

Introduced: 1/31/86  
Referred: Labor & Commerce  
and Judiciary

BY COTTEN, BINKLEY, COLLINS,  
PIGNALBERI AND THOMPSON

1 IN THE HOUSE

2 HOUSE BILL NO. 532

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil actions; amending Alaska  
7 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;  
8 and providing for an effective date."

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

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

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to  
13 recover damages for personal injury based on negligence, damages for  
14 noneconomic losses shall be limited to compensation for pain, suffer-  
15 ing, inconvenience, physical impairment, disfigurement, loss of enjoy-  
16 ment of life and other nonpecuniary damage.

17 (b) The amount of damages awarded by a court or jury under (a)  
18 of this section may not exceed \$250,000.

19 Sec. 09.17.020. PUNITIVE DAMAGES. In an action, whether in  
20 tort, contract, or otherwise, in which a party seeks to recover dam-  
21 ages, any punitive or exemplary damages that may be adjudged against  
22 the party defending the claim shall be awarded to the benefit of the  
23 state and when paid deposited in the general fund.

24 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages  
25 for personal injury are awarded by the court or jury, the verdict  
26 shall be itemized between economic loss and noneconomic loss, if any,  
27 and economic loss shall be further itemized by category. Itemization  
28 of economic loss by category includes: (1) amounts intended to com-  
29 pensate for reasonable expenses that have been incurred, or which will

1 be incurred, for necessary medical, surgical, x-ray, dental, or other  
2 health or rehabilitative services, drugs, and therapy; (2) amounts  
3 intended to compensate for lost wages or loss of earning capacity; and  
4 (3) all other economic losses claimed by the plaintiff or granted by  
5 the jury. A verdict shall further determine the amounts intended to  
6 compensate for injury or losses incurred before the verdict and  
7 amounts intended to compensate for losses that will be incurred in the  
8 future.

9 Sec. 09.17.040. PERIODIC PAYMENTS. (a) In an action to recover  
10 damages for personal injury, the court shall, at the request of a  
11 party, enter judgment ordering that amounts awarded a judgment credi-  
12 tor for future damages be paid to the maximum extent feasible by  
13 periodic payments rather than by a lump-sum payment if the award  
14 equals or exceeds \$50,000 in future damages. In entering judgment  
15 ordering the payment of future damages by periodic payments, the court  
16 shall make a specific finding as to the dollar amount of periodic  
17 payments that will compensate the judgment creditor for future dam-  
18 ages. The court may require a judgment debtor to post security ade-  
19 quate to assure full payment of future damages awarded by judgment.

20 (b) A judgment ordering payment of future damages by periodic  
21 payments shall specify the recipient, the dollar amount of the pay-  
22 ments, the interval between payments, and the number of payments or  
23 the period of time over which payments shall be made. Payments shall  
24 be modified only in the event of the death of the judgment creditor,  
25 in which case payments may not be reduced or terminated, but shall be  
26 paid to persons to whom the judgment creditor owed a duty of support,  
27 as provided by law, immediately before death. The court that rendered  
28 the original judgment, may, upon petition of a party in interest,  
29 modify the judgment to award and apportion the unpaid future damages

1 in accordance with this section.

2 (c) If the court finds that the judgment debtor has exhibited a  
3 continuing pattern of failing to make payments, under (b) of this  
4 section, the court shall find the judgment debtor in contempt of court  
5 and, in addition to the required periodic payments, shall order the  
6 judgment debtor to pay the judgment creditor any damages caused by the  
7 failure to make periodic payments, including costs and attorney fees.

8 (d) Following expiration of all obligations specified in the  
9 periodic payment judgment, the obligation of the judgment debtor to  
10 make further payments shall cease and security given under (a) of this  
11 section shall revert to the judgment debtor.

12 (e) A certified copy of a judgment or order of the court issued  
13 under this section may be recorded under AS 09.30.010, but may not  
14 become a lien upon real property before the date that payment becomes  
15 due.

16 Sec. 09.17.050. VERIFICATION OF CLAIMS. Every complaint, cross-  
17 claim, and counterclaim shall be signed and verified by the claiming  
18 party or the attorney of the claiming party and shall bear a statement  
19 that the person signing the claim believes the statements made in the  
20 claim are true. If the court finds that a statement made in the  
21 complaint, cross-claim, or counterclaim is untrue, and upon motion of  
22 a party defending against the claim, the person signing the claim  
23 shall be compelled to show cause why the person signing the claim  
24 should not be held in contempt of court.

25 Sec. 09.17.060. COLLATERAL BENEFITS. (a) The defendant, in an  
26 action for personal injury, may introduce evidence of an amount paid  
27 or payable as a benefit to the plaintiff as a result of the personal  
28 injury under the United States Social Security Act, a state or federal  
29 income disability or workers' compensation act, a health, sickness, or

1 income-disability insurance, accident insurance that provides health  
2 benefits or income-disability coverage, and a contract or agreement of  
3 a group, organization, partnership, or corporation to provide, pay for  
4 or reimburse the cost of medical, hospital, dental, or other health  
5 care services. If the defendant elects to introduce evidence under  
6 this section, the plaintiff may introduce evidence of an amount that  
7 the plaintiff has paid or contributed to secure the right to an insur-  
8 ance benefit concerning which the defendant has introduced evidence.

9 (b) Collateral benefits introduced under (a) of this section may  
10 not be used to recover an amount against the plaintiff nor may the  
11 source of the benefits be subrogated to the rights of the plaintiff  
12 against a defendant.

13 Sec. 09.17.070. EFFECT OF CONTRIBUTORY FAULT. In an action  
14 based on fault seeking to recover damages for injury or death to  
15 person or harm to property, contributory fault chargeable to the  
16 claimant diminishes proportionately the amount awarded as compensatory  
17 damages for an injury attributable to the claimant's contributory  
18 fault, but does not bar recovery.

19 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions  
20 involving fault of more than one party to the action, including  
21 third-party defendants and persons who have been released under  
22 AS 09.17.090, the court, unless otherwise agreed by all parties, shall  
23 instruct the jury to answer special interrogatories or, if there is no  
24 jury, shall make findings, indicating

25 (1) the amount of damages each claimant would be entitled  
26 to 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-  
29 party defendant, and person who has been released from liability under

1 AS 09.17.090; for this purpose the court may determine that two or  
2 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  
5 and the extent of the causal relation between the conduct and the  
6 damages claimed.

7 (c) The court shall determine the award of damages to each  
8 claimant in accordance with the findings, subject to a reduction under  
9 AS 09.17.090, and enter judgment against each party liable on the  
10 basis of rules of several liability. The court also shall determine  
11 and state in the judgment each party's equitable share of the obliga-  
12 tion to each claimant in accordance with the respective percentages of  
13 fault.

14 Sec. 09.17.090. 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 liability to the claimant, but it  
17 does not discharge another person liable upon the same claim unless  
18 the release, covenant not to sue, or similar agreement provides for  
19 discharge. However, the claim of the releasing person against other  
20 persons is reduced by the amount of the released person's equitable  
21 share of the obligation, determined in accordance with the provisions  
22 of AS 09.17.080.

23 Sec. 09.17.100. CONTINGENT FEE AGREEMENTS. (a) An attorney may  
24 not contract for or collect a contingency fee for representing a  
25 person seeking damages in connection with an action for personal  
26 injury based on negligence in excess of the following limits:

- 27 (1) 40 percent of the first \$50,000 recovered;  
28 (2) 33 1/3 percent of the next \$50,000 recovered;  
29 (3) 25 percent of the next \$100,000 recovered;

1                   (4) 10 percent of any amount recovered which exceeds  
2 \$200,000.

3                   (b) The limits in (a) of this section apply whether the recovery  
4 is by settlement, arbitration, or judgment, or whether the person for  
5 whom the recovery is made is a responsible adult, an infant, or incom-  
6 petent by reason of mental illness.

7                   (c) If periodic payments are awarded to the plaintiff under  
8 AS 09.17.040, the court shall place a total value on the periodic  
9 payments based upon the projected life expectancy of the plaintiff and  
10 include the total value in computing the total award from which attor-  
11 ney fees are calculated under this section.

12                   Sec. 09.17.900. DEFINITIONS. In this chapter

13                   (1) "fault" includes acts or omissions that are in any  
14 measure negligent or reckless toward the person or property of the  
15 actor or others, or that subject a person to strict tort liability;  
16 the term also includes breach of warranty, unreasonable assumption of  
17 risk not constituting an enforceable express consent, misuse of a  
18 product for which the defendant otherwise would be liable, and unrea-  
19 sonable failure to avoid an injury or to mitigate damages; legal  
20 requirements of causal relation apply both to fault as the basis for  
21 liability and to contributory fault;

22                   (2) "future damages" includes damages for future medical  
23 treatment, care or custody; loss of future earning capacity; or any  
24 future noneconomic loss;

25                   (3) "recovered" or "recovery" means the net sum  
26 recovered after deducting any disbursements or costs incurred in  
27 connection with prosecution or settlement of the claim; costs of  
28 medical care incurred by the plaintiff and any attorney's over-  
29 head costs or charges may not be included as deductible

1           disbursements or costs.

2   \* Sec. 2. AS 09.10.070 is amended to read:

3           Sec. 09.10.070. ACTIONS TO BE BROUGHT IN TWO YEARS. A [NO]  
4   person may not bring an action (1) for libel, slander, assault, bat-  
5   tery, seduction, false imprisonment, or for any injury to the person  
6   or rights of another not arising on contract and not specifically  
7   provided otherwise; (2) upon a statute for a forfeiture or penalty to  
8   the state; or (3) upon a liability created by statute, other than a  
9   penalty or forfeiture; unless commenced within two years from the date  
10   of the act or omission that gave rise to the claim, irrespective of  
11   the age or competency of the claimant or the failure of the claimant  
12   to discover the claim.

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

14           Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED.  
15   A person may not bring an action for damages based on personal injury  
16   when the amount in controversy is less than \$50,000, exclusive of  
17   costs, interest and attorney fees, unless the controversy is first  
18   arbitrated under AS 09.43.

19   \* Sec. 4. AS 09.10.140 is amended to read:

20           Sec. 09.10.140. DISABILITIES OF MINORITY, INCOMPETENCY AND  
21   IMPRISONMENT. Except as provided in AS 09.10.070, if [IF] a person  
22   entitled to bring an action mentioned in this chapter is at the time  
23   the cause of action accrues either (1) under the age of majority, or  
24   (2) incompetent by reason of mental illness, or (3) imprisoned on a  
25   criminal charge, or in execution under sentence of a court for a term  
26   less than the person's natural life, the time of the disability is not  
27   a part of the time limited for the commencement of the action. But  
28   the period within which the action may be brought is not extended in  
29   any case longer than two years after the disability ceases.

1 \* Sec. 5. AS 09.30.065 is amended to read:

2           Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day  
3 following the filing of an answer in a civil action, and on the fifth  
4 day following the day discovery closes as ordered by the court,  
5 [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a  
6 claim may serve upon the party making the claim [ADVERSE PARTY] an  
7 offer to allow judgment to be entered in complete satisfaction of the  
8 claim against that defending party for the money or property or to the  
9 effect specified in the offer, with cost then accrued. If within 10  
10 days after the service of the offer the claiming [ADVERSE] party  
11 serves written notice that the offer is accepted, either party may  
12 then file the offer and notice of acceptance together with proof of  
13 service, and the clerk shall enter judgment. An offer not accepted  
14 within 10 days is considered withdrawn and evidence of that offer is  
15 not admissible except in a proceeding to determine the form of judg-  
16 ment after verdict. If the judgment finally entered on the claim as  
17 to which an offer has been made under this section is not more favor-  
18 able to the claiming party [OFFEREE] than the offer, the claim shall  
19 bear no interest from the date of the offer to the date of judgment  
20 [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE  
21 JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

22           (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE  
23 INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

24           (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE  
25 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

26 \* Sec. 6. AS 09.43.110 is amended to read:

27           Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of  
28 a party, the court shall confirm an award unless

29           (1) within the time limits imposed by AS 09.43.120 and

1 09.43.130 grounds are urged for vacating or modifying or correcting  
2 the award, in which case the court shall proceed as provided in  
3 AS 09.43.120 and 09.43.130; or

4 (2) an appeal is taken under AS 09.43.160(c).

5 \* Sec. 7. AS 09.43.160 is amended by adding a new subsection to read:

6 (c) An award made as a result of arbitration required by  
7 AS 09.10.075 may be appealed to the superior court. The appeal shall  
8 be filed within 60 days after notice of an award is made under  
9 AS 09.43.080. The court shall grant a trial de novo if an appeal is  
10 filed under this subsection.

11 \* Sec. 8. AS 09.55.580(a) is amended to read:

12 (a) When the death of a person is caused by the wrongful act or  
13 omission of another, the personal representatives of the former may  
14 maintain an action therefor against the latter, if the former might  
15 have maintained an action, had the person lived, against the latter  
16 for an injury done by the same act or omission and if the decedent is  
17 survived by a spouse, children or other dependents. The action shall  
18 be commenced within two years after the death, and the damages therein  
19 shall be the damages the court or jury may consider fair and just.  
20 The amount recovered, if any, shall be exclusively for the benefit of  
21 the decedent's spouse and children when the decedent is survived by a  
22 spouse or children, or other dependents. When the decedent is sur-  
23 vived by no spouse or children or other dependents, the action shall  
24 be dismissed [THE AMOUNT RECOVERED SHALL BE ADMINISTERED AS OTHER  
25 PERSONAL PROPERTY OF THE DECEDENT BUT SHALL BE LIMITED TO PECUNIARY  
26 LOSS]. When the plaintiff prevails, the trial court shall determine  
27 the allowable costs and expenses of the action and may, in its dis-  
28 cretion, require notice and hearing thereon. The amount recovered  
29 shall be distributed only after payment of all costs and expenses of

1 suit and debts and expenses of administration.

2 \* Sec. 9. AS 09.60.010 is amended by adding a new subsection to read:

3 (b) Notwithstanding (a) of this section, the court may not award  
4 attorney fees to a prevailing party in an action for damages to the  
5 person or to property in the absence of a specific finding that the  
6 party at fault acted with malice, in bad faith, or with reckless  
7 disregard of the rights of another in causing the injury.

8 \* Sec. 10. AS 22.10.020(d) is amended to read:

9 (d) The superior court has jurisdiction in all matters appealed  
10 to it (1) from a subordinate court; (2) by a party to an arbitration  
11 award under AS 09.43.160(c); [,] or (3) an administrative agency when  
12 appeal is provided by law. The hearings on appeal from a final order  
13 or judgment of a subordinate court or administrative agency shall be  
14 on the record unless the superior court, in its discretion, grants a  
15 trial de novo, in whole or in part.

16 \* Sec. 11. AS 09.16 is repealed.

17 \* Sec. 12. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act  
18 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring  
19 the jury to answer the special interrogatories listed in AS 09.17.080  
20 regarding the amount of damages and the percentages of fault to be  
21 allocated among the parties and to itemize the verdict regarding economic  
22 and noneconomic loss as specified in AS 09.17.030.

23 \* Sec. 13. AS 09.17.080 enacted in sec. 1 of this Act has the effect of  
24 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
25 specific findings regarding the amount of damages and the percentages of  
26 fault to be allocated among the parties.

27 \* Sec. 14. AS 09.17.030, 09.17.040 and 09.17.080 enacted in sec. 1 of  
28 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by  
29 requiring the court to include a specific item in its judgment.

1 \* Sec. 15. AS 09.17.050 enacted in sec. 1 of this Act has the effect of  
2 amending Alaska Rule of Civil Procedure 11 by requiring verification of  
3 claims, counterclaims, and cross-claims.

4 \* Sec. 16. AS 09.17.100 enacted in sec. 1 of this Act has the effect of  
5 amending Civil Rule 82 by limiting the amount that could be awarded as  
6 attorney's fees in an action for personal injury based on negligence.

7 \* Sec. 17. AS 09.30.065 as amended by sec. 5 of this Act has the effect  
8 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
9 interest stops accruing from the date of an offer by a defending party  
10 which a claiming party fails to increase at judgment.

11 \* Sec. 18. AS 09.60.010 as amended by sec. 9 of this Act has the effect  
12 of amending Alaska Rule of Civil Procedure 82 by allowing costs and attor-  
13 ney fees only after a specific finding of malice, bad faith, or reckless  
14 disregard of the rights of another in causing the injury.

15 \* Sec. 19. APPLICABILITY. Sections 1 - 10 of this Act apply to all  
16 causes of action accruing after the effective date of this Act.

17 \* Sec. 20. This Act takes effect immediately in accordance with AS 01.-  
18 10.070(c).