant, defendant, third-party defendant, person who has been released from
27 liability, or other person responsible for the damages be determined and awards be allocated
28 in accordance with their fault;

29 (5) reduce the amount of litigation proceeding to trial by modifying the
30 allocation of attorney fees and court costs based on the offer of judgment and the final court
31 award thereby providing a financial incentive to both parties to settle the dispute;

1 (6) accumulate additional information concerning the costs to society of the
2 civil justice system as it is presently constituted by having the attorney general compile useful
3 information and present an annual report to the legislature; this information is necessary to
4 determine whether the civil justice, health care, and insurance systems as they are presently
5 constituted are fairly serving victims and whether a disproportionate amount of compensation
6 dollars is absorbed by the system;

7 (7) enact a statute of repose that meets the tests set out in Turner Construction
8 Co., Inc. v. Scales, 752 P.2d 467 (Alaska 1988);

9 (8) clarify the circumstances in which hospitals are held directly liable for the
10 actions of health care providers not employed by the hospital.

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

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

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

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

20 (3) of the last act alleged to have caused the personal injury, death, or
21 property damage.

22 (b) This section does not apply if

23 (1) the personal injury, death, or property damage was caused
24 intentionally;

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

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

29 (c) This section does not preclude application of the provisions of
30 AS 09.10.140(b).

31 (d) In this section, "substantial completion" means the date when construction

1 is sufficiently completed to allow the owner or a person authorized by the owner to
2 occupy the improvement or to use the improvement in the manner for which it was
3 intended.

4 * **Sec. 3.** AS 09.10 is amended by adding a new section to read:

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

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

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

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

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

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

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

23 (c) This section does not preclude the application of the provisions of
24 AS 09.10.140(b).

25 (d) 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. 4. 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. 5. 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), 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 (c) This section does not preclude application of the provisions of
18 AS 09.10.140(b).

19 * Sec. 6. AS 09.17.010(a) is amended to read:

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

24 * Sec. 7. AS 09.17.010(b) is amended to read:

25 (b) The amount of damages awarded by a court or a jury under (a) of this
26 section may not exceed \$500,000 for all claims, including a loss of consortium
27 claim, arising out of a single injury or death [EACH CLAIM BASED ON A
28 SEPARATE INCIDENT OR INJURY].

29 * Sec. 8. AS 09.17.020 is amended to read:

30 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
31 awarded in an action, whether in tort, contract, or otherwise, unless supported by clear

1 and convincing evidence of malice and conscious acts showing deliberate disregard
2 of another person by the person from whom the punitive damages are sought.

3 * Sec. 9. AS 09.17.020 is amended by adding a new subsection to read:

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

7 * Sec. 10. AS 09.17.030 is amended to read:

8 Sec. 09.17.030. DAMAGES RESULTING FROM COMMISSION OF A
9 CRIME. A person who suffers personal injury or death may not recover damages for
10 the personal injury or death if the injuries or death occurred while the person was
11 attempting to commit or committing a felony, or fleeing from [ENGAGED IN] the
12 commission of a felony, [THE PERSON HAS BEEN CONVICTED OF THE
13 FELONY, INCLUDING CONVICTION BASED ON A GUILTY PLEA OR PLEA
14 OF NOLO CONTENDERE,] and the action [FELONY] substantially contributed to
15 the injury or death. [THIS SECTION DOES NOT AFFECT A RIGHT OF ACTION
16 UNDER 42 U.S.C. 1983.]

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

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

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

- 22 (A) [(1)] past economic loss;
23 (B) [(2)] past noneconomic loss;
24 (C) [(3)] future economic loss;
25 (D) [(4)] future noneconomic loss; [AND]
26 (E) [(5)] punitive damages; and

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

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

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

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

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

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

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

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

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

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

18 (d) A person who provides a collateral benefit admissible under (a) or (b) of
19 this section may not recover any amount against the claimant as reimbursement for
20 those benefits and may not be subrogated to the rights of a claimant against a person
21 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 or could have been named as a party to the action [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 as determined
10 under (a) of this section. An assessment of a percentage of fault against a person
11 who is not a party may only be used as a measure for accurately determining the
12 percentages of fault of a named party. Assessment of a percentage of fault
13 against a person who is not a party does not subject that person to civil liability
14 in this or another action and may not be used as evidence of civil liability in
15 another action.

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

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

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

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

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

27 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10 days
28 before the trial begins either the party making a claim or the party defending against
29 a claim may serve upon the adverse party an offer to allow judgment to be entered in
30 complete satisfaction of the claim for the money or property or to the effect specified
31 in the offer, with cost then accrued. If within 10 days after the service of the offer the

1 adverse party serves written notice that the offer is accepted, either party may then file
2 the offer and notice of acceptance together with proof of service, and the clerk shall
3 enter judgment. An offer not accepted within 10 days is considered withdrawn and
4 evidence of that offer is not admissible except in a proceeding to determine the form
5 of judgment after verdict. If the judgment finally entered on the claim as to which an
6 offer has been made under this section is not more favorable to the offeree than the
7 offer, the offeree shall pay the actual costs and attorney fees incurred by the
8 offeror from the date the offer was made [THE INTEREST AWARDED UNDER
9 AS 09.30.070 AND ACCRUED UP TO THE DATE JUDGMENT IS ENTERED
10 SHALL BE ADJUSTED AS FOLLOWS:

11 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE
12 INTEREST RATE SHALL BE REDUCED BY FIVE PERCENT A YEAR;

13 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE
14 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY FIVE PERCENT A
15 YEAR].

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

17 (a) The rate of interest on judgments and decrees for the payment of money
18 is three percent above the 12th Federal Reserve District discount rate in effect on
19 January 2 of the year in which the judgment or decree is entered [10.5 PERCENT
20 A YEAR], except that a judgment or decree founded on a contract in writing,
21 providing for the payment of interest until paid at a specified rate not exceeding the
22 legal rate of interest for that type of contract, bears interest at the rate specified in the
23 contract if the interest rate is set out in the judgment or decree.

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

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

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

28 (k) The provisions of the Uniform Arbitration Act, AS 09.43.010 - 09.43.180,
29 apply to arbitrations under this section if they do not conflict with the provisions of
30 this section; arbitrations under this section shall be conducted in accordance with
31 procedures established by any rules of court which may be adopted and according to

1 provisions of AS 09.55.540 - 09.55.547 [AS 09.55.540 - 09.55.548] and AS 09.55.554
2 - 09.55.560, and AS 09.65.090.

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

4 (c) Except as provided in AS 09.17.010 and (g) of this section, in [IN]
5 fixing the amount of damages to be awarded under this section, the court or jury shall
6 consider all the facts and circumstances and from them fix the award at a sum which
7 will fairly compensate for the injury resulting from the death. In determining the
8 amount of the award, the court or jury shall consider but is not limited to the
9 following:

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

14 (2) loss of contributions for support;

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

17 (4) loss of consortium;

18 (5) loss of prospective training and education;

19 (6) medical and funeral expenses.

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

21 (g) The amount awarded by the court or jury under this section for pecuniary
22 damages may not exceed \$10,000 if the deceased is not survived by a spouse, minor
23 child, or dependent. In this subsection, "dependent" means a father, mother, child,
24 grandchild, or sibling who was dependent on the deceased at the time of death.

25 * Sec. 24. AS 09.60.010 is repealed and reenacted to read:

26 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
27 PARTY. The supreme court shall determine by rule or order the costs, if any, that
28 may be allowed a prevailing party in a civil action. Unless specifically authorized by
29 statute or by agreement between the parties, attorney fees may not be awarded to a
30 party in a civil action for personal injury, death, or property damage related to or
31 arising out of fault. In this section, "fault" has the meaning given in AS 09.17.900.

1 * Sec. 25. 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 is not liable for civil damages as a result of an act or omission by a
4 health care provider who is not an employee or actual agent of the hospital if the
5 hospital provides notice that the health care provider is an independent contractor. The
6 notice required by this subsection must be posted conspicuously in all admitting areas
7 of the hospital, published at least annually in a newspaper of general circulation in the
8 area, and must be in substantially the following form:

9 Notice of Limited Liability

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

12 (List specific health care providers)

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

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

20 (c) In this section,

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

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

25 * Sec. 26. AS 09.17.010(c), 09.17.040(c) and AS 09.55.548 are repealed.

26 * Sec. 27. AS 09.17.080(a), as amended in sec. 15 of this Act, has the effect of amending
27 Alaska Rule of Civil Procedure 49 by requiring the jury to answer the special interrogatory
28 listed in AS 09.17.080(a)(2) regarding the percentages of fault to be allocated among the
29 parties.

30 * Sec. 28. AS 09.30.065, as amended by sec. 18 of this Act, has the effect of amending
31 Alaska Rule of Civil Procedure 68 by providing that if a judgment is not more favorable to

1 the offeree than the offer, the offeree shall pay actual costs and attorney fees incurred by the
2 offeror.

3 * **Sec. 29.** AS 09.30.070(c), added by sec. 20 of this Act, has the effect of amending
4 Alaska Rule of Civil Procedure 68 by providing that prejudgment interest may not be awarded
5 for future economic or noneconomic damages.

6 * **Sec. 30.** AS 09.60.010, as repealed and reenacted by sec. 24 of this Act, has the effect
7 of amending Alaska Rule of Civil Procedure 82 by providing that attorney fees may not be
8 awarded in a civil action for personal injury, death, or property damage, unless authorized by
9 statute or by agreement of the parties.

10 * **Sec. 31. SEVERABILITY.** Under AS 01.10.030, if any provision of this Act, or the
11 application of a provision of this Act to any person or circumstance is held invalid, the
12 remainder of this Act and the application to other persons shall not be affected.

13 * **Sec. 32. APPLICABILITY.** This Act applies to all causes of action accruing on or after
14 the effective date of this Act.

15 * **Sec. 33.** This Act takes effect July 1, 1994.