

AN ACT

An Act relating to civil actions in Alaska and providing for an effective date.

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

Sec. 1. AS 09.10.055 is repealed and reenacted to read:

Sec. 09.10.055. **STATUTE OF REPOSE OF EIGHT YEARS.** (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, or property damage unless commenced within eight years of the earlier of the date of

(1) substantial completion of the construction alleged to have caused the personal injury, death, or property damage; however, the limitation of this paragraph does not apply to a claim resulting from an intentional or reckless disregard of specific project design plans and specifications or building codes; or

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

(b) This section does not apply if

(1) the personal injury, death, or property damage resulted from

(A) exposure to a hazardous substance; in this subparagraph, "hazardous substance" means an element or compound that, when it enters into the air or on the surface or subsurface land or water of the state, presents an imminent and substantial danger to public or individual health and welfare;

(B) an intentional act or gross negligence;

(C) fraud or fraudulent misrepresentation;

(D) breach of an express warranty or guarantee; or

(E) a defective product; in this subparagraph, "product" means an object that has intrinsic value, is capable of delivery as an assembled whole or as a component part, and is introduced into trade or commerce; "product" includes an element or compound that if ingested by humans or if humans are exposed to, or are in contact with the element compound or product, poses a threat to human health;

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

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

or

(4) a longer period of time for bringing the action was provided under a contract.

(c) The limitation imposed under (a) of this section is tolled during any period in which there exists the undiscovered presence of a foreign body, that has no therapeutic or diagnostic purpose or effect, in the body of the injured person and the action is based on the presence of the foreign body.

INITIATIVE

September 30, 1996

(d) In this section, "substantial completion" means the date when construction is sufficiently completed to allow the owner or a person authorized by the owner to occupy the improvement or to use the improvement in the manner for which it was intended.

Sec. 2. AS 09.10.070 is repealed and reenacted to read:

Sec. 09.10.070. ACTIONS FOR CERTAIN TORTS AND CERTAIN STATUTORY LIABILITIES TO BE BROUGHT IN TWO YEARS. Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment; (2) upon a statute for a forfeiture or penalty to the state; or (3) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years.

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

Sec. 09.10.075. LIMITATION ON ACTIONS INVOLVING INJURY TO PERSON OR PROPERTY. (a) Notwithstanding the disability of minority described under AS 09.10.140(a), a person may not bring an action for personal injury, death, property damage, or injury to the rights of another not arising on contract, unless the action is brought within two years of the accrual of the action.

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

Sec. 4. AS 09.17.010. is repealed and reenacted to read:

Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to recover damages for personal injury or wrongful death, all damage claims for noneconomic losses shall be limited to compensation for pain, suffering, inconvenience, physical impairment, disfigurement, loss of enjoyment of life, loss of consortium, and other nonpecuniary damage.

(b) Except as provided under (c) of this section, the amount of damages awarded by a court or a jury under (a) of this section for all claims of a party to the action, including a loss of consortium claim, arising out of a single injury or death may not exceed \$300,000.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (a) of this section may not exceed \$500,000 when the claimant, as a result of the injury;

(A) is a hemiplegic, paraplegic, or quadriplegic and has permanent functional loss of one or more limbs resulting from injury to the spine or spinal cord;

(B) has lost both arms or both legs or an arm and a leg;

(C) has permanently impaired cognitive capacity, is incapable of making independent, responsible decisions, and is permanently incapable of independently performing the activities of normal, daily living;

(D) is both deaf and blind; or

(E) has third degree burns over one half or more of the claimant's body.

(d) The limit under (b) or (c) of this section does not apply to noneconomic damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony, if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(e) Multiple injuries sustained as a result of a single incident shall be treated as a single injury for purposes of this section.

Sec. 5. AS 09.17.020 is repealed and reenacted to read:

Sec. 09.17.020. **PUNITIVE DAMAGES.** (a) Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence of outrageous conduct, including acts done with malice or bad motives, or reckless indifference to the interest of another person.

(b) The amount of punitive damages awarded by a court or jury under (a) of this section may not exceed three times the amount of compensatory damages awarded or \$300,000, whichever amount is greater.

(c) The limit under (b) of this section does not apply to punitive damages awarded by a court or jury against a person who, as proven by a preponderance of the evidence, was attempting to commit or committing a felony if the person bringing the action was a victim of that offense and the offense substantially contributed to the injury or death. In this subsection, "victim" has the meaning given in AS 12.55.185.

(d) If a person receives an award of punitive damages, the court shall require that seventy five percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

Sec. 6. AS 09.17.070 is repealed and reenacted to read:

Sec. 09.17.070. **COLLATERAL BENEFITS.** (a) A claimant in an action for personal injury or death may only recover damages that exceed amounts received by the claimant, or that with reasonable probability will be received in the future by the claimant, as compensation for the injuries from collateral sources, whether private, group, or governmental, and whether contributory or noncontributory, except when

(1) the collateral source is a federally funded program that by law must seek subrogation;

- (2) the collateral source has a right of subrogation under federal law;
- (3) the collateral source is the payment of a dependent child's medical bills by the injured child's parent which does not result from insurance coverage;
- (4) the benefit consists of death benefits paid under life insurance; or
- (5) the benefit consists of workers' compensation benefits received under AS 23.30.

(b) A person defending a claim may introduce into evidence an amount paid or payable as a benefit to the claimant as a result of the personal injury or death under Title 42 Chapter 7 of the United States Code (Social Security Act); a state or federal disability act; health, sickness, disability, accident, or income-disability insurance; insurance that provides health benefits or income-disability coverage; and a contract or agreement of a group, organization, partnership, or corporation, or other collateral source, to provide, pay for, or reimburse the cost of medical, hospital, dental, or other health care services, disability, or lost wages. However, evidence of a collateral source that is a federally funded program that by law must seek subrogation or that has a right of subrogation under federal law, or evidence of death benefits paid under life insurance, or evidence of workers' compensation benefits received under AS 23.30, may not be introduced under this subsection. If a person defending a claim elects to introduce evidence described in this subsection, the claimant may introduce evidence of the amount that the claimant has paid or contributed to secure the claimant's right to the collateral benefit, including the cost to the claimant resulting from depleted or exhausted coverage.

(c) A person who provides a collateral benefit admissible under (b) of this section may not recover any amount against the claimant as reimbursement for those benefits and may not be subrogated to the rights of a claimant against a person defending a claim.

Sec. 7. AS 09.17.080 is repealed and reenacted to read:

Sec. 09.17.080. ALLOCATION OF DAMAGES. (a) In all actions involving the fault of more than one person, including third-party defendants and persons who have been released, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is not jury, shall make findings, indicating

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

(2) the percentage of the total fault that is allocated to each claimant, defendant, third-party defendant, person who has been released from liability, or other person responsible for the damages to each claimant regardless of whether the other person, including an employer, is or could have been named as a party to the action.

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault, and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot

be distinguished.

(c) The court shall determine the award of damages to each claimant in accordance with the findings and enter judgment against each party liable. The court also shall determine and state in the judgment each party's equitable share of the obligation to each claimant in accordance with the respective percentages of fault as determined under (a) of this section. An assessment of a percentage of fault against a person who is not a party may only be used as a measure for accurately determining the percentages of fault of a named party. Assessment of a percentage of fault against a person who is not a party does not subject that person to civil liability in that or another action and may not be used as evidence of civil liability in another action.

(d) The court shall enter judgment against each party liable on the basis of several liability in accordance with that party's percentage of fault.

Sec. 8. AS 09.30.070 is amended by adding a new subsection to read:

Sec. 09.30.070(c) **PREJUDGMENT INTEREST.** Prejudgment interest may not be awarded for future economic damages, future noneconomic damages, or for punitive damages.

Sec. 9. AS 09.65 is amended by adding a new section to read:

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

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

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.

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

(c) In this section,

(1) "health care provider" means a doctor of medicine, psychologist, osteopath, dentist, optometrist, chiropractor, optician, pharmacist, podiatrist, or certified registered nurse anesthetist, who

is licensed in this state:

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

(3) "independent contractor" means a licensed health care provider who is a member of a hospital's medical staff or who has otherwise been granted specified privileges to render health care services directly or indirectly to patients at the hospital, but who is not an employee or actual agent of the hospital in connection with the rendition of the health care services.

Sec. 10. AS 09.65.210 is repealed and reenacted to read:

Sec. 09.65.210 DAMAGES RESULTING FROM COMMISSION OF A FELONY. (a) A person who suffers personal injury or property damage may not recover damages for the personal injury or property damage if the injury occurred while the person was committing or attempting to commit a felony, or fleeing from the commission or attempted commission of a felony and the commission or attempted commission of the felony substantially contributed to the injury or property damage.

(b) The personal representative of a deceased person may not recover damages for the person's death if the court determines by clear and convincing evidence that the death occurred while the person was committing or attempting to commit a felony, or fleeing from the commission or attempted commission of a felony, and that the felony or attempted felony substantially contributed to the death.

Sec. 11. AS 09.17 is amended to add a new section to read

Sec. 09.17.090 EXPERT WITNESS QUALIFICATION. (a) Except as provided under (b) of this section, in an action based upon professional negligence, a person may not testify as an expert witness on the issue of the appropriate standard of care unless the witness is a professional who is licensed in this state, or is licensed in another state or country and

(1) is trained and experienced in the same discipline or school of practice as the defendant or in an area directly related to a matter at issue; and

(2) is certified by a board recognized by the state as having acknowledged expertise and training directly related to the particular field or matter at issue.

(b) The provisions of (a) of this section do not apply to a person who is testifying on the appropriate standard of care in a profession that is not licensed in this state, or another state or country, and who the court determines is qualified as an expert witness.

(c) "Professional negligence" means a negligent act or omission in rendering professional services.

Sec. 12. AS 09.55.548 is repealed.

Sec. 13. SEVERABILITY. If any provision of this Initiative, or the application of a provision of this Initiative to any person or circumstance is held invalid, the remainder of this Initiative and the application to other persons or circumstances shall not be affected.

Sec. 14. APPLICABILITY. This Initiative applies to all causes of action accruing on or after the effective date of this Act. This Initiative does not apply to any action or recovery arising out of the "Exxon Valdez" oil spill of March 1989.

Sec. 15. EFFECTIVE DATE OF THIS INITIATIVE. This Initiative takes effect ninety days after its certification by the lieutenant governor.