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Original sponsors: Cotten, Binkley,
Collins, et al

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 532 (L&C)

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. In an action to recover
13 damages for personal injury based on negligence, damages for noneco-
14 nomic losses shall be limited to 25 percent of the present value of
15 the damages awarded for economic losses, or \$500,000 whichever amount
16 is lower.

17 Sec. 09.17.020. PUNITIVE DAMAGES. (a) Punitive damages may not
18 be awarded in an action, whether in tort, contract, or otherwise,
19 unless supported by clear and convincing evidence. Fifty percent of
20 any punitive or exemplary damages that may be adjudged against the
21 party defending the claim shall be awarded to the benefit of the state
22 and when paid deposited in the general fund.

23 (b) The amount of punitive damages awarded to the state shall be
24 considered a part of the amount recovered by the claiming party for
25 purposes of calculating an award of attorney fees.

26 (c) Except for purposes of seeking execution on a judgment, the
27 state may not bring or be joined in an action based on punitive dam-
28 ages that may be awarded under this section.

29 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR

1 COMMISSION OF A CRIME. A person who suffers personal injury or death
2 may not recover damages for the personal injury or death if the in-
3 juries or death occurred while the person was

4 (1) under the influence of intoxicating liquor or a con-
5 trolled substance listed in AS 11.71.140 - 11.71.190 and the condition
6 of being under the influence of the intoxicating liquor or controlled
7 substance contributed more than 50 percent to the person's injuries or
8 death; if there was 0.10 percent or more by weight of alcohol in the
9 person's blood or 0.10 grams or more of alcohol per 210 liters of the
10 person's breath, it is presumed that the person was under the influ-
11 ence of intoxicating liquor;

12 (2) engaged in the commission of a felony, if the felony
13 was causally related to the injury or death in time, place, or activi-
14 ty; however, nothing in this paragraph shall affect a right of action
15 under 42 U.S.C. 1983.

16 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
17 for personal injury are awarded by the court or jury, the verdict
18 shall be itemized between economic loss and noneconomic loss, if any,
19 and economic loss shall be further itemized by category. Itemization
20 of economic loss by category includes: (1) amounts intended to com-
21 pensate for reasonable expenses that have been incurred, or which will
22 be incurred, for necessary medical, surgical, x-ray, dental, or other
23 health or rehabilitative services, drugs, and therapy; (2) amounts
24 intended to compensate for lost wages or loss of earning capacity; and
25 (3) all other economic losses granted by the fact finder. A verdict
26 shall further determine the amounts intended to compensate for injury
27 or losses incurred before the verdict and amounts intended to compen-
28 sate for losses that will be incurred in the future.

29 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action where the

1 damages for personal injury include an award for future damages in
2 excess of \$75,000, the court may, if it determines that it is in the
3 interest of the injured party or the public, require that the portion
4 of the total award allocated for future damages be paid into the court
5 and placed in a trust account in a bank or savings and loan associa-
6 tion or placed with a licensed escrow agent and paid to the judgment
7 creditor in periodic payments rather than in a lump-sum payment.

8 (b) A judgment ordering payment of future damages by periodic
9 payment shall specify the recipient, the dollar amount of the pay-
10 ments, the interval between payments, and the number of payments or
11 the period of time over which payments shall be made. Payments may be
12 modified only as provided in (d) of this section or in the event of
13 the death of the judgment creditor, in which case payments may not be
14 reduced or terminated, but shall be paid to persons to whom the judg-
15 ment creditor owed a duty of support, as provided by law, immediately
16 before death. In the event the judgment creditor owed no duty of
17 support to dependents at the time of the judgment creditor's death,
18 the money remaining in the trust shall be distributed in accordance
19 with a will of the deceased judgment creditor or under the intestate
20 laws of the state if the deceased had no will.

21 (c) The court shall include as part of the costs awarded to the
22 claimant the costs of providing periodic payment of future economic
23 losses through a trust account as required by this section.

24 (d) The court that rendered the original judgment may, upon
25 petition of the judgment creditor, modify the judgment to award and
26 apportion the unpaid future damages specified in AS 09.17.030 if the
27 judgment creditor incurs unanticipated medical expenses that periodic
28 payments paid to date do not cover.

29 (e) If the court finds that the judgment debtor has exhibited a

1 continuing pattern of failing to make payments required under (b) of
2 this section, the court shall, in addition to the required periodic
3 payments, order the judgment debtor to pay the judgment creditor any
4 damages caused by the failure to make periodic payments, including
5 costs and attorney fees.

6 (f) If at any time following entry of judgment, a judgment
7 debtor fails to make a payment in a timely fashion according to the
8 terms of the part of the judgment related to periodic payments, the
9 judgment creditor may petition the court that rendered the original
10 judgment for an order requiring payment by the judgment debtor of the
11 outstanding payments in a lump sum. In calculating the amount of the
12 lump-sum judgment under this section, the court shall total the re-
13 maining periodic payments due and owing to the judgment creditor.
14 This amount may not be converted to its present value. The court may
15 also require the payment of interest on the outstanding judgment.

16 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. Every complaint,
17 answer, cross-claim, and counterclaim shall be signed and verified by
18 the party or the attorney of the party filing the pleading and shall
19 bear a statement that the person signing the pleading believes the
20 statements made in the pleading are true. If the court finds that a
21 statement made in the complaint, answer, cross-claim, or counterclaim
22 was knowingly untrue, and upon motion of a party the person signing
23 the pleading shall be compelled to show cause why the person signing
24 the pleading should not be held in contempt of court.

25 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS, OFFICERS
26 AND SUPERINTENDENTS. (a) Unless the act or omission constituted
27 gross negligence, a person may not recover damages for an act or
28 omission to act, in the course and scope of official duties, from the
29 following:

1 (1) a member of the board of directors or an officer of a
2 nonprofit corporation;

3 (2) a member of the board of directors of a public or
4 private hospital;

5 (3) a member of a school board or superintendent of a
6 school district;

7 (4) an elected or appointed official of a political subdi-
8 vision of the state.

9 (b) Notwithstanding (a) of this section, the duties and liabil-
10 ities of a director or officer of a nonprofit corporation to the
11 corporation or the corporation's shareholders may not be limited or
12 modified.

13 Sec. 09.17.050. 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. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder
20 has rendered an award to a claimant, and after the court has awarded
21 costs and attorney fees, a defendant may introduce evidence of amounts
22 received or to be received by the claimant as compensation for the
23 same injury from collateral sources that do not have a right of subro-
24 gation against the claimant by law or contract.

25 (b) If the defendant elects to introduce evidence under (a) of
26 this section, the claimant may introduce evidence of

27 (1) the amount that the actual attorney fees incurred by
28 the claimant exceed the amount of attorney fees awarded to the claim-
29 ant; and

1 (2) the amount that the claimant has paid or contributed to
2 secure the right to an insurance benefit introduced by the defendant
3 as evidence.

4 (c) If the total amount of collateral benefits introduced as
5 evidence under (a) of this section exceeds the total amount that the
6 claimant introduced as evidence under (b) of this section, the court
7 shall deduct from the amount awarded the claimant, the amount by which
8 the value of the benefits under (a) of this section exceeds the amount
9 of payments under (b) of this section.

10 (d) Notwithstanding (a) of this section, the defendant may not
11 introduce evidence of

12 (1) benefits that cannot be reduced or offset by federal
13 law;

14 (2) a deceased's life insurance policy; or

15 (3) gratuitous benefits provided to the claimant.

16 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
17 involving fault of more than one party to the action, including third-
18 party defendants and persons who have been released under AS 09.17.-
19 070, the court, unless otherwise agreed by all parties, shall instruct
20 the jury to answer special interrogatories or, if there is no jury,
21 shall make findings, indicating

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

24 (2) the percentage of the total fault of all of the parties
25 to each claim that is allocated to each claimant, defendant, third-
26 party defendant, and person who has been released from liability under
27 AS 09.17.070.

28 (b) In determining the percentages of fault, the trier of fact
29 shall consider both the nature of the conduct of each party at fault,

1 and the extent of the causal relation between the conduct and the
2 damages claimed. The trier of fact may determine that two or more
3 persons are to be treated as a single party if their conduct was a
4 cause of the damages claimed and the separate act or omission of each
5 person cannot be distinguished.

6 (c) The court shall determine the award of damages to each
7 claimant in accordance with the findings, subject to a reduction under
8 AS 09.17.070, and enter judgment against each party liable. The court
9 also shall determine and state in the judgment each party's equitable
10 share of the obligation to each claimant in accordance with the re-
11 spective percentages of fault.

12 (d) The court shall enter judgment against each party liable on
13 the basis of joint and several liability, except that a party who is
14 allocated less than 50 percent of the total fault allocated to all the
15 parties may not be jointly liable for more than twice the percentage
16 of fault allocated to that party.

17 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
18 sue, or similar agreement entered into by a claimant and a person
19 liable discharges that person from liability to the claimant, but it
20 does not discharge another person liable upon the same claim unless
21 the release, covenant not to sue, or similar agreement provides for
22 discharge. However, the claim of the releasing person against other
23 persons is reduced by the dollar amount of the release, covenant not
24 to sue, or similar agreement.

25 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
26 acts or omissions that are in any measure negligent or reckless toward
27 the person or property of the actor or others, or that subject a
28 person to strict tort liability; the term also includes breach of
29 warranty, unreasonable assumption of risk not constituting an

1 enforceable express consent, misuse of a product for which the defen-
2 dant otherwise would be liable, and unreasonable failure to avoid an
3 injury or to mitigate damages; legal requirements of causal relation
4 apply both to fault as the basis for liability and to contributory
5 fault.

6 * Sec. 2. AS 09.10 is amended by adding a new section to read:

7 Sec. 09.10.075. ACTIONS THAT MUST BE ARBITRATED. A person may
8 not bring an action for damages based on injury to person or property
9 when the amount in controversy is less than \$75,000, exclusive of
10 costs, interest and attorney fees, unless the controversy is first
11 arbitrated under AS 09.43.

12 * Sec. 3. AS 09.30.065 is amended to read:

13 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
14 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
15 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
16 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
17 making a claim or the party defending against a claim may serve upon
18 the adverse party an offer to allow judgment to be entered in complete
19 satisfaction of the claim for the money or property or to the effect
20 specified in the offer, with cost then accrued. If within 10 days
21 after the service of the offer the adverse party serves written notice
22 that the offer is accepted, either party may then file the offer and
23 notice of acceptance together with proof of service, and the clerk
24 shall enter judgment. An offer not accepted within 10 days is con-
25 sidered withdrawn and evidence of that offer is not admissible except
26 in a proceeding to determine the form of judgment after verdict. If
27 the judgment finally entered on the claim as to which an offer has
28 been made under this section is not more favorable to the offeree than
29 the offer, the interest awarded under AS 45.45.010(a) and accrued up

1 to the date judgment is entered shall be adjusted as follows:

2 (1) if the offeree is the party making the claim, the
3 interest rate shall be reduced by five [TWO] percent a year;

4 (2) if the offeree is the party defending against the
5 claim, the interest rate shall be increased by five [TWO] percent a
6 year.

7 * Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:

8 (b) Except when the court finds that the parties have agreed
9 otherwise, prejudgment interest accrues from the day the cause of
10 action accrues.

11 * Sec. 5. AS 09.43.110 is amended to read:

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

14 (1) within the time limits imposed by AS 09.43.120 and
15 09.43.130 grounds are urged for vacating or modifying or correcting
16 the award, in which case the court shall proceed as provided in
17 AS 09.43.120 and 09.43.130; or

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

19 * Sec. 6. AS 09.43.160 is amended by adding a new subsection to read:

20 (c) An award made as a result of arbitration required by AS 09.-
21 10.075 may be appealed to the proper court. The appeal shall be filed
22 within 60 days after notice of an award is made under AS 09.43.080.
23 The court shall grant a trial de novo if an appeal is filed under this
24 subsection.

25 * Sec. 7. AS 09.55.548 is repealed and reenacted to read:

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

29 * Sec. 8. AS 09.60.010 is repealed and reenacted to read:

1 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
2 PARTY. (a) The supreme court shall determine by rule or order the
3 costs, if any, that may be allowed a prevailing party in a civil
4 action. Unless specifically authorized by statute or by agreement
5 between the parties, attorney fees may not be awarded to a party in a
6 civil action.

7 (b) The court may, upon petition by a party to a civil action,
8 determine the reasonableness of that party's attorney fee agreement.
9 The court shall take into consideration

10 (1) the time and labor required, the novelty and difficulty
11 of the questions involved, and the skill requisite to perform the
12 legal service properly;

13 (2) the likelihood, if apparent to the client, that the
14 acceptance of the particular employment will preclude other employment
15 by the attorney;

16 (3) the fee customarily charged in the locality for similar
17 legal services;

18 (4) the amount involved and the results obtained;

19 (5) the time limitations imposed by the client or by the
20 circumstances;

21 (6) the nature and length of the professional relationship
22 with the client;

23 (7) the experience, reputation, and ability of the attorney
24 or attorneys performing the services;

25 (8) whether the fee is fixed or contingent;

26 (9) whether the fixed or contingent fee agreement was in
27 writing and whether the client was aware of the right to petition the
28 court under this section.

29 * Sec. 9. AS 09.60 is amended by adding a new section to read:

1 Sec. 09.60.035. COSTS AND ATTORNEY FEES ALLOWED FOR ARBITRATION
2 APPEAL. If a party appeals an award made as a result of arbitration
3 required by AS 09.10.075, and the appellate court increases or de-
4 creases the award by more than 10 percent, the prevailing party on
5 appeal shall also be awarded actual costs and attorney fees incurred
6 as a result of the appeal.

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

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

15 * Sec. 11. AS 22.15.030(a) is amended to read:

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

18 (1) for the recovery of money or damages when the amount
19 claimed exclusive of costs, interest and attorney fees does not exceed
20 \$25,000;

21 (2) for the recovery of specific personal property, when
22 the value of the property claimed and the damages for the detention do
23 not exceed \$25,000;

24 (3) for the recovery of a penalty or forfeiture, whether
25 given by statute or arising out of contract, not exceeding \$25,000;

26 (4) to give judgment without action upon the confession of
27 the defendant for any of the cases specified in this section, except
28 for a penalty or forfeiture imposed by statute;

29 (5) for establishing the fact of death of any person in the

1 manner prescribed in AS 09.55.020 - 09.55.060;

2 (6) for the recovery of the possession of premises in the
3 manner provided under AS 09.45.070 - 09.45.160 when the value of the
4 property or of the arrears and damage to the property does not exceed
5 \$25,000;

6 (7) for the foreclosure of a lien when the amount in con-
7 troversy does not exceed \$25,000;

8 (8) for the recovery of money or damages in motor vehicle
9 tort cases when the amount claimed exclusive of costs, interest and
10 attorney fees does not exceed \$25,000;

11 (9) over civil actions for taking utility service and for
12 damages to or interference with a utility line filed under AS 42.20.-
13 030;

14 (10) over cases involving injunctive relief for domestic
15 violence under AS 25.35.010 and 25.35.020;

16 (11) over an appeal by a party to an arbitration award under
17 AS 09.43.160(c) when the amount claimed exclusive of costs, interest,
18 and attorney fees does not exceed \$25,000.

19 * Sec. 12. AS 09.16 is repealed.

20 * Sec. 13. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
21 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
22 the jury to answer the special interrogatories listed in AS 09.17.060
23 regarding the amount of damages and the percentages of fault to be allocat-
24 ed among the parties and to itemize the verdict regarding economic and
25 noneconomic loss as specified in AS 09.17.030.

26 * Sec. 14. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
27 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
28 specific findings regarding the amount of damages and the percentages of
29 fault to be allocated among the parties.

1 * Sec. 15. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
2 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
3 the court to include a specific item in its judgment.

4 * Sec. 16. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
5 amending Alaska Rule of Civil Procedure 11 by requiring verification of
6 claims, answers, counterclaims, and cross-claims.

7 * Sec. 17. AS 09.30.065 as amended by sec. 3 of this Act has the effect
8 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
9 interest accrues from the day the cause of action accrues.

10 * Sec. 18. AS 09.60.010 as amended by sec. 8 of this Act has the effect
11 of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of
12 attorney fees, unless allowed by statute or by agreement of the parties.

13 * Sec. 19. APPLICABILITY. Sections 1 - 12 of this Act apply to all
14 causes of action accruing on or after the effective date of this Act.

15 * Sec. 20. This Act takes effect immediately in accordance with AS 01.-
16 10.070(c).