

Introduced: 3/5/86  
Referred: Labor & Commerce  
and Judiciary

BY COTTEN, BINKLEY, COLLINS,  
PIGNALBERI, THOMPSON AND FRANK

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR 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 for each claim based on a  
19 separate incident or injury.

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

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

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

10 Sec. 09.17.040. FUTURE DAMAGES. (a) In an action to recover  
11 damages for personal injury, the court may, at the request of a party,  
12 enter judgment ordering that amounts awarded a judgment creditor for  
13 future damages be paid to the maximum extent feasible by periodic  
14 payments rather than by a lump-sum payment if the award equals or  
15 exceeds \$50,000 in future damages. In entering judgment ordering the  
16 payment of future damages by lump-sum payment, the court shall reduce  
17 the award of damages to a present value. The court may require a  
18 judgment debtor to post security adequate to assure full payment of  
19 future periodic payment 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 subsection.

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

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

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

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

26 Sec. 09.17.060. COLLATERAL BENEFITS. (a) A claimant, in an  
27 action for personal injury, may only recover damages from the defen-  
28 dant that exceeds the amount received by the claimant as compensation  
29 for the same injury from collateral sources, whether private, group or

1 governmental, and whether contributory or noncontributory. Evidence  
2 of collateral sources is admissible after the fact finder has rendered  
3 an award. The court may take into account the value of a claimant's  
4 rights to future or contingent benefits by including a reasonable  
5 estimate of their probable value, or by specifying and holding for  
6 possible periodic payment under AS 09.17.040 that amount of the award  
7 that would otherwise have been deducted, to determine if payment of  
8 the collateral benefit actually takes place.

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 third-  
21 party defendants and persons who have been released under AS 09.17.-  
22 090, the court, unless otherwise agreed by all parties, shall instruct  
23 the jury to answer special interrogatories or, if there is no jury,  
24 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 under AS 09.17.080.

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

- 26 (1) 40 percent of the first \$50,000 recovered;  
27 (2) 33 1/3 percent of the next \$50,000 recovered;  
28 (3) 25 percent of the next \$100,000 recovered;  
29 (4) 10 percent of any amount recovered which exceeds

1       \$200,000.

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

6           (c) If periodic payments are awarded to the plaintiff under  
7 AS 09.17.040, the court shall include the present value of the period-  
8 ic payments in computing the total award from which attorney fees are  
9 calculated under this section.

10       Sec. 09.17.900. DEFINITIONS. In this chapter

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

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

23           (3) "present value" means the value now of an amount that  
24 becomes due in the future, after being invested at a reasonable rate  
25 of return and adjusted for inflation;

26           (4) "recovered" or "recovery" means the net sum recovered  
27 after deducting any disbursements or costs incurred in connection with  
28 prosecution or settlement of the claim; costs of medical care incurred  
29 by the plaintiff and any attorney's overhead costs or charges may not

1 be included as deductible 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, [EI-  
5 THER THE PARTY MAKING A CLAIM OR] the party defending against a claim  
6 may serve upon the party making the claim [ADVERSE PARTY] an offer to  
7 allow judgment to be entered in complete satisfaction of the claim  
8 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 09.30.070 is amended by adding a new subsection to read:

27           (b) Except when the court finds that the parties have agreed  
28 otherwise, prejudgment interest accrues from the day of service of the  
29 complaint, cross-claim or counter-claim.

1 \* Sec. 7. AS 09.43.110 is amended to read:

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

4 (1) within the time limits imposed by AS 09.43.120 and  
5 09.43.130 grounds are urged for vacating or modifying or correcting  
6 the award, in which case the court shall proceed as provided in  
7 AS 09.43.120 and 09.43.130; or

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

9 \* Sec. 8. AS 09.43.160 is amended by adding a new subsection to read:

10 (c) An award made as a result of arbitration required by AS 09.-  
11 10.075 may be appealed to the proper court. The appeal shall be filed  
12 within 60 days after notice of an award is made under AS 09.43.080.  
13 The court shall grant a trial de novo if an appeal is filed under this  
14 subsection.

15 \* Sec. 9. AS 09.55.548 is repealed and reenacted to read:

16 Sec. 09.55.548. AWARDS. Damages shall be awarded in accordance  
17 with principles of the common law. The fact finder in a malpractice  
18 action shall render any award for damages in accordance with AS 09.17.

19 \* Sec. 10. AS 09.55.580(a) is amended to read:

20 (a) When the death of a person is caused by the wrongful act or  
21 omission of another, the personal representatives of the former may  
22 maintain an action therefor against the latter, if the former might  
23 have maintained an action, had the person lived, against the latter  
24 for an injury done by the same act or omission and if the decedent is  
25 survived by a spouse, children or other dependents. The action shall  
26 be commenced within two years after the death, and the damages therein  
27 shall be the damages the court or jury may consider fair and just.  
28 The amount recovered, if any, shall be exclusively for the benefit of  
29 the decedent's spouse and children when the decedent is survived by a

1 spouse or children, or other dependents. When the decedent is sur-  
2 vived by no spouse or children or other dependents, the action shall  
3 be dismissed [THE AMOUNT RECOVERED SHALL BE ADMINISTERED AS OTHER  
4 PERSONAL PROPERTY OF THE DECEDENT BUT SHALL BE LIMITED TO PECUNIARY  
5 LOSS]. When the plaintiff prevails, the trial court shall determine  
6 the allowable costs and expenses of the action and may, in its dis-  
7 cretion, require notice and hearing thereon. The amount recovered  
8 shall be distributed only after payment of all costs and expenses of  
9 suit and debts and expenses of administration.

10 \* Sec. 11. AS 09.60.010 is amended to read:

11 Sec. 09.60.010. COSTS ALLOWED PREVAILING PARTY. Except as  
12 otherwise provided by statute, the supreme court shall determine by  
13 rule or order what costs, if any, [INCLUDING ATTORNEY FEES,] shall be  
14 allowed the prevailing party in any case. Unless specifically  
15 authorized by statute or by agreement between the parties, attorney  
16 fees may not be awarded to a party in a civil action. If a court  
17 awards attorney fees authorized by statute, the award may not exceed  
18 the limits established under AS 09.17.100(a)(1) - (4).

19 \* Sec. 12. AS 22.10.020(d) is amended to read:

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

27 \* Sec. 13. AS 22.15.030(a) is amended to read:

28 (a) The district court has jurisdiction of civil cases and  
29 proceedings as follows:

- 1 (1) for the recovery of money or damages when the amount  
2 claimed exclusive of costs, interest and attorney fees does not exceed  
3 \$25,000;
- 4 (2) for the recovery of specific personal property, when  
5 the value of the property claimed and the damages for the detention do  
6 not exceed \$25,000;
- 7 (3) for the recovery of a penalty or forfeiture, whether  
8 given by statute or arising out of contract, not exceeding \$25,000;
- 9 (4) to give judgment without action upon the confession of  
10 the defendant for any of the cases specified in this section, except  
11 for a penalty or forfeiture imposed by statute;
- 12 (5) for establishing the fact of death of any person in the  
13 manner prescribed in AS 09.55.020 - 09.55.060;
- 14 (6) for the recovery of the possession of premises in the  
15 manner provided under AS 09.45.070 - 09.45.160 when the value of the  
16 property or of the arrears and damage to the property does not exceed  
17 \$25,000;
- 18 (7) for the foreclosure of a lien when the amount in con-  
19 troversy does not exceed \$25,000;
- 20 (8) for the recovery of money or damages in motor vehicle  
21 tort cases when the amount claimed exclusive of costs, interest and  
22 attorney fees does not exceed \$25,000;
- 23 (9) over civil actions for taking utility service and for  
24 damages to or interference with a utility line filed under AS 42.20.-  
25 030;
- 26 (10) over cases involving injunctive relief for domestic  
27 violence under AS 25.35.010 and 25.35.020;
- 28 (11) over an appeal by a party to an arbitration award under  
29 AS 09.43.160(c) when the amount claimed exclusive of costs, interest,

1        and attorney fees does not exceed \$25,000.

2        \* Sec. 14. AS 09.16 is repealed.

3        \* Sec. 15. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act  
4 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring  
5 the jury to answer the special interrogatories listed in AS 09.17.080  
6 regarding the amount of damages and the percentages of fault to be allocat-  
7 ed among the parties and to itemize the verdict regarding economic and  
8 noneconomic loss as specified in AS 09.17.030.

9        \* Sec. 16. AS 09.17.080 enacted in sec. 1 of this Act has the effect of  
10 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
11 specific findings regarding the amount of damages and the percentages of  
12 fault to be allocated among the parties.

13       \* Sec. 17. AS 09.17.030, 09.17.040 and 09.17.080 enacted in sec. 1 of  
14 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by  
15 requiring the court to include a specific item in its judgment.

16       \* Sec. 18. AS 09.17.050 enacted in sec. 1 of this Act has the effect of  
17 amending Alaska Rule of Civil Procedure 11 by requiring verification of  
18 claims, counterclaims, and cross-claims.

19       \* Sec. 19. AS 09.17.060, enacted in sec. 1 of this Act, has the effect  
20 of amending Alaska Rule of Civil Procedure 58 by requiring the court to  
21 reduce a judgment by the amount of collateral benefits received by a claim-  
22 ant.

23       \* Sec. 20. AS 09.17.100 enacted in sec. 1 of this Act and AS 09.60.010  
24 as amended by sec. 11 of this Act have the effect of amending Civil Rule 82  
25 by limiting the amount that could be awarded as attorney's fees in a civil  
26 action.

27       \* Sec. 21. AS 09.30.065 as amended by sec. 5 of this Act has the effect  
28 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
29 interest accrues from the date of filing of the claim.

1     \* Sec. 22. AS 09.60.010 as amended by sec. 11 of this Act has the  
2 effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the  
3 award of attorney fees in civil actions unless specifically authorized by  
4 statute or by agreement between the parties.

5     \* Sec. 23. APPLICABILITY. Sections 1 - 13 of this Act apply to all  
6 causes of action accruing after the effective date of this Act.

7     \* Sec. 24. This Act takes effect immediately in accordance with AS 01.-  
8 10.070(c).