

HB

19

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: February 8, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/13/95

The FINANCE Committee considered:

HB 19

HOUSE BILL NO. 19

DEFINITION OF "FAULT" FOR CIVIL LIABILITY

"An Act relating to the definition of 'fault' as that term is used for the purposes of determining the liabilities of parties in civil actions, setting limitations on civil liability, and authorizing the award, in conformance with applicable court rule, of attorney fees in civil actions."

recommends it be replaced with the following committee substitute _____ [] the same title [] a new title

[] additional referral to _____ Committee
 [] attached amendment(s)

ADOPTS: House Judiciary Letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept) APPROVES PREVIOUS: _____ (Dept/Date)

[] fiscal note(s) _____ [] fiscal note(s) _____

[] zero fiscal note(s) _____ 2 [] zero fiscal note(s) 1 - Law 1 - DOA

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Richard Daley</i> FOSTER	X			
<i>Mark Hanley</i> Hanley	X			
<i>Terry Martin</i> Martin	V			
<i>Alan Parnell</i> Parnell	X			
<i>Vic Kohring</i> Kohring	X			
<i>Ben Grussendorf</i> Grussendorf	X			
<i>Wiles Navarre</i> Navarre			X	
<i>Walter Kelly</i> Kelly	X			
<i>Gene Therriault</i> Therriault	X			
<i>Ellen Mulder</i> Mulder	X			
<i>Ray Brown</i> Brown			X	

CO CHAIR'S SIGNATURE *Mark Hanley* *Richard Daley*
 Hanley FOSTER

FISCAL NOTE

NO. 1
 Bill Version: HB 19
 (H) Publish Date: 2/8/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to the definition of "fault"...determining BRU: Legal Services
the liabilities of parties in civil actions..." Component: Operations
 Sponsor: Representative Therriault
 Requester: Representative Therriault COMPONENT SERIAL NO. 0093

Expenditures/Revenues	(Thousands of Dollars)					
	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE	(Thousands of Dollars)					
	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.01	0.0	0.0	0.01	0.01	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the definition of fault, in AS 09.17.900 (Civil Damages and Apportionment of Fault) to include intentional acts. Current state law defines fault as acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subjects a person to strict tort liability. There have been recent instances where persons have attempted to avoid liability for their acts, where a court apportions fault in a personal injury suit, by claiming that their contributory acts were intentional and not negligent or reckless and should therefore be excluded from apportionment. This bill will cure this problem and reduce litigation costs for the time and effort that must now be expended to overcome this line of defense. The bill will not have a fiscal impact.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 1/30/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 1/30/95
Department of Law

COMMITTEE COPY

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 2
Bill Version: HB 19
(+) Publish Date: 2/8/95

Revision Date: _____
Title: An Act Relating to the Definition of 'Fault'
Sponsor: Theriault
Requestor: _____

Department Affected: Administration
BRU: Risk Management
Component: Risk Management
COMPONENT SERIAL NO. 71

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Division of Risk Management.

Prepared by: Brad Thompson
Division: Risk Management

Phone: 465-2180
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 1/30/95

COMMITTEE COPY PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information, call the Governor's Legislative Office

Alaska State Legislature



House of Representatives
House Judiciary Committee

State Capitol, Room 120
Juneau, Alaska 99801-1182
(907) 465-4990

LETTER OF INTENT

In adding "intentional" to the definition of fault in this chapter, the committee intends to make it clear that parties whose actions were arguably intentional may be named or joined in the litigation, as well as those who were allegedly negligent or reckless. The inclusion of intentional tortfeasors does not preclude consideration of whether the intentional tortfeasor's acts relieve unintentional tortfeasors of liability.

Brian A. Porter

Representative Brian Porter, Chairman

2-6-95

Date

Alaska State Legislature

REPRESENTATIVE
GENE THERRIALT
Mailing Address
119 N Cushman Suite 101
Fairbanks, Alaska 99701
(907) 488-0862
Fax (907) 488-4271



White in Fairbanks
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax (907) 465-3884
House District 33

House Of Representatives

HB 19: "An act relating to the definition of "fault" as that term is used for the purposes of determining the liabilities of parties in civil actions, setting limitations on civil liability, and authorizing the award, in conformance with applicable court rule, of attorney fees in civil actions."

Sponsor: Representative Gene Therriault

Sponsor Statement:

This legislation is intended to clarify a gray area of state civil liability law that allows defendants to argue they are not liable for offenses they have committed intentionally. The need arises from Alaska court cases in which defendants have argued that because the law refers only to acts that are "negligent or reckless" and not specifically to acts that are "intentional," it does not allow for the apportionment of fault to those who have committed offenses intentionally. Particularly in cases in which more than one person contributes to the injuries or could be sued, the law is unclear as to whether or not the person who committed an offense intentionally can be held responsible for any of the fault. In the cases that have been heard so far, the judge has found the argument to be without merit, however, tightening the law would eliminate the need for these costly court proceedings.

COMMISSION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 19, 1995

SUBJECT: House Bill 19: sectional analysis (Work Order No. 9-LS0103\A)

TO: Representative Gene Therriault
ATTN: Wilda Whittaker

FROM: Jack Chenoweth
Legislative Counsel 

AS 09.17.900 provides a definition of the term "fault" as it applies to civil actions to recover damages and to the apportionment of damages when more than one party may have been at fault. The current definition identifies "fault" in terms of the defendant's conduct if that conduct was "negligent" or "reckless." The referenced bill expands the definition to add, as a third element, conduct of a defendant that was "intentional." The revision is made applicable to causes of action that accrue on or after the bill's effective date. The change implicates references to "fault" that appear in, and relate to, the liabilities of parties in joint recoveries.

AS 09.60.010, directing the courts to determine, by rule, the award of attorney fees, precludes payment of fees in certain civil actions based upon "fault," incorporating a reference to the definition of "fault" in AS 09.17.900. The bill extends the definition in that section and, by the cross-reference, implicates the attorney fee provision, hence the reference to those fees in the bill's title.

JBC:pl
95-006.plm

Sec. 09.17.100. (Renumbered as AS 09.65.180.)

Sec. 09.17.900. Definition. In this chapter "fault" includes acts or omissions that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability. The term also includes breach of warranty, unreasonable assumption of risk not constituting an enforceable express consent, misuse of a product for which the defendant otherwise would be liable, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault. (§ 1 ch 139 SLA 1986)

NOTES TO DECISIONS

Quoted in *Borg-Warner Corp. v. AVCO Corp.*, 850 P.2d 628 (Alaska 1993).
 Cited in *Bell Helicopter Textron, Inc. v. United States*, 755 F. Supp. 269 (D. Alaska 1990).

Chapter 20. Trial.

Article

- 1. Jurors and Verdict (§§ 09.20.010 -- 09.20.100)
- 2. Witnesses (§§ 09.20.110 -- 09.20.180)

Article 1. Jurors and Verdict.

Section

- 10. Qualification of jurors; interpreters
- 20. Disqualification of jurors
- 25. Limitation on jury service
- 30. Exemptions
- 35. Deferral of jury service
- 37. Protection for employee on jury duty
- 40. Compliance with statute

Section

- 50. Jury list
- 60. Use of jury box or computer list
- 70. Public drawing for jurors for panel
- 80. Jury panel
- 90. Impaneling the trial jury
- 100. Verdicts

Cross references. — For court rules on jurors, see Civ. R. 47.

Collateral references. — 47 Am. Jur. 2d, Jury, § 1 et seq.

50 C.J.S., Juries, § 1 et seq.

Communication or contact between witnesses and jurors in civil case, 52 ALR2d 182.

Jury in civil case taking depositions to jury room during deliberations as ground for new trial, 57 ALR2d 1011.

Communication or contact between juror and party or counsel during trial of civil case, 62 ALR2d 298.

Providing food or drink for, treating, or entertaining of juror by party or counsel during trial of civil case as ground for new trial, 62 ALR2d 323.

Communication or contact between juror and outsider during trial of civil case, 64 ALR2d 158.

Treating of juror by outsider during trial of civil case as ground for new trial, 64 ALR2d 219.

Withdrawal of waiver of jury trial, 64 ALR2d 506; 9 ALR4th 1041; 48 ALR4th 747.

Validity and effect of contractual waiver of trial by jury, 73 ALR2d 1332.

Inattention of juror from sleepiness or other cause as ground for reversal or new trial, 88 ALR2d 1275.

Indoctrination by court of persons summoned for jury service as violation of right to jury trial, 89 ALR2d 215.

Rule of statute requiring opposing

Explanation of section in title "authorizing the award, in conformance with applicable court rule, of attorney fees in civil actions."

Sec. 09.50.010 sets out the conditions under which the court shall determine the costs and attorney's fees allowed a prevailing party in a civil action. It states that fees may not be awarded to a party in a civil action for personal injury, death or property damage related to or arising out of fault as defined in AS 09.17.900 unless the action is contested. By cross reference, the addition of "intentional" to AS 09.17.900 also adds "intentional torts" to the contested civil actions for which the courts can determine attorney fees.

Sec. 09.60.010. Costs and attorney fees allowed prevailing party. The supreme court shall determine by rule or order the costs, if any, that may be allowed a prevailing party in a civil action. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action for personal injury, death, or property damage related to or arising out of fault, as defined in AS 09.17.900, unless the civil action is contested without trial, or fully contested as determined by the court. (§ 5.14 ch 101 SLA 1962; am § 4 ch 139 SLA 1986)

Cross references. — For related court rules, see Civ. R. 54, 79 and 82.

For effect of the 1986 amendment to this section on Alaska Rules of Civil Procedure 82, see § 8, ch. 139, SLA 1986, in the Temporary and Special Acts.

Editor's notes. — Section 9, ch. 139, SLA 1986 provides that the 1986 amendment to this section applies "to all causes of action accruing after June 11, 1986."

NOTES TO DECISIONS

- I. General Consideration.
- II. Right to Costs.
 - A. Generally.
 - B. Prevailing Party.
- III. Award.
 - A. Generally.
 - B. Attorney's Fees.

I. GENERAL CONSIDERATION.

Applied in *Brand v. First Fed. Sav. & Loan Ass'n*, 478 P.2d 829 (Alaska 1970).

Quoted in *Albritton v. Estate of Larson*, 428 P.2d 379 (Alaska 1967); *Thomas v. Croft*, 614 P.2d 795 (Alaska 1980); *Alaska Fed. Sav. & Loan Ass'n v. Bernhardt*, 788 P.2d 31 (Alaska 1990); *Alaska Pac. Assurance Co. v. Collins*, 794 P.2d 936 (Alaska 1990); *Hickel v. Southeast Conference*, 868 P.2d 919 (Alaska 1994).

Cited in *Guin v. Ha*, 591 P.2d 1281 (Alaska 1979); *Stone v. Stone*, 647 P.2d 582 (Alaska 1982); *Kimmons v. Heldt*, 667 P.2d 1245 (Alaska 1983).

II. RIGHT TO COSTS.

A. Generally.

The right to costs is purely statutory. *Mutual Benefit Health & Accident Ass'n v. Moyer*, 9 Alaska 235, 94 F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

Right to costs did not exist at common law. *Mutual Benefit Health & Accident Ass'n v. Moyer*, 9 Alaska 235, 94

F.2d 906 (9th Cir. 1938), cert. denied, 9 Alaska 292, 304 U.S. 581, 58 S. Ct. 1054, 82 L. Ed. 1543 (1938).

The authority to make awards of attorney fees is derived from this section, which is of relatively ancient origin, dating from an Act of Congress of June 6, 1900, 31 Stat. 415-18, which was amended in 1923 by the Territorial Legislature of Alaska to expressly permit the courts to impose reasonable attorney's fees. *Stepanov v. Gavrilovich*, 594 P.2d 30 (Alaska 1979).

Rule 82(a), which allows for the recovery of reasonable attorney's fees, is supported by legislation which specifies that the supreme court shall determine when attorney's fees are to be awarded. Thus, the award of attorney's fees is authorized, though not mandated, by statute. *Klopfenstein v. Pargeter*, 597 F.2d 150 (9th Cir. 1979).

Child in need of aid proceedings. — There is no statute authorizing awards of attorney's fees in child in need of aid proceedings, nor has any rule or order authorizing such an award been promulgated. *Cooper v. State*, 638 P.2d 174 (Alaska 1981).

Civil R. 82 established pursuant to