

Introduced: 4/12/85  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY GRUENBERG AND PIGNALBERI

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HOUSE BILL NO. 368

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

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and amending Alaska Rules of Civil Procedure 7, 49,

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52 and 58."

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

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

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CHAPTER 17. UNIFORM COMPARATIVE FAULT ACT.

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Sec. 09.17.010. EFFECT OF CONTRIBUTORY FAULT. In an action

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based on fault seeking to recover damages for injury or death to

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person or harm to property, contributory fault chargeable to the

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claimant diminishes proportionately the amount awarded as compensatory

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damages for an injury attributable to the claimant's contributory

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fault, but does not bar recovery. This rule applies whether or not

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under prior law the claimant's contributory fault constituted a de-

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fense or was disregarded under applicable legal doctrines, such as

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last clear chance.

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Sec. 09.17.020. APPORTIONMENT OF DAMAGES. (a) In all actions

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involving fault of more than one party to the action, including

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third-party defendants and persons who have been released under

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AS 09.17.060, the court, unless otherwise agreed by all parties, shall

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instruct the jury to answer special interrogatories or, if there is no

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jury, shall make findings, indicating

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(1) the amount of damages each claimant would be entitled

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to recover if contributory fault is disregarded; and

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(2) the percentage of the total fault of all of the parties

1 to each claim that is allocated to each claimant, defendant, third-  
2 party defendant, and person who has been released from liability under  
3 AS 09.17.060; for this purpose the court may determine that two or  
4 more persons are to be treated as a single party.

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

9 (c) The court shall determine the award of damages to each  
10 claimant in accordance with the findings, subject to a reduction under  
11 AS 09.17.060, and enter judgment against each party liable on the  
12 basis of rules of joint and several liability. For purposes of con-  
13 tribution under AS 09.17.040 - 09.17.050, the court also shall deter-  
14 mine and state in the judgment each party's equitable share of the  
15 obligation to each claimant in accordance with the respective per-  
16 centages of fault.

17 (d) Upon motion made not later than one year after judgment is  
18 entered, the court shall determine whether all or part of a party's  
19 equitable share of the obligation is uncollectible from that party,  
20 and shall reallocate an uncollectible amount among the other parties,  
21 including a claimant at fault, according to their respective percent-  
22 ages of fault. The party whose liability is reallocated is nonethe-  
23 less subject to contribution and to a continuing liability to the  
24 claimant on the judgment.

25 Sec. 09.17.030. SET-OFF. A claim and counterclaim may not be  
26 set off against each other, except by agreement of both parties. On  
27 motion, however, the court, if it finds that the obligation of either  
28 party is likely to be uncollectible, may order that both parties make  
29 payment into court for distribution. The court shall distribute the

1 funds received and declare obligations discharged as if the payment  
2 into court by either party had been a payment to the other party and a  
3 distribution of those funds back to the party making payment had been  
4 a payment to that party by the other party.

5 Sec. 09.17.040. RIGHT OF CONTRIBUTION. (a) A right of contri-  
6 bution exists between or among two or more persons who are jointly and  
7 severally liable upon the same indivisible claim for the same injury,  
8 death, or harm, whether or not judgment has been recovered against all  
9 or one of them. A person may enforce this right of contribution  
10 either in the original action or by a separate action brought for that  
11 purpose. The basis for contribution is each person's equitable share  
12 of the obligation, including the equitable share of a claimant at  
13 fault, as determined in accordance with the provisions of AS 09.17.-  
14 020.

15 (b) Contribution is available to a person who enters into a  
16 settlement with a claimant only

17 (1) if the liability of the person against whom contribu-  
18 tion is sought has been extinguished; and

19 (2) to the extent that the amount paid in settlement was  
20 reasonable.

21 Sec. 09.17.050. ENFORCEMENT OF CONTRIBUTION. (a) If the pro-  
22 portionate fault of the parties to a claim for contribution has been  
23 established previously by the court, as provided by AS 09.17.020, a  
24 party paying more than the party's equitable share of the obligation,  
25 upon motion, may recover judgment for contribution.

26 (b) If the proportionate fault of the parties to the claim for  
27 contribution has not been established by the court, a party may en-  
28 force contribution in a separate action whether or not a judgment has  
29 been rendered against either the person seeking contribution or the

1 person from whom contribution is being sought.

2 (c) If a judgment has been rendered, a party must begin an  
3 action for contribution within one year after the judgment becomes  
4 final. If no judgment has been rendered, the person bringing the  
5 action for contribution either must have

6 (1) discharged by payment the common liability within the  
7 period of the statute of limitations applicable to the claimant's  
8 right of action against the person bringing the action for contribu-  
9 tion and commenced the action for contribution within one year after  
10 payment; or

11 (2) agreed while action was pending to discharge the common  
12 liability and, within one year after the agreement, have paid the  
13 liability and commenced an action for contribution.

14 Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to  
15 sue, or similar agreement entered into by a claimant and a person  
16 liable discharges that person from all liability for contribution, but  
17 it does not discharge another person liable upon the same claim unless  
18 the release, covenant not to sue, or similar agreement so provides.  
19 However, the claim of the releasing person against other persons is  
20 reduced by the amount of the released person's equitable share of the  
21 obligation, determined in accordance with the provisions of AS 09.-  
22 17.020.

23 Sec. 09.17.070. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
24 This chapter shall be applied and construed to effect its general  
25 purpose to make uniform the law with respect to the subject of this  
26 chapter among states enacting it.

27 Sec. 09.17.080. DEFINITION. In this chapter "fault" includes  
28 acts or omissions that are in any measure negligent or reckless toward  
29 the person or property of the actor or others, or that subject a

1 person to strict tort liability. The term also includes breach of  
2 warranty, unreasonable assumption of risk not constituting an  
3 enforceable express consent, misuse of a product for which the  
4 defendant otherwise would be liable, and unreasonable failure to avoid  
5 an injury or to mitigate damages. Legal requirements of causal  
6 relation apply both to fault as the basis for liability and to  
7 contributory fault.

8 Sec. 09.17.090. APPLICABILITY. This chapter applies to all  
9 causes of action accruing after the effective date of this chapter.

10 Sec. 09.17.100. SHORT TITLE. This chapter may be cited as the  
11 "Uniform Comparative Fault Act."

12 \* Sec. 2. AS 09.16 is repealed.

13 \* Sec. 3. AS 09.17.020 enacted in sec. 1 of this Act has the effect of  
14 amending Alaska Rule of Civil Procedure 7 by setting a time limit on the  
15 filing of the motion allowed in AS 09.17.020.

16 \* Sec. 4. AS 09.17.020 enacted in sec. 1 of this Act has the effect of  
17 amending Alaska Rule of Civil Procedure 49 by requiring the jury to answer  
18 the special interrogatories listed in AS 09.17.020 regarding the amount of  
19 damages and the percentages of fault to be allocated among the parties.

20 \* Sec. 5. AS 09.17.020 enacted in sec. 1 of this Act has the effect of  
21 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
22 specific findings regarding the amount of damages and the percentages of  
23 fault to be allocated among the parties.

24 \* Sec. 6. AS 09.17.020 enacted in sec. 1 of this Act has the effect of  
25 amending Alaska Rule of Civil Procedure 58 by requiring the court to in-  
26 clude a specific item in its judgment.