

1 IN THE SENATE

BY HAGGLAND

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 245

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to contribution among tortfeasors;
7 and providing for an effective date."

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

9 * Section 1. AS 09 is amended by adding a new chapter to read:

10 CHAPTER 16. CONTRIBUTION AMONG JOINT TORTFEASORS.

11 Sec. 09.16.010. RIGHT TO CONTRIBUTION. (a) Except as otherwise
12 provided in this chapter, where two or more persons become jointly or
13 severally liable in tort for the same injury to person or property or
14 for the same wrongful death, there is a right of contribution among them
15 even though judgment has not been recovered against all or any of them.

16 (b) The right of contribution exists only in favor of a tortfeasor
17 who has paid more than his pro rata share of the common liability, and
18 his total recovery is limited to the amount paid by him in excess of
19 his pro rata share. No tortfeasor is compelled to make contribution
20 beyond his own pro rata share of the entire liability.

21 (c) There is no right of contribution in favor of any tortfeasor
22 who has intentionally caused or contributed to the injury or wrongful
23 death.

24 (d) A tortfeasor who enters into a settlement with a claimant is
25 not entitled to recover contribution from another tortfeasor whose
26 liability for the injury or wrongful death is not extinguished by the
27 settlement nor in respect to any amount paid in a settlement which is
28 in excess of what was reasonable.

29 (e) A liability insurer, who by payment has discharged in full or

1 in part the liability of a tortfeasor and has thereby discharged in full
2 its obligation as insurer, is subrogated to the tortfeasor's right
3 of contribution to the extent of the amount it has paid in excess of
4 the tortfeasor's pro rata share of the common liability. This provi-
5 sion does not limit or impair any right of subrogation arising from
6 any other relationship.

7 (f) This chapter does not impair any right or indemnity under
8 existing law. Where one tortfeasor is entitled to indemnity from an-
9 other, the right of the indemnity obligee is for indemnity and not con-
10 tribution, and the indemnity obligor is not entitled to contribution
11 from the obligee for any portion of his indemnity obligation.

12 (g) This chapter shall not apply to breaches of trust or of other
13 fiduciary obligation.

14 Sec. 09.16.020. PRO RATA SHARES. In determining the pro rata
15 shares of tortfeasors in the entire liability (1) their relative
16 degrees of fault shall not be considered; (2) if equity requires the
17 collective liability of some as a group shall constitute a single
18 share; and (3) principles of equity applicable to contribution general-
19 ly shall apply.

20 Sec. 09.16.030. ENFORCEMENT. (a) Whether or not judgment has
21 been entered in an action against two or more tortfeasors for the same
22 injury or wrongful death, contribution may be enforced by separate
23 action.

24 (b) Where a judgment has been entered in an action against two or
25 more tortfeasors for the same injury or wrongful death, contribution
26 may be enforced in that action by judgment in favor of one against
27 other judgment defendants by motion upon notice to all parties to the
28 action.

29 (c) If there is a judgment for the injury or wrongful death

1 against the tortfeasor seeking contribution, any separate action by him
2 to enforce contribution must be commenced within one year after the
3 judgment has become final by lapse of time for appeal or after appel-
4 late review.

5 (d) If there is no judgment for the injury or wrongful death
6 against the tortfeasor seeking contribution, his right of contribution
7 is barred unless he has either (1) discharged by payment the common
8 liability within the statute of limitations period applicable to
9 claimant's right of action against him and has commenced his action for
10 contribution within one year after payment; or (2) agreed while action
11 is pending against him to discharge the common liability and has within
12 one year after the agreement paid the liability and commenced his action
13 for contribution.

14 (e) The recovery of a judgment for an injury or wrongful death
15 against one tortfeasor does not of itself discharge the other tort-
16 feasons from liability for the injury or wrongful death unless the
17 judgment is satisfied. The satisfaction of the judgment does not impair
18 any right of contribution.

19 (f) The judgment of the court in determining the liability of the
20 several defendants to the claimant for an injury or wrongful death shall
21 be binding as among the defendants in determining their right to contri-
22 bution.

23 Sec. 09.16.040. RELEASE OR COVENANT NOT TO SUE. When a release
24 or covenant not to sue or not to enforce judgment is given in good
25 faith to one of two or more persons liable in tort for the same injury
26 or the same wrongful death:

27 (1) it does not discharge any of the other tortfeasors from
28 liability for the injury or wrongful death unless its terms so provide;
29 but it reduces the claim against the others to the extent of any amount

1 stipulated by the release or the covenant, or in the amount of the con-
2 sideration paid for it, whichever is the greater; and,

3 (2) it discharges the tortfeasor to whom it is given from
4 all liability for contribution to any other tortfeasor.

5 Sec. 09.16.050. UNIFORMITY OF INTERPRETATION. This chapter shall
6 be so interpreted and construed as to effectuate as far as practical
7 the general purpose of making uniform the law of those states that
8 enact it.

9 Sec. 09.16.060. SHORT TITLE. This chapter may be cited as the
10 Alaska Uniform Contribution among Tortfeasors Act.

11 * Sec. 2. This Act shall take effect on the day after its passage and
12 approval or on the day it becomes law without approval.