

Introduced: 5/17/82
Referred: Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 SENATE BILL NO. 899

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act adopting the Uniform Comparative Fault Act."

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

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

9 CHAPTER 17. COMPARATIVE FAULT.

10 Sec. 09.17.010. EFFECT OF CONTRIBUTORY FAULT. (a) In an action
11 based on fault for the recovery of damages for injury or death to a
12 person or harm to property, any contributory fault chargeable to the
13 claimant diminishes proportionately the amount awarded as compensatory
14 damages for an injury attributable to the claimant's contributory fault,
15 but does not bar recovery.

16 (b) The legal requirements of causal relation apply to

- 17 (1) fault as the basis for liability; and
18 (2) contributory fault.

19 Sec. 09.17.020. APPORTIONMENT OF DAMAGES. (a) In all actions
20 involving fault of more than one party to the action, including third-
21 party defendants and persons who have been released under AS 09.17.060,
22 the court, unless otherwise agreed by all parties, shall instruct the
23 jury to answer special interrogatories or, if there is no jury, shall
24 make findings indicating

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

27 (2) the percentage of the total fault of all of the parties
28 to each claim that is allocated to each claimant, defendant, third-party
29 defendant, and person who has been released from liability under AS 09.-

1 17.060; for purposes of this paragraph, the court may determine that two
2 or more persons are to be treated as a single party.

3 (b) In determining the percentages of fault, the trier of fact
4 shall consider both the nature of the conduct of each party at fault and
5 the extent of the causal relation between the conduct and the damages
6 claimed.

7 (c) The court shall determine the award of damages to each claim-
8 ant in accordance with the findings, subject to reduction under AS 09.-
9 17.060, and enter judgment against each party liable on the basis of
10 rules of joint-and-several liability. For purposes of contribution
11 under AS 09.17.040 and 09.17.050, the court shall determine and state in
12 the judgment each party's equitable share of the obligation to each
13 claimant in accordance with the respective percentages of fault.

14 (d) Upon motion made not later than one year after judgment is
15 entered, the court shall determine whether all or part of a party's
16 equitable share of the obligation is uncollectible from that party, and
17 shall reallocate any uncollectible amount among the other parties,
18 including a claimant at fault, according to their respective percentages
19 of fault. Notwithstanding reallocation under this subsection, the party
20 whose liability is reallocated is subject to contribution and to any
21 continuing liability to the claimant on the judgment.

22 Sec. 09.17.030. SETOFF. A claim and counterclaim may not be set
23 off against each other, except by agreement of both parties. Upon a
24 motion, the court may, if it finds that the obligation of either party
25 is likely to be uncollectible, order that both parties make payment into
26 court for distribution. The court shall distribute the money received
27 and declare obligations discharged as if the payment into court by
28 either party had been a payment to the other party and any distribution
29 of that money back to the party making payment had been a payment to him

1 by the other party.

2 Sec. 09.17.040. RIGHT OF CONTRIBUTION. (a) A right of contri-
3 bution exists between or among two or more persons who are jointly and
4 severally liable upon the same indivisible claim for the same injury,
5 death, or harm, whether or not judgment has been recovered against all
6 or any of them. It may be enforced either in the original action or by
7 a separate action brought for that purpose. The basis for contribution
8 is each person's equitable share of the obligation, including the equit-
9 able share of a claimant at fault, as determined under AS 09.17.020.

10 (b) Contribution is available to a person who enters into a settle-
11 ment with a claimant only

12 (1) if the liability of the person against whom contribution
13 is sought has been extinguished; and

14 (2) to the extent that the amount paid in settlement was
15 reasonable.

16 Sec. 09.17.050. ENFORCEMENT OF CONTRIBUTION. (a) If the pro-
17 portionate fault of the parties to a claim for contribution has been
18 established previously by the court under AS 09.17.020, a party paying
19 more than his equitable share of the obligation, upon motion, may recover
20 judgment for contribution.

21 (b) If the proportionate fault of the parties to the claim for
22 contribution has not been established by the court, contribution may be
23 enforced in a separate action, whether or not a judgment has been entered
24 against either the person seeking contribution or the person from whom
25 contribution is being sought.

26 (c) If a judgment has been entered, the action for contribution
27 must be commenced within one year after the judgment becomes final. If
28 no judgment has been entered, the person bringing the action for con-
29 tribution either must have

1 (1) discharged by payment the common liability within the
2 period of the statute of limitations applicable to the claimant's right
3 of action against him and commenced the action for contribution within
4 one year after payment; or

5 (2) agreed while action was pending to discharge the common
6 liability and, within one year after the agreement, have paid the lia-
7 bility and commenced an action for contribution.

8 Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to
9 sue, or similar agreement entered into by a claimant and a person liable
10 discharges that person from all liability for contribution, but it does
11 not discharge any other persons liable upon the same claim unless it so
12 provides. However, the claim of the releasing person against other
13 persons is reduced by the amount of the released person's equitable
14 share of the obligation, determined under AS 09.17.020.

15 Sec. 09.17.250. DEFINITIONS. In this chapter, "fault" means acts
16 or omissions that are negligent or reckless toward the person or property
17 of the actor or others, including acts or omissions that subject a
18 person to strict tort liability and acts or omissions that constitute
19 breach of warranty, unreasonable assumption of risk not constituting an
20 enforceable express consent, misuse of a product for which the defendant
21 otherwise would be liable, and unreasonable failure to avoid an injury
22 or to mitigate damages.

23 Sec. 09.17.260. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This
24 chapter shall be applied and construed so as to effectuate its general
25 purpose to make uniform the law with respect to the subject of this
26 chapter among states enacting it.

27 Sec. 09.17.270. SHORT TITLE. This chapter may be cited as the
28 Alaska Uniform Comparative Fault Act.

29 * Sec. 2. AS 09.16 is repealed.

1 * Sec. 3. PROSPECTIVE EFFECT OF ACT. This Act applies to all causes of
2 action accruing after the effective date of this Act.

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