

## Alaska Wrongful Death Statutes

### § 09.55.570. All causes of action survive

All causes of action by one person against another, whether arising on contract or otherwise, except those involving defamation of character, survive to the personal representatives of the former and against the personal representatives of the latter, but this may not be construed so as to abate an action for a wrong where any party has died after the verdict or to defeat or prejudice the right of action given by AS 09.15.010. The personal representatives may maintain an action thereon against the party against whom the cause of action accrued, or, after the party's death, against the personal representatives of the party.

### § 09.55.580. Action for wrongful death (Alaska Statutes (2023 Edition))

(a) Except as provided under (f) of this section and AS 09.65.145, when the death of a person is caused by the wrongful act or omission of another, the personal representatives of the former may maintain an action therefor against the latter, if the former might have maintained an action, had the person lived, against the latter for an injury done by the same act or omission. The action shall be commenced within two years after the death, and the damages therein shall be the damages the court or jury may consider fair and just. The amount recovered, if any, shall be exclusively for the benefit of the decedent's spouse and children when the decedent is survived by a spouse or children, or other dependents. When the decedent is survived by no spouse or children or other dependents, the amount recovered shall be administered as other personal property of the decedent but shall be limited to pecuniary loss. When the plaintiff prevails, the trial court shall determine the allowable costs and expenses of the action and may, in its discretion, require notice and hearing thereon. The amount recovered shall be distributed only after payment of all costs and expenses of suit and debts and expenses of administration.

(b) The damages recoverable under this section shall be limited to those which are the natural and proximate consequence of the negligent or wrongful act or omission of another.

(c) In fixing the amount of damages to be awarded under this section, the court or jury shall consider all the facts and circumstances and from them fix the award at a sum

which will fairly compensate for the injury resulting from the death. In determining the amount of the award, the court or jury shall consider but is not limited to the following:

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

(2) loss of contributions for support;

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

(4) loss of consortium;

(5) loss of prospective training and education;

(6) medical and funeral expenses.

(d) The death of a beneficiary or beneficiaries before judgment does not affect the amount of damages recoverable under this section.

(e) The right of action granted by this section is not abated by the death of a person named or to be named the defendant.

(f) A person whose act or omission constitutes the felonious killing of another person may not recover damages for the death of that person either directly or as a personal representative of that person's estate. In this subsection, a "felonious killing" means a crime defined by AS 11.41.100 - 11.41.140.

**§ 09.55.585. Action for wrongful death of an unborn child; applicability** (Alaska Statutes (2023 Edition))

(a) A parent of an unborn child may maintain an action as plaintiff for the death of an unborn child that was caused by the wrongful act or omission of another.

(b) This section does not apply to acts or omissions that

(1) cause the death of an unborn child if those acts or omissions are committed during a legal abortion to which the pregnant woman or a person authorized by law to act on her behalf consents or for which consent is implied by law;

(2) are committed under usual and customary standards of medical practice during diagnostic testing, during therapeutic treatment, or while assisting a pregnancy; or

(3) are committed by a pregnant woman against herself and her unborn child.

(c) This section does not limit any other cause of action that a parent may maintain for the death of an unborn child.

(d) In this section,

(1) "abortion" has the meaning given in AS 18.16.090;

(2) "unborn child" has the meaning given in AS 11.81.900.

History: Added by SLA 2014, ch. 77, sec. 2, eff. 10/8/2014.

Note: This section was originally enacted as 09.15.018 but was renumbered by the reviser of statutes.

#### **§ 09.17.010. Noneconomic damages** (Alaska Statutes (2023 Edition))

(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 damages awarded by a court or a jury under (a) of this section for all claims, including a loss of consortium claim, arising out of a single injury or death may not exceed \$400,000 or the injured person's life expectancy in years multiplied by \$8,000, whichever is greater.

(c) In an action for personal injury, the damages awarded by a court or jury that are described under (b) of this section may not exceed \$1,000,000 or the person's life expectancy in years multiplied by \$25,000, whichever is greater, when the damages are awarded for severe permanent physical impairment or severe disfigurement.

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

**§ 09.65.320. Nonrecovery for damages for noneconomic losses resulting from operating a motor vehicle while uninsured** (Alaska Statutes (2023 Edition))

(a) Except as provided in (b) of this section, in an action to recover damages for personal injury or wrongful death, a person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for noneconomic losses if the injury or death occurred while the person was operating a motor vehicle and the person knew that the person was not in compliance with the motor vehicle liability insurance provisions of AS 28.22.011 or, if applicable, the motor vehicle liability insurance provisions of AS 28.20. In this subsection, "damages for noneconomic losses" means the compensation claimed for the losses identified in AS 09.17.010 (a).

(b) The prohibition against the recovery of noneconomic losses in (a) of this section does not apply if the person who is liable for the personal injury or wrongful death

(1) was driving while under the influence of an alcoholic beverage, inhalant, or controlled substance;

(2) acted intentionally, recklessly, or with gross negligence;

(3) fled from the scene of the accident; or

(4) was acting in furtherance of an offense or in immediate flight from an offense that constitutes a felony as defined in AS 11.81.900 at the time of the accident.

**§ 47.32.160. Immunity** (Alaska Statutes (2023 Edition))

(a) The Department of Health and the Department of Family and Community Services and the employees and agents of both departments are not liable for civil damages as a result of an act or omission in the licensure process, the monitoring of a licensed entity, or any activities under this chapter.

(b) A volunteer who works for a hospice program licensed under this chapter is not liable for damages for personal injury, wrongful death, or property damage for an act or omission committed in the course of hospice-related duties unless the act or omission constitutes gross negligence, recklessness, or intentional misconduct.

History: Amended by AK 2022 Executive Order 121, sec. 107, eff. 7/1/2022.

**§ 02.40.030. Unsolicited communication prohibited** (Alaska Statutes (2023 Edition))

(a) Except as provided in (c) of this section, in the event of an accident involving an air carrier providing intrastate transportation of passengers, an attorney may not initiate a contact with an individual injured in the accident or a relative of an individual injured or killed in the accident for the purpose of offering or discussing potential representation in an action based on the accident for personal injury or wrongful death within 45 days following the accident. In this subsection, "attorney" includes an attorney for an air carrier and an associate, agent, employee, or other representative of an attorney.

(b) During the 45-day period described in (a) of this section, an agent or representative of an air carrier or its insurer may not initiate contact with an individual injured in the accident or a relative of an individual injured or killed in the accident for the purpose of offering a final settlement of a claim.

(c) The prohibitions in (a) and (b) of this section do not apply to the activities that an air carrier or its insurers may undertake, or the obligations that an air carrier or its insurers may have to:

(1) provide a passenger or the family of a passenger injured or killed in an aircraft accident with short-term physical or financial assistance; or

(2) meet the obligations of the air carrier under 49 U.S.C. 41113 (Aviation Disaster Family Assistance Act of 1996).

(d) The attorney general or an aggrieved person may institute a civil action against a person who violates this section. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$10,000 may be imposed for each violation.

**§ 09.60.070. Attorney fees for victims of serious criminal offenses** (Alaska Statutes (2023 Edition))

(a) A person who has been injured or damaged, or the estate of a person who has died, may recover from the offender full reasonable attorney fees in a civil action or a wrongful death action if the injury, damage, or death resulted from

(1) an attempt on the part of the person to prevent the commission of a serious criminal offense or to apprehend an offender who has committed a serious criminal offense, or aiding or attempting to aid a police officer to do so, or aiding a victim of a serious criminal offense; or

(2) the commission or attempt on the part of the offender to commit a serious criminal offense.

(b) If a judgment for attorney fees is entered against an offender in a civil action brought under this section, and a contract of insurance requires an insurer to pay the attorney fees, the insurer shall be liable only for the attorney fees that would be awarded to the plaintiff under Rule 82(b)(1), Alaska Rules of Civil Procedure.

(c) In this section, "serious criminal offense" means the following offenses:

(1) murder in any degree;

(2) manslaughter;

(3) criminally negligent homicide;

(4) assault in any degree;

(5) kidnapping;

(6) sexual assault in any degree;

(7) sexual abuse of a minor in any degree;

(8) robbery in any degree;

(9) coercion;

(10) extortion;

(11) arson in any degree;

(12) burglary in any degree;

(13) criminal mischief in the first, second, third, or fourth degree;

(14) driving while under the influence of an alcoholic beverage, inhalant, or controlled substance or another crime resulting from the operation of a motor vehicle, boat, or airplane when the offender is under the influence of an alcoholic beverage, inhalant, or controlled substance;

(15) a crime involving domestic violence, as defined in AS 18.66.990.

History: Amended by SLA 2015, ch. 22, sec. 8, eff. 5/14/2015.

In **Parks v. Petersburg Borough**, \_\_\_ P. 3<sup>rd</sup> \_\_\_, Sup. Ct. No. 1950 (February 22, 2023), the supreme court in a Memorandum Opinion and Judgement focused on what constitutes an intention tort to avoid the Alaska Workers' Compensation Act's exclusive liability provision. After an employee died in a vehicle crash, where she was a passenger, her estate brought a wrongful death action against her co-employee (the driver) and their employee relying on the theory of 'indifference to human life' as an independent claim. The driver had a seizure disorder which he failed to disclose on this license renewal. A doctor advised him not to drive and notified the employer of the disorder and the directive not to drive. However, the job required driving the Borough's vehicle. As a result of the accident the driver was charged with two counts of second-degree murder, two counts of manslaughter, and one count of first-degree assault. Nonetheless, the trial court's dismissal of the wrongful death action was affirmed based on the "exclusive remedy" provision of the workers' compensation statute.

Justice Carney, dissenting, called the majority opinion a "*miscarriage of justice*" arguing that the workers' compensation exclusive remedy provision cannot be applied so as to protect criminal conduct by an employer and a fellow employee.

In **Doan v. Banner Health**, 485 P.3d 537 (Alaska 2021), the supreme court held that settlement funds may be withheld for non-settling defendants' eventual attorneys' fees; however, the court also held that reserved settlement funds may be partially distributed for the payment of plaintiff's attorneys' fees. (*Id.* at 542–45). In 2013, Doan's estate brought a wrongful death suit against seven defendants, resulting in a settlement with two defendants in 2018. (*Id.* at 539). Doan's estate requested the immediate distribution of that settlement for the payment of attorney's fees and the establishment of a trust for the estate's beneficiary; the non-settling defendants requested that the court deny any distribution, reserving the settlement to pay their attorneys' fees should they prevail in subsequent proceedings. (*Id.* at 539–40). The superior court ordered that the settlement be applied to the estate's attorneys' fees, but that the remainder be reserved. (*Id.* at 540). In response, the estate appealed for the distribution of the entire settlement, while the non-settling defendants appealed for the reservation of the entire settlement. (*Id.*). The supreme court first found that because Doan's estate was representing Doan's beneficiary, the defendants, should they prevail, may only seek attorneys' fees from a reserved settlement fund. (*Id.* at 542). Therefore, the settlement fund must be reserved to make the defendant's recovery possible. (*Id.*). However, the court also found that because the reserved settlement fund only exists due to the Doan estate and its attorney, it would be unjust to prevent the estate from paying its attorney through that fund. (*Id.* at 543–44). To find otherwise, the court held, would unjustly enrich the non-settling defendants at the expense of the Doan estate. (*Id.*). Affirming the superior court, the supreme court held that courts may withhold settlement funds for the potential payment of non-settling defendant's attorneys' fees but may also partially distribute reserved settlement funds for the payment of a plaintiff's attorneys' fees. (*Id.* at 542–45).

In *Haight v. City & Borough of Juneau*, 448 P.3d 254 (Alaska 2019), the supreme court held that the municipal's decision not to regulate safety requirement for a lake was not a waiver of sovereign immunity. Haight sued the City of Juneau for the wrongful death of her daughter after she died from a boating accident that occurred on Auke Lake. The city shares management of the lake with the state of Alaska and had passed an ordinance governing use of watercraft on the lake and constructed a boat launch into the lake but did not enact safety regulations for use of the lake. Alaskan municipalities have sovereign immunity from claims involving discretionary functions, but Haight argued that this immunity did not apply because safety regulations were an operational decision in implementing the boat launch, not a planning decision regarding the lake. The Supreme Court rejected this argument, holding that the decision not to regulate the lake was a discretionary planning decision and thus, protected from suit. Regulating the lake was not dependent on the construction of the new boat launch so it cannot be an operational decision based on implementing the boat launch. A report recommended the implementation of safety regulations but the city rejected several safety proposals when passing the lake's watercraft governing ordinance. Thus, the decision to not to implement safety regulations on Auke Lake was a discretionary planning decision and the city may not be sued for claims arising from this decision.

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