

3420 HJUD SB 377 / HB 532 (FILE 2: BILLS, FISCAL NOTES & AMENDMENTS)



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SB

377/532 FILE #2

TORT REFORM

(BILLS, FISCAL NOTES,
Amendments)

COMPARISON BETWEEN CS FOR CS SB 377 (Judiciary-5/7/86) and CS SB 377 (Finance) am

Prepared by Rep. John Sund's office; May 7, 1986

1. Findings

Senate version (only)

11 * Section 1. FINDINGS AND PURPOSE. (a) Tort law in this state has
12 generally been developed by the courts on a case-by-case basis. While this
13 process has resulted in some significant changes in the law, including
14 amelioration of the harshness of many common law doctrines, the legislature
15 has periodically intervened in order to bring about needed reforms. The
16 purpose of this Act is to enact further reforms in order to create a more
17 equitable distribution of the cost and risk of injury and increase the
18 availability and affordability of insurance.

19 (b) The legislature finds that boroughs, cities, and other govern-
20 mental entities are faced with increased exposure to lawsuits and awards
21 and dramatic increases in the cost of insurance coverage. These escalating
22 costs ultimately affect the public through higher taxes, loss of essential
23 services, and loss of the protection provided by adequate insurance. In
24 order to improve the availability and affordability of quality governmental
25 services, comprehensive reform is necessary.

26 (c) The legislature also finds comparable cost increases in profes-
27 sional liability insurance. Escalating malpractice insurance premiums
28 discourage physicians and other health care providers from initiating or
29 continuing their practice or offering needed services to the public and

Findings (cont)

1 contribute to the rising costs of consumer health care. Other profession-
2 als, such as architects and engineers, face similar difficult choices,
3 financial instability, and unlimited risk in providing services to the
4 public.

5 (d) The legislature also finds that general liability insurance is
6 becoming unavailable or unaffordable to many businesses, individuals, and
7 nonprofit organizations in amounts sufficient to cover potential losses.
8 High premiums have discouraged socially and economically desirable activ-
9 ities and encourage many to go without adequate insurance coverage.

10 (e) It is the intent of the legislature to reduce costs associated
11 with the tort system, while ensuring that adequate and appropriate compen-
12 sation for persons injured through the fault of others is available.

2. Noneconomic Damages

House version

13 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
14 recover damages for personal injury based on negligence, damages for
15 noneconomic losses shall be limited to \$1,000,000 for each person
16 injured.

17 (b) The limit under (a) of this section does not apply to dam-
18 ages for physical impairment or disfigurement.

Senate version

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

20 (b) The amount of damages awarded by a court or jury under (a)
21 of this section may not exceed \$500,000 for each claim based on a
22 separate incident or injury.

3. Punitive Damages

Senate version (only)

23 Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be
24 awarded in an action, whether in tort, contract, or otherwise, unless
25 supported by clear and convincing evidence.

4 Damages from Intoxication or Crime

House version

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Sec. 09.17.010. DAMAGES RESULTING FROM COMMISSION OF A CRIME. person who suffers personal injury or death may not recover damage for the personal injury or death if the injuries or death occurred while the person was engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on guilty plea or plea of nolo contendere, and the felony substantially contributed to the injury or death. This section does not affect right of action under 42 U.S.C. 1983.

Senate version

26 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISS-
27 SION OF A CRIME. (a) A person who suffers personal injury or death
28 may not bring an action to recover damages for the personal injury or
29 death if the injuries or death occurred while the person was

1 (1) voluntarily under the influence of intoxicating liquor
2 or under the influence of a controlled substance listed in AS 11.71.-
3 140 - 11.71.190 and the condition of being under the influence of the
4 intoxicating liquor or controlled substance contributed more than 50
5 percent to the person's injuries or death; if there was 0.10 percent
6 or more by weight of alcohol in the person's blood or 0.10 grams or
7 more of alcohol per 210 liters of the person's breath, it is presumed
8 that the person was under the influence of intoxicating liquor; or

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

13 (b) The provisions of (a)(1) of this section do not apply to a
14 person who suffers personal injury or death caused by the intentional
15 act of another person or persons.

5. Itemized Verdicts

House version and Senate version

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 as follows:

- 20 (1) past economic loss;
21 (2) past noneconomic loss;
22 (3) future economic loss;
23 (4) future noneconomic loss; and
24 (5) punitive damages.

6. Periodic Payments

House version and Senate version

25 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover
26 damages, the court shall, at the request of an injured party, enter
27 judgment ordering that amounts awarded a judgment creditor for future
28 damages be paid to the maximum extent feasible by periodic payments
29 rather than by a lump-sum payment if the award equals or exceeds
1 \$100,000 in future damages.

2 (b) The court may require security be posted, in order to ensure
3 that funds are available as periodic payments become due. The court
4 may not require security to be posted if an authorized insurer, as
5 defined in AS 21.90.900, acknowledges to the court its obligation to
6 discharge the judgment.

7 (c) A judgment ordering payment of future damages by periodic
8 payment shall specify the recipient, the dollar amount of the pay-
9 ments, the interval between payments, and the number of payments or
10 the period of time over which payments shall be made. Periodic pay-
11 ments shall be cumulatively adjusted annually by applying each year
12 the annual rate of change in the consumer price index for all urban
13 consumers for the Anchorage Metropolitan Area as published by the
14 Bureau of Labor Statistics of the United States Department of Labor
15 for the immediately preceding year. Payments may be modified only in
16 the event of the death of the judgment creditor, in which case pay-
17 ments may not be reduced or terminated, but shall be paid to persons
18 to whom the judgment creditor owed a duty of support, as provided by
19 law, immediately before death. In the event the judgment creditor
20 owed no duty of support to dependents at the time of the judgment
21 creditor's death, the money remaining shall be distributed in accor-
22 dance with a will of the deceased judgment creditor accepted into
23 probate or under the intestate laws of the state if the deceased had
24 no will.

25 (d) If the court finds that the judgment del or has exhibited a
26 continuing pattern of failing to make payments required under (c) of
27 this section, the court shall, in addition to the required periodic
28 payments, order the judgment debtor to pay the judgment creditor any
29 damages caused by the failure to make periodic payments, including
1 costs and attorney fees.

7. Limited Liability

House version

12 Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
13 OFFICERS. (a) Unless the act or omission constituted gross negli-
14 gence, a person may not recover tort damages for personal injury,
15 death, or damage to property for an act or omission to act in the
16 course and scope of official duties, as a member or officer of the
17 following:

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

20 (2) a member of the board of directors of a public or
21 nonprofit hospital, or a member of a citizen's advisory board of any
22 hospital;

23 (3) a member of a school board of a school district;

24 (4) a member of the governing body, a commission, or a
25 citizen's advisory committee of a municipality of the state.

26 (b) Notwithstanding (a) of this section, the duties and liabil-
27 ities of a director or officer of a nonprofit corporation to the
28 corporation or the corporation's shareholders may not be limited or
29 modified.

1 (c) In this section "nonprofit corporation" means a corporation
2 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
3 or (4) (Internal Revenue Code).

Limited Liability (cont)

Senate version

11 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
12 OFFICERS. (a) Unless the act or omission constituted gross negli-
13 gence, a person may not recover damages for a negligent act or omis-
14 sion to act, in the course and scope of official duties, from the
15 following:

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

18 (2) a member of the board of directors of a public or
19 nonprofit hospital or a community-based advisory board of a hospital;

20 (3) a member of a school board of a school district;

21 (4) a member of a governing board, commission, or citizen
22 advisory committee of a municipality in the state.

23 (b) Notwithstanding (a) of this section, the duties and liabil-
24 ities of a director or officer of a nonprofit corporation to the
25 corporation or the corporation's shareholders may not be limited or
26 modified.

8. Contributory Fault

State version and House version

27 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
28 based on fault seeking to recover damages for injury or death to a
29 person or harm to property, contributory fault chargeable to the
1 claimant diminishes proportionately the amount awarded as compensatory
2 damages for the injury attributable to the claimant's contributory
3 fault, but does not bar recovery.

9 Collateral Benefits

House version

10 Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder
11 has rendered an award to a claimant, and after the court has awarded
12 costs and attorney fees, a defendant may introduce evidence of amounts
13 received or to be received by the claimant as compensation for the
14 same injury from collateral sources that do not have a right of subro-
15 gation by law or contract.

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

18 (1) the amount that the actual attorney fees incurred by
19 the claimant in obtaining the award exceed the amount of attorney fees
20 awarded to the claimant by the court; and

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

24 (c) If the total amount of collateral benefits introduced as
25 evidence under (a) of this section exceeds the total amount that the
26 claimant introduced as evidence under (b) of this section, the court
27 shall deduct from the total award the amount by which the value of the
28 nonsubrogated sum awarded under (a) of this section exceeds the amount
29 of payments under (b) of this section.

1 (d) Notwithstanding (a) of this section, the defendant may not
2 introduce evidence of

3 (1) benefits that under federal law cannot be reduced or
4 offset;

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

6 (3) gratuitous benefits provided to the claimant.

7 (e) This section does not apply to a medical malpractice action
8 filed under AS 09.55.

Collateral Benefits (cont)

Senate version

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

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

12 (1) the amount that the actual attorney fees incurred by
13 the claimant exceed the amount of the attorney fees awarded to the
14 claimant; and

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

18 (c) If the total amount of collateral benefits introduced as
19 evidence under (a) of this section exceeds the total amount that the
20 claimant introduced as evidence under (b) of this section, the court
21 shall deduct from the amount awarded the claimant, the amount by which
22 the value of the benefits under (a) of this section exceeds the amount
23 of payments under (b) of this section.

24 (d) Notwithstanding (a) of this section, the defendant may not
25 introduce evidence of

26 (1) benefits that cannot be reduced or offset by federal
27 law;

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

29 (3) gratuitous benefits provided to the claimant.

1 (e) This section does not apply to a medical malpractice action
2 filed under AS 09.55.

10. Apportionment of Damages

House version

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Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third party defendants and persons who have been released under AS 09.17.070, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury shall make findings, indicating

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

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was a cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

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

Apportionment of Damages (cont)

Senate version

3 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
4 involving fault of more than one party to the action, including third-
5 party defendants and persons who have been released under AS 09.17.-
6 070, the court, unless otherwise agreed by all parties, shall instruct
7 the jury to answer special interrogatories or, if there is no jury,
8 shall make findings, indicating

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

11 (2) the percentage of the total fault of all of the parties
12 to each claim that is allocated to each claimant, defendant, third-
13 party defendant, and person who has been released from liability under
14 AS 09.17.070: for this purpose the court may determine that two or
15 more persons are to be treated as a single party.

16 (b) In determining the percentages of fault, the trier of fact
17 shall consider both the nature of the conduct of each party at fault
18 and the extent of the causal relation between the conduct and the
19 damages claimed.

20 (c) The court shall determine the award of damages to each
21 claimant in accordance with the findings, subject to a reduction under
22 AS 09.17.070, and enter judgment against each party liable on the
23 basis of rules of several liability. The court shall also determine
24 and state in the judgment each party's equitable share of the obliga-
25 tion to each claimant in accordance with the respective percentage of
26 fault.

11 Effect of Release

House version

20 Sec. 09.17.070. EFFECT OF RELEASE. When a release or covenant
21 not to sue or not to enforce judgment is given in good faith to one or
22 two or more persons liable in tort for the same injury or the same
23 wrongful death

24 (1) it does not discharge any of the other tortfeasors from
25 liability for the injury or wrongful death unless its terms so pro-
26 vide; but it reduces the claim against the others to the extent of an
27 amount stipulated by the release or the covenant, or in the amount of
28 the consideration paid for it, whichever is the greater; and

29 (2) it discharges the tortfeasor to whom it is given from
all liability for contribution to any other tortfeasor.

Senate version

27 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to
28 sue, or similar agreement entered into by a claimant and a person
29 liable discharges that person from liability to the claimant, but it

1 does not discharge another person liable upon the same claim unless
2 the release, covenant not to sue, or similar agreement provides for
3 discharge. However, the claim of the releasing person against other
4 persons is reduced by the amount of the released person's equitable
5 share of the obligation, determined in accordance with the provisions
6 of AS 09.17.060.

12. Contingency Fees
Senate version (only)

7 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
8 not contract for or collect a contingency fee for representing a
9 person seeking damages in connection with an action for personal
10 injury based on negligence in excess of 25 percent of the amount
11 recovered.

12 (b) If periodic payments for future damages are awarded, the
13 present value of the periodic payments must be included in computing
14 the total award from which attorney fees are calculated under this
15 section.

16 (c) An attorney may not contract for or receive a fee for de-
17 fending a person against a claim for damages in connection with an
18 action for personal injury based on negligence, in excess of 25 per-
19 cent of the amount recovered or if no amount is recovered by the
20 plaintiff, 25 percent of the amount in controversy.

21 (d) The limitations in (a) - (c) of this section apply whether
22 the recovery is by settlement, arbitration, or judgment.

This section takes effect only if section
regarding Rule 82 (As 09.60.010) does not pass
each house by at least 2/3 majority.

13 Definitions

House version and Senate version.

23 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
24 acts or omissions that are in any measure negligent or reckless toward
25 the person or property of the actor or others, or that subject a
26 person to strict tort liability; the term also includes breach of
27 warranty, unreasonable assumption of risk not constituting an enforce-
28 able express consent, misuse of a product for which the defendant
29 otherwise would be liable, and unreasonable failure to avoid an injury

1 or to mitigate damages; legal requirements of causal relation apply
2 both to fault as the basis for liability and to contributory fault.

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

14. Offers of Judgment

Have version

2 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
3 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
4 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
5 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
6 making a claim or the party defending against a claim may serve upon
7 the adverse party an offer to allow judgment to be entered [IN COM-
8 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the
9 effect specified in the offer, with costs [COST] ther. accrued. If
10 within 10 days after the service of the offer the adverse party serves
11 written notice that the offer is accepted, either party may then file
12 the offer and notice of acceptance together with proof of service, and
13 the clerk shall enter judgment. An offer not accepted within 10 days
14 is considered withdrawn and evidence of that offer is not admissible
15 except in a proceeding to determine costs and attorney fees [THE FORM
16 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the
17 claim as to which an offer has been made under this section is not
18 more favorable to the offeree than the offer, the offeree shall pay
19 costs incurred after service of the offer, and the court may also
20 require payment of reasonable actual attorney fees incurred after
21 service of the offer, and the interest awarded under AS 45.45.010(a)
22 and accrued up to the date judgment is entered shall be adjusted as
23 follows:

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

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

Offer of Judgment (cont)

House version (cont)

1 (b) The fact that an offer is made but not accepted does not
2 preclude a subsequent offer. When the liability of one party to
3 another has been determined by verdict, order, or judgment, but the
4 amount or extent of the liability remains to be determined by further
5 proceedings, the party adjudged liable may make an offer of judgment,
6 which shall have the same effect as an offer made before trial if it
7 is served within a reasonable time not less than 10 days before the
8 commencement of hearings to determine the amount or extent of liability.
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10 (c) Except for civil commitment and child custody actions, this
11 section applies to all civil actions.

14. Offer of Judgment (cont)

Senate version

4 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
5 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
6 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
7 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
8 making a claim or the party defending against a claim may serve upon
9 the adverse party an offer to allow judgment to be entered in complete
10 satisfaction of the claim for the money or property or to the effect
11 specified in the offer, with cost then accrued. If within 10 days
12 after the service of the offer the adverse party serves written notice
13 that the offer is accepted, either party may then file the offer and
14 notice of acceptance together with proof of service, and the clerk
15 shall enter judgment. An offer not accepted within 10 days is con-
16 sidered withdrawn and evidence of that offer is not admissible except
17 in a proceeding to determine the form of judgment after verdict. If
18 the judgment finally entered on the claim as to which an offer has
19 been made under this section is not more favorable to the offeree than
20 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
21 and accrued up to the date judgment is entered shall be adjusted as
22 follows:

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

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

15. Interest on Judgments

House version

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* Sec. 4. AS 09.30.070 is amended by adding a new subsection to read:
(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day the cause of action accrues.

Senate version

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Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on judgments and decrees for the payment of money is equal to the 12th Federal Reserve district discount rate as determined under AS 45.45.010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded on a contract in writing, providing for the payment of interest until paid at a specified rate not exceeding the legal rate of interest for that type of contract, bears interest at the rate specified in the contract if the interest rate is set out in the judgment or decree.

* Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:
(b) Except when the court finds that the parties have agreed otherwise, prejudgment interest accrues from the day process is served on the defendant or the day the defendant received written notification of the claim, whichever is earlier. Evidence to be considered by the finder of fact may include the amount of the prejudgment interest that may be added to the award.

16. Awards

Have version (only)

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Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damage in a malpractice action shall be awarded in accordance with principle of the common law.

17. Prevailing Party Attorney Fees

House version

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(b) In making an award of attorney fees to a prevailing party the court shall consider actual attorney fees incurred by each party in the civil action. Actual attorney fees shall be supported by affidavit from the attorney representing each party.

Senate version

15 * Sec. 6. AS 09.60.010 is repealed and reenacted to read:
16 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
17 PARTY. The supreme court shall determine by rule or order the costs,
18 if any, that may be allowed a prevailing party in a civil action.
19 Unless specifically authorized by statute or by agreement between the
20 parties, attorney fees may not be awarded to a party in a civil action
21 for personal injury, death or property damage related to or arising
22 out of fault, as defined in AS 09.17.900.

18 Verification of Claims

Howe version

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Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as provided in (b) of this section, every complaint, answer, cross-claim, and counterclaim shall be signed and verified by the party or the attorney of the party filing the pleading and shall bear a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counterclaim was knowingly untrue, upon motion of a party, the person signing the pleading may be compelled to show cause why the person signing the pleading should not be held in contempt of court.

(b) For good cause, a complaint, answer, cross-claim or counter-claim may be filed without verification; provided, however that verification of the pleading by the party or attorney of the party shall be made within 15 days of the filing of the pleading.

Sevate version

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Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the attorney of the party shall sign and verify each complaint, answer, cross-claim, and counterclaim that the party files. The verification must include a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counter-claim was knowingly untrue, and upon motion of a party the person signing the pleading shall be compelled to show cause why the person signing the pleading should not be held in contempt of court.

19. Repeals

House version and Senate version

23 * Sec. 7. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
24 09.16.060 are repealed.

20- Applicability

House version

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8 * Sec. 15. APPLICABILITY. Sections 1 - 3 of this Act apply to a
causes of action accruing on or after the effective date of this Act.

Senate version

24 * Sec. 15. APPLICABILITY. Sections 1 - 7 of this Act apply to all
25 causes of action accruing after the effective date of this Act, except that
26 AS 09.17.055(a) enacted in sec. 2 of this Act applies to all contracts for
27 the provision of collateral benefits that are formed or renewed after the
28 effective date of this Act.

21 . Severability
Senate version (only)

29 * Sec. 16. SEVERABILITY. If any provision of this Act, or the

1 application thereof to any person or circumstance is held invalid, the
2 remainder of this Act and the application to other persons or circumstances
3 shall not be affected thereby.

22. Study

House version

AMENDMENT -- HCS CSSB 377(Jud)

Delete all of section 16 and replace with the following:

* Sec. 16.

(a) The Department of Law shall collect and analyze information pertaining to the insurance crisis and its relation to the civil justice system in Alaska. The study may include an analysis of closed insurance claim files and insurance company finances.

(b) All state agencies shall cooperate fully with the Department of Law in the collection and analysis of information necessary to conduct the study under (a) of this section.

(c) The Department of Law shall report its findings under this section to the legislature no later than the 30th day of the Fifteenth State Legislature.

22.

Study

State version.

4 * Sec. 17. The Department of Law, with the assistance of the Department
5 of Commerce and Economic Development, shall contract for
6 (1) a study of closed insurance claims to identify
7 (A) the extent to which the legal system has or has not
8 been the cause of dramatic liability insurance increases and coverage
9 reduction in crisis lines in Alaska;
10 (B) how victims are faring under the present system; and
11 (C) what the various specific tort reform proposals will
12 actually accomplish;
13 (2) a study of insurance company finances to determine
14 (A) the extent to which dramatic liability insurance rate
15 increases and coverage limitations in Alaska are, or are not, cost-
16 justified in relation to awards, settlements, and relevant court
17 decisions in Alaska involving personal injury, death, or property
18 damage based on fault; and
19 (B) the extent to which legislative or regulatory actions
20 affecting the tort system in Alaska are necessary to resolve the
21 state's liability insurance crisis.

23. Effective Dates

House version

9
10 * Sec. 16. This Act takes effect immediately in accordance with AS 01.10.070(c).

Senate version

22 * Sec. 18. Except for AS 09.17.080, added by sec. 2 of this Act, this
23 Act takes effect immediately in accordance with AS 01.10.070(c).

24 * Sec. 19. AS 09.17.080, added by sec. 2 of this Act, only takes effect
25 if sec. 14 of this Act does not pass each house of the legislature by at
26 least a two-thirds majority vote. If AS 09.17.080 takes effect, it takes
27 effect immediately under AS 01.10.070(c).

3002

COMPARISON BETWEEN HOUSE BILL 532 and SENATE BILL 377

(Versions as of 5/6/86)

1. Noneconomic Damages
SB 377 (only)

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

20 (b) The amount of damages awarded by a court or jury under (a)
21 of this section may not exceed \$500,000 for each claim based on a
22 separate incident or injury.

2. Punitive Damages
SB 377 (only)

23

24

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Sec. 09.17.020. PUNITIVE DAMAGES. Punitive damages may not be awarded in an action, whether in tort, contract, or otherwise, unless supported by clear and convincing evidence.

3. Damages from Intoxication or Crime

HR 532

12 Sec. 09.17.010. DAMAGES RESULTING FROM COMMISSION OF A CRIME.
13 person who suffers personal injury or death may not recover damage
14 for the personal injury or death if the injuries or death occurs
15 while the person was engaged in the commission of a felony, the person
16 has been convicted of the felony, including conviction based on
17 guilty plea or plea of nolo contendere, and the felony substantially
18 contributed to the injury or death. This section does not affect
19 right of action under 42 U.S.C. 1983.
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SB 377

26 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR COMMISS-
27 SION OF A CRIME. (a) A person who suffers personal injury or death
28 may not bring an action to recover damages for the personal injury or
29 death if the injuries or death occurred while the person was

1 (1) voluntarily under the influence of intoxicating liquor
2 or under the influence of a controlled substance listed in AS 11.71.-
3 140 - 11.71.190 and the condition of being under the influence of the
4 intoxicating liquor or controlled substance contributed more than 50
5 percent to the person's injuries or death; if there was 0.10 percent
6 or more by weight of alcohol in the person's blood or 0.10 grams or
7 more of alcohol per 210 liters of the person's breath, it is presumed
8 that the person was under the influence of intoxicating liquor; or

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

13 (b) The provisions of (a)(1) of this section do not apply to a
14 person who suffers personal injury or death caused by the intentional
15 act of another person or persons.

4 Itemized Verdicts

HB 532

21 Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damage
22 for personal injury are awarded by the court or jury, the verdict
23 shall be itemized between economic loss and noneconomic loss, if any
24 and economic loss shall be further itemized by category. Itemization
25 of economic loss by category includes: (1) amounts intended to com-
26 pensate for reasonable expenses that have been incurred, or which will
27 be incurred, for necessary medical, surgical, x-ray, dental, or other
28 health or rehabilitative services, drugs, and therapy; (2) amount
29 intended to compensate for lost wages or loss of earning capacity; and
1 (3) all other economic losses granted by the fact finder. A verdict
2 shall further determine the amounts intended to compensate for injury
3 or losses incurred before the verdict and amounts intended to compen-
sate for losses that will be incurred in the future.

SB 377

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 as follows:

- 20 (1) past economic loss;
- 21 (2) past noneconomic loss;
- 22 (3) future economic loss;
- 23 (4) future noneconomic loss; and
- 24 (5) punitive damages.

5. Periodic Payments / Future Damages

HB 532

4 Sec. 09.17.030. FUTURE DAMAGES. (a) The court shall reduce
5 lump-sum award of future damages to its present value. In reducing
6 the award to present value, the court shall consider inflation and the
7 estimated future earning capacity of the injured person.

8 (b) The court may enter a judgment that future damages be paid
9 in whole or in part by periodic payments rather than by a lump-sum
10 payment; the judgment shall include, if necessary, other provisions to
11 assure that funds are available as periodic payments become due.
12 Insurance from an authorized insurer as defined in AS 21.90.900 or
13 from the Medical Indemnity Corporation of Alaska is sufficient assur-
14 ance that funds will be available. Any part of the award that is paid
15 on a periodic basis shall be adjusted annually according to changes in
16 the consumer price index in the community where the claimant resides.
17 The court shall include as a part of the costs awarded to the claimant
18 the costs of providing periodic payment of future damages.

19 (c) A judgment ordering payment of future damages by periodic
20 payment shall specify the recipient, the dollar amount of the pay-
21 ments, the interval between payments, and the number of payments or
22 the period of time over which payments shall be made. Payments may be
23 modified only as provided in (d) of this section or in the event of
24 the death of the judgment creditor, in which case payments may not be
25 reduced or terminated, but shall be paid to persons to whom the judg-
26 ment creditor owed a duty of support, as provided by law, immediately
27 before death. In the event the judgment creditor owed no duty of
28 support to dependents at the time of the judgment creditor's death,
29 the money remaining shall be distributed in accordance with a will of

Periodic Payments / Future Damages (cont.)

HB 532

1 the deceased judgment creditor or under the intestate laws of the
2 state if the deceased had no will.

3 (d) The court that rendered the original judgment may, upon
4 petition of the judgment creditor, modify the judgment to award addi-
5 tional damages if the judgment creditor incurs medical expenses that
6 were not included in the original judgment and could not have been
7 reasonably anticipated at the time of trial.

8 (e) If the court finds that the judgment debtor has exhibited a
9 continuing pattern of failing to make payments required under this
10 section, the court shall, in addition to the required periodic
11 payments, order the judgment debtor to pay the judgment creditor any
12 damages caused by the failure to make periodic payments, including
13 costs and attorney fees.

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

Periodic Payments / Future Damages (cont)

SB 377

25 Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action to recover
26 damages, the court shall, at the request of an injured party, enter
27 judgment ordering that amounts awarded a judgment creditor for future
28 damages be paid to the maximum extent feasible by periodic payments
29 rather than by a lump-sum payment if the award equals or exceeds

1 \$100,000 in future damages.

2 (b) The court may require security be posted, in order to ensure
3 that funds are available as periodic payments become due. The court
4 may not require security to be posted if an authorized insurer, as
5 defined in AS 21.90.900, acknowledges to the court its obligation to
6 discharge the judgment.

7 (c) A judgment ordering payment of future damages by periodic
8 payment shall specify the recipient, the dollar amount of the pay-
9 ments, the interval between payments, and the number of payments or
10 the period of time over which payments shall be made. Periodic pay-
11 ments shall be cumulatively adjusted annually by applying each year
12 the annual rate of change in the consumer price index for all urban
13 consumers for the Anchorage Metropolitan Area as published by the
14 Bureau of Labor Statistics of the United States Department of Labor
15 for the immediately preceding year. Payments may be modified only in
16 the event of the death of the judgment creditor, in which case pay-
17 ments may not be reduced or terminated, but shall be paid to persons
18 to whom the judgment creditor owed a duty of support, as provided by
19 law, immediately before death. In the event the judgment creditor
20 owed no duty of support to dependents at the time of the judgment
21 creditor's death, the money remaining shall be distributed in accor-
22 dance with a will of the deceased judgment creditor accepted into
23 probate or under the intestate laws of the state if the deceased had
24 no will.

25 (d) If the court finds that the judgment debtor has exhibited a
26 continuing pattern of failing to make payments required under (c) of
27 this section, the court shall, in addition to the required periodic
28 payments, order the judgment debtor to pay the judgment creditor any
29 damages caused by the failure to make periodic payments, including
1 costs and attorney fees.

6. Verification of Civil Claims

SB 377



2 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. The party or the
3 attorney of the party shall sign and verify each complaint, answer,
4 cross-claim, and counterclaim that the party files. The verification
5 must include a statement that the person signing the pleading believes
6 the statements made in the pleading are true. If the court finds that
7 a statement made in the complaint, answer, cross-claim, or counter-
8 claim was knowingly untrue, and upon motion of a party the person
9 signing the pleading shall be compelled to show cause why the person
10 signing the pleading should not be held in contempt of court.

HB 532

* Sec. 6. AS 09.63 is amended by adding a new section to read:

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Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as provided in (b) of this section, every complaint, answer, cross-claim, and counterclaim shall be signed and verified by the party or the attorney of the party filing the pleading and shall bear a statement that the person signing the pleading believes the statements made in the pleading are true. If the court finds that a statement made in the complaint, answer, cross-claim, or counterclaim was knowingly untrue, upon motion of a party, the person signing the pleading may be compelled to show cause why the person signing the pleading should not be held in contempt of court.

(b) For good cause, a complaint, answer, cross-claim or counter-claim may be filed without verification; provided, however, that verification of the pleading by the party or attorney of the party shall be made within 15 days of the filing of the pleading.

7. Limited Liability

HB 532

24 Sec. 09.17.040. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
25 OFFICERS. (a) Unless the act or omission constituted gross negli-
26 gence, a person may not recover tort damages for personal injury,
27 death, or damage to property for an act or omission to act in the
28 course and scope of official duties, as a member or officer of the
29 following:

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

3 (2) a member of the board of directors of a public or
4 nonprofit hospital, or a member of a citizen's advisory board of an
5 hospital;

6 (3) a member of a school board of a school district;

7 (4) a member of the governing body, a commission, or
8 citizen's advisory committee of a municipality 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 (c) In this section "nonprofit corporation" means a corporation
14 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
15 (Internal Revenue Code).

Limited Liability (cont)

SB 377

11 Sec. 09.17.045. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
12 OFFICERS. (a) Unless the act or omission constituted gross negli-
13 gence, a person may not recover damages for a negligent act or emis-
14 sion to act, in the course and scope of official duties, from the
15 following:

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

18 (2) a member of the board of directors of a public or
19 nonprofit hospital or a community-based advisory board of a hospital;

20 (3) a member of a school board of a school district;

21 (4) a member of a governing board, commission, or citizen
22 advisory committee of a municipality in the state.

23 (b) Notwithstanding (a) of this section, the duties and liabil-
24 ities of a director or officer of a nonprofit corporation to the
25 corporation or the corporation's shareholders may not be limited or
26 modified.

8. Contributory Fault

HB 532

16 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an acti
17 based on fault seeking to recover damages for injury or death
18 person or harm to property, contributory fault chargeable to t
19 claimant diminishes proportionately the amount awarded as compensato
20 damages for an injury attributable to the claimant's contributo
21 fault, but does not bar recovery.

SB 377

27 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
28 based on fault seeking to recover damages for injury or death to a
29 person or harm to property, contributory fault chargeable to the
1 claimant diminishes proportionately the amount awarded as compensatory
2 damages for the injury attributable to the claimant's contributory
3 fault, but does not bar recovery.

9. Collateral Benefits

HB 532

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

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

1 (1) the amount that the actual attorney fees incurred by
2 the claimant in obtaining the award exceed the amount of attorney fees
3 awarded to the claimant by the court; and

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

7 (c) If the total amount of collateral benefits introduced as
8 evidence under (a) of this section exceeds the total amount that the
9 claimant introduced as evidence under (b) of this section, the court
10 shall deduct from the total award the amount by which the value of the
11 nonsubrogated sum awarded under (a) of this section exceeds the amount
12 of payments under (b) of this section.

13 (d) Notwithstanding (a) of this section, the defendant may not
14 introduce evidence of

15 (1) benefits that under federal law cannot be reduced or
16 offset;

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

18 (3) gratuitous benefits provided to the claimant.

Collateral Benefits

SB 377

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

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

12 (1) the amount that the actual attorney fees incurred by
13 the claimant exceed the amount of the attorney fees awarded to the
14 claimant; and

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

18 (c) If the total amount of collateral benefits introduced as
19 evidence under (a) of this section exceeds the total amount that the
20 claimant introduced as evidence under (b) of this section, the court
21 shall deduct from the amount awarded the claimant, the amount by which
22 the value of the benefits under (a) of this section exceeds the amount
23 of payments under (b) of this section.

24 (d) Notwithstanding (a) of this section, the defendant may not
25 introduce evidence of

26 (1) benefits that cannot be reduced or offset by federal
27 law;

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

29 (3) gratuitous benefits provided to the claimant.

1 (e) This section does not apply to a medical malpractice action
2 filed under AS 09.55.

10. Apportionment of Damages

HB 532

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Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions involving fault of more than one party to the action, including third-party defendants and persons who have been released under AS 09.17.070, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating

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

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

(b) In determining the percentages of fault, the trier of fact shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. The trier of fact may determine that two or more persons are to be treated as a single party if their conduct was cause of the damages claimed and the separate act or omission of each person cannot be distinguished.

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

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

Apportionment of Damages

SB 377

3 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
4 involving fault of more than one party to the action, including third-
5 party defendants and persons who have been released under AS 09.17.-
6 070, the court, unless otherwise agreed by all parties, shall instruct
7 the jury to answer special interrogatories or, if there is no jury,
8 shall make findings, indicating

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

11 (2) the percentage of the total fault of all of the parties
12 to each claim that is allocated to each claimant, defendant, third-
13 party defendant, and person who has been released from liability under
14 AS 09.17.070; for this purpose the court may determine that two or
15 more persons are to be treated as a single party.

16 (b) In determining the percentages of fault, the trier of fact
17 shall consider both the nature of the conduct of each party at fault
18 and the extent of the causal relation between the conduct and the
19 damages claimed.

20 (c) The court shall determine the award of damages to each
21 claimant in accordance with the findings, subject to a reduction under
22 AS 09.17.070, and enter judgment against each party liable on the
23 basis of rules of several liability. The court shall also determine
24 and state in the judgment each party's equitable share of the obliga-
25 tion to each claimant in accordance with the respective percentages of
26 fault.

11. Effect of Release

HB 532

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Sec. 09.17.070. EFFECT OF RELEASE. When a release or covenant not to sue or not to enforce judgment is given in good faith to one or two or more persons liable in tort for the same injury or the same wrongful death

(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

SB 377

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Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.060.

12. Contingency Fees
SB 377 (only)

7 Sec. 09.17.080. CONTINGENT FEE AGREEMENTS. (a) An attorney may
8 not contract for or collect a contingency fee for representing a
9 person seeking damages in connection with an action for personal
10 injury based on negligence in excess of 25 percent of the amount
11 recovered.

12 (b) If periodic payments for future damages are awarded, the
13 present value of the periodic payments must be included in computing
14 the total award from which attorney fees are calculated under this
15 section.

16 (c) An attorney may not contract for or receive a fee for de-
17 fending a person against a claim for damages in connection with an
18 action for personal injury based on negligence, in excess of 25 per-
19 cent of the amount recovered or if no amount is recovered by the
20 plaintiff, 25 percent of the amount in controversy.

21 (d) The limitations in (a) - (c) of this section apply whether
22 the recovery is by settlement, arbitration, or judgment.

This section takes effect only if section
regarding Rule 82. (As 09.60.010) does not pass
each house by at least $\frac{2}{3}$ majority.

13. Offer of Judgment

HB 532

16 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than
17 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING
18 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
19 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
20 making a claim or the party defending against a claim may serve upon
21 the adverse party an offer to allow judgment to be entered in compliance
22 with satisfaction of the claim for the money or property or to the effect
23 specified in the offer, with costs [COST] then accrued. If within
24 ten days after the service of the offer the adverse party serves written
25 notice that the offer is accepted, either party may then file the offer
26 and notice of acceptance together with proof of service, and the clerk
27 shall enter judgment. An offer not accepted within 10 days shall be
28 considered withdrawn and evidence of that offer is not admissible
29 except in a proceeding to determine the form of judgment after

1 verdict. If the judgment finally entered on the claim as to which
2 an offer has been made under this section is not more favorable to
3 the offeree than the offer, the interest awarded under AS 45.45.010(a)
4 accrued up to the date judgment is entered shall be adjusted as follows:
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6 (1) if the offeree is the party making the claim, the
7 interest rate shall be reduced by five [TWO] percent a year;

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

Offers of Judgment (cont).

SB 377

4 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
5 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
6 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
7 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
8 making a claim or the party defending against a claim may serve upon
9 the adverse party an offer to allow judgment to be entered in complete
10 satisfaction of the claim for the money or property or to the effect
11 specified in the offer, with cost then accrued. If within 10 days
12 after the service of the offer the adverse party serves written notice
13 that the offer is accepted, either party may then file the offer and
14 notice of acceptance together with proof of service, and the clerk
15 shall enter judgment. An offer not accepted within 10 days is con-
16 sidered withdrawn and evidence of that offer is not admissible except
17 in a proceeding to determine the form of judgment after verdict. If
18 the judgment finally entered on the claim as to which an offer has
19 been made under this section is not more favorable to the offeree than
20 the offer, the interest awarded under AS 09.30.070 [AS 45.45.010(a)]
21 and accrued up to the date judgment is entered shall be adjusted as
22 follows:

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

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

14. Interest on Judgments

HB 532.

11 * Sec. 3. AS 09.30.070 is amended by adding a new subsection to read:

12 (b) Except when the court finds that the parties have agreed
13 otherwise, prejudgment interest accrues from the day the cause of
14 action accrues.

SB 377

28 * Sec. 4. AS 09.30.070 is amended to read:

29 Sec. 09.30.070. INTEREST ON JUDGMENTS. The rate of interest on
1 judgments and decrees for the payment of money is equal to the 12th
2 Federal Reserve district discount rate as determined under AS 45.45.-
3 010(b) [10.5 PERCENT A YEAR], except that a judgment or decree founded
4 on a contract in writing, providing for the payment of interest until
5 paid at a specified rate not exceeding the legal rate of interest for
6 that type of contract, bears interest at the rate specified in the
7 contract if the interest rate is set out in the judgment or decree.

8 * Sec. 5. AS 09.30.070 is amended by adding a new subsection to read:

9 (b) Except when the court finds that the parties have agreed
10 otherwise, prejudgment interest accrues from the day process is served
11 on the defendant or the day the defendant received written notifica-
12 tion of the claim, whichever is earlier. Evidence to be considered by
13 the finder of fact may include the amount of the prejudgment interest
14 that may be added to the award.

15. Awards

HB 532 (only)

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* Sec. 4. AS 09.55.548 is repealed and reenacted to read:
Sec. 09.55.548. AWARDS. Except as provided in AS 09.17, damages
in a malpractice action shall be awarded in accordance with principles
of the common law.

16. Prevailing Party Attorney Fees

HB 532

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* Sec. 5. AS 09.60.010 is amended by adding a new subsection to read.

(b) In making an award of attorney fees to a prevailing party the court shall consider actual attorney fees incurred by each party in the civil action. Actual attorney fees shall be supported by affidavit from the attorney representing each party.

SB 377

15 * Sec. 6. AS 09.60.010 is repealed and reenacted to read:

16 Sec. 09.60.010. COSTS AND ATTORNEY FEES ALLOWED PREVAILING
17 PARTY. The supreme court shall determine by rule or order the costs,
18 if any, that may be allowed a prevailing party in a civil action.
19 Unless specifically authorized by statute or by agreement between the
20 parties, attorney fees may not be awarded to a party in a civil action
21 for personal injury, death or property damage related to or arising
22 out of fault, as defined in AS 09.17.900.

17. Jurisdiction HB 532 (only)
* Sec. 7. AS 22.15.030(a) is amended to read:

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

(1) for the recovery of money or damages when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$35,000 [\$25,000];

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$35,000 [\$25,000];

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

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 - 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 - 09.45.160 when the value [OF THE PROPERTY OR] of the arrears and damage to the property does not exceed

\$35,000 [\$25,000];

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

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claimed exclusive of costs, interest and attorney fees does not exceed \$35,000 [\$25,000];

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

(10) over cases involving injunctive relief for domestic

18. Severability

SB 377 (only)

29 * Sec. 16. SEVERABILITY. If any provision of this Act, or the

1 application thereof to any person or circumstance is held invalid, the
2 remainder of this Act and the application to other persons or circumstances
3 shall not be affected thereby.

19.

Study

SB 377 (only)

4 * Sec. 17. The Department of Law, with the assistance of the Department
5 of Commerce and Economic Development, shall contract for

6 (1) a study of closed insurance claims to identify

7 (A) the extent to which the legal system has or has not
8 been the cause of dramatic liability insurance increases and coverage
9 reduction in crisis lines in Alaska;

10 (B) how victims are faring under the present system; and

11 (C) what the various specific tort reform proposals will
12 actually accomplish;

13 (2) a study of insurance company finances to determine

14 (A) the extent to which dramatic liability insurance rate
15 increases and coverage limitations in Alaska are, or are not, cost-
16 justified in relation to awards, settlements, and relevant court
17 decisions in Alaska involving personal injury, death, or property
18 damage based on fault; and

19 (B) the extent to which legislative or regulatory actions
20 affecting the tort system in Alaska are necessary to resolve the
21 state's liability insurance crisis.

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 5/6/86

FURTHER REFERRALS: FINANCE

DATE: _____

The JUDICIARY Committee has considered CSSB 377(Fin)am

"An Act relating to civil actions; directing the Department of Law to conduct a study; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with HCS CSSB 377(JUD) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

Robin L. Topka

SIGNING OTHER RECOMMENDATIONS:

William Miller - NO REC

Letty's Pass the Finance Bill
ROSE BROWN - No R.

Dr. Cochran - NO REC

William Miller
Chairman

Ford
5/7/86 pm

Original sponsors: Kelly, Abood,
Bennett, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 377 (Judiciary)

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; directing the
7 Department of Law to conduct a study; amending Alaska
8 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;
9 and providing for an effective date."

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

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

12 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

13 Sec. 09.17.010. NONECONOMIC DAMAGES. (a) In an action to
14 recover damages for personal injury based on negligence, damages for
15 noneconomic losses shall be limited to \$1,000,000 for each person
16 injured.

17 (b) The limit under (a) of this section does not apply to dam-
18 ages for physical impairment or disfigurement.

19 Sec. 09.17.020. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
20 person who suffers personal injury or death may not recover damages
21 for the personal injury or death if the injuries or death occurred
22 while the person was engaged in the commission of a felony, the person
23 has been convicted of the felony, including conviction based on a
24 guilty plea or plea of nolo contendere, and the felony substantially
25 contributed to the injury or death. This section does not affect a
26 right of action under 42 U.S.C. 1983.

27 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
28 for personal injury are awarded by the court or jury, the verdict
29 shall be itemized between economic loss and noneconomic loss, if any,

1 as follows:

- 2 (1) past economic loss;
3 (2) past noneconomic loss;
4 (3) future economic loss;
5 (4) future noneconomic loss; and
6 (5) punitive damages.

7 Sec. 09.17.040. PERIODIC PAYMENTS. (a) In an action to recover
8 damages, the court shall, at the request of an injured party, enter
9 judgment ordering that amounts awarded a judgment creditor for future
10 damages be paid to the maximum extent feasible by periodic payments
11 rather than by a lump-sum payment if the award equals or exceeds
12 \$100,000 in future damages.

13 (b) The court may require security be posted, in order to ensure
14 that funds are available as periodic payments become due. The court
15 may not require security to be posted if an authorized insurer, as
16 defined in AS 21.90.900, acknowledges to the court its obligation to
17 discharge the judgment.

18 (c) A judgment ordering payment of future damages by periodic
19 payment shall specify the recipient, the dollar amount of the pay-
20 ments, the interval between payments, and the number of payments or
21 the period of time over which payments shall be made. Periodic pay-
22 ments shall be cumulatively adjusted annually by applying each year
23 the annual rate of change in the consumer price index for all urban
24 consumers for the Anchorage Metropolitan Area as published by the
25 Bureau of Labor Statistics of the United States Department of Labor
26 for the immediately preceding year. Payments may be modified only in
27 the event of the death of the judgment creditor, in which case pay-
28 ments may not be reduced or terminated, but shall be paid to persons
29 to whom the judgment creditor owed a duty of support, as provided by

1 law, immediately before death. If the judgment creditor owed no duty
2 of support to dependents at the time of the judgment creditor's death,
3 the money remaining shall be distributed in accordance with a will of
4 the deceased judgment creditor accepted into probate or under the
5 intestate laws of the state if the deceased had no will.

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

12 Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
13 OFFICERS. (a) Unless the act or omission constituted gross negli-
14 gence, a person may not recover tort damages for personal injury,
15 death, or damage to property for an act or omission to act in the
16 course and scope of official duties, as a member or officer of the
17 following:

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

20 (2) a member of the board of directors of a public or
21 nonprofit hospital, or a member of a citizen's advisory board of any
22 hospital;

23 (3) a member of a school board of a school district;

24 (4) a member of the governing body, a commission, or a
25 citizen's advisory committee of a municipality of the state.

26 (b) Notwithstanding (a) of this section, the duties and liabil-
27 ities of a director or officer of a nonprofit corporation to the
28 corporation or the corporation's shareholders may not be limited or
29 modified.

1 (c) In this section "nonprofit corporation" means a corporation
2 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
3 or (4) (Internal Revenue Code).

4 Sec. 09.17.060. EFFECT OF CONTRIBUTORY FAULT. In an action
5 based on fault seeking to recover damages for injury or death to a
6 person or harm to property, contributory fault chargeable to the
7 claimant diminishes proportionately the amount awarded as compensatory
8 damages for the injury attributable to the claimant's contributory
9 fault, but does not bar recovery.

10 Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder
11 has rendered an award to a claimant, and after the court has awarded
12 costs and attorney fees, a defendant may introduce evidence of amounts
13 received or to be received by the claimant as compensation for the
14 same injury from collateral sources that do not have a right of subro-
15 gation by law or contract.

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

18 (1) the amount that the actual attorney fees incurred by
19 the claimant in obtaining the award exceed the amount of attorney fees
20 awarded to the claimant by the court; and

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

24 (c) If the total amount of collateral benefits introduced as
25 evidence under (a) of this section exceeds the total amount that the
26 claimant introduced as evidence under (b) of this section, the court
27 shall deduct from the total award the amount by which the value of the
28 nonsubrogated sum awarded under (a) of this section exceeds the amount
29 of payments under (b) of this section.

1 (d) Notwithstanding (a) of this section, the defendant may not
2 introduce evidence of

3 (1) benefits that under federal law cannot be reduced or
4 offset;

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

6 (3) gratuitous benefits provided to the claimant.

7 (e) This section does not apply to a medical malpractice action
8 filed under AS 09.55.

9 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions
10 involving fault of more than one party to the action, including third-
11 party defendants and persons who have been released under AS 09.17.-
12 090, the court, unless otherwise agreed by all parties, shall instruct
13 the jury to answer special interrogatories or, if there is no jury,
14 shall make findings, indicating

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

17 (2) the percentage of the total fault of all of the parties
18 to each claim that is allocated to each claimant, defendant, third-
19 party defendant, and person who has been released from liability under
20 AS 09.17.090.

21 (b) In determining the percentages of fault, the trier of fact
22 shall consider both the nature of the conduct of each party at fault,
23 and the extent of the causal relation between the conduct and the
24 damages claimed. The trier of fact may determine that two or more
25 persons are to be treated as a single party if their conduct was a
26 cause of the damages claimed and the separate act or omission of each
27 person cannot be distinguished.

28 (c) The court shall determine the award of damages to each
29 claimant in accordance with the findings, subject to a reduction under

1 AS 09.17.090, and enter judgment against each party liable. The court
2 also shall determine and state in the judgment each party's equitable
3 share of the obligation to each claimant in accordance with the re-
4 spective percentages of fault.

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

10 Sec. 09.17.090. EFFECT OF RELEASE. When a release or covenant
11 not to sue or not to enforce judgment is given in good faith to one of
12 two or more persons liable in tort for the same injury or the same
13 wrongful death

14 (1) it does not discharge any of the other tortfeasors from
15 liability for the injury or wrongful death unless its terms so pro-
16 vide; but it reduces the claim against the others to the extent of any
17 amount stipulated by the release or the covenant, or in the amount of
18 the consideration paid for it, whichever is the greater; and

19 (2) it discharges the tortfeasor to whom it is given from
20 all liability for contribution to any other tortfeasor.

21 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
22 acts or omissions that are in any measure negligent or reckless toward
23 the person or property of the actor or others, or that subject a
24 person to strict tort liability. The term also includes breach of
25 warranty, unreasonable assumption of risk not constituting an enforce-
26 able express consent, misuse of a product for which the defendant
27 otherwise would be liable, and unreasonable failure to avoid an injury
28 or to mitigate damages. Legal requirements of causal relation apply
29 both to fault as the basis for liability and to contributory fault.

1 * Sec. 2. AS 09.30.065 is amended to read:

2 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
3 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
4 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
5 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
6 making a claim or the party defending against a claim may serve upon
7 the adverse party an offer to allow judgment to be entered [IN COM-
8 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the
9 effect specified in the offer, with costs [COST] then accrued. If
10 within 10 days after the service of the offer the adverse party serves
11 written notice that the offer is accepted, either party may then file
12 the offer and notice of acceptance together with proof of service, and
13 the clerk shall enter judgment. An offer not accepted within 10 days
14 is considered withdrawn and evidence of that offer is not admissible
15 except in a proceeding to determine costs and attorney fees [THE FORM
16 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the
17 claim as to which an offer has been made under this section is not
18 more favorable to the offeree than the offer, the offeree shall pay
19 costs incurred after service of the offer, and the court may also
20 require payment of reasonable actual attorney fees incurred after
21 service of the offer, and the interest awarded under AS 45.45.010(a)
22 and accrued up to the date judgment is entered shall be adjusted as
23 follows:

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

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

29 * Sec. 3. AS 09.30.065 is amended by adding new subsections to read:

1 (b) The fact that an offer is made but not accepted does not
2 preclude a subsequent offer. When the liability of one party to
3 another has been determined by verdict, order, or judgment, but the
4 amount or extent of the liability remains to be determined by further
5 proceedings, the party adjudged liable may make an offer of judgment,
6 which shall have the same effect as an offer made before trial if it
7 is served within a reasonable time not less than 10 days before the
8 commencement of hearings to determine the amount or extent of liability.
9

10 (c) Except for civil commitment and child custody actions, this
11 section applies to all civil actions.

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

13 (b) Except when the court finds that the parties have agreed
14 otherwise, prejudgment interest accrues from the day the cause of
15 action accrues.

16 * Sec. 5. AS 09.55.548(a) is repealed and reenacted to read:

17 (a) Except as provided in AS 09.17, damages in a malpractice
18 action shall be awarded in accordance with principles of the common
19 law.

20 * Sec. 6. AS 09.60.070 is amended by adding a new subsection to read:

21 (b) In making an award of attorney fees to a prevailing party,
22 the court shall consider the actual attorney fees incurred by each
23 party in the civil action. Actual attorney fees shall be supported by
24 affidavit from the attorney representing each party.

25 * Sec. 7. AS 09.63 is amended by adding a new section to read:

26 Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as
27 provided in (b) of this section, every complaint, answer, cross-claim,
28 and counterclaim shall be signed and verified by the party or the
29 attorney of the party filing the pleading and shall bear a statement

1 that the person signing the pleading believes the statements made in
2 the pleading are true. If the court finds that a statement made in
3 the complaint, answer, cross-claim, or counterclaim was knowingly
4 untrue, upon motion of a party, the person signing the pleading may be
5 compelled to show cause why the person signing the pleading should not
6 be held in contempt of court.

7 (b) For good cause, a complaint, answer, cross-claim or coun-
8 ter-claim may be filed without verification; provided, however, that
9 verification of the pleading by the party or attorney of the party
10 shall be made within 15 days of the filing of the pleading.

11 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
12 09.16.060 are repealed.

13 * Sec. 9. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act have
14 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
15 jury to answer the special interrogatories listed in AS 09.17.080 regarding
16 the amount of damages and the percentages of fault to be allocated among
17 the parties and to itemize the verdict regarding economic, noneconomic, and
18 punitive damages as specified in AS 09.17.030.

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

23 * Sec. 11. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act
24 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
25 the court to include a specific item in its judgment.

26 * Sec. 12. AS 09.63.045 enacted in sec. 7 of this Act has the effect of
27 amending Alaska Rule of Civil Procedure 11 by requiring verification of
28 claims, answers, counterclaims, and cross-claims.

29 * Sec. 13. AS 09.30.070(b) as added by sec. 4 of this Act has the

1 effect of amending Alaska Rule of Civil Procedure 68 by providing that
2 prejudgment interest accrues from the day the cause of action accrues.

3 * Sec. 14. AS 09.60.010 as amended by sec. 6 of this Act has the effect
4 of amending Alaska Rule of Civil Procedure 82 by requiring the court to
5 consider the actual attorney fees incurred in the civil action.

6 * Sec. 15. APPLICABILITY. Sections 1 - 8 of this Act apply to all
7 causes of action accruing after the effective date of this Act.

8 * Sec. 16. (a) The Department of Law, with the assistance of the
9 Department of Commerce and Economic Development, shall conduct

10 (1) a study of closed insurance claims to identify

11 (A) the extent to which the legal system has or has not
12 been the cause of dramatic liability insurance increases and coverage
13 reduction in crisis lines in Alaska;

14 (B) how victims are faring under the present system; and

15 (C) what the various specific tort reform proposals will
16 actually accomplish;

17 (2) a study of insurance company finances to determine

18 (A) the extent to which dramatic liability insurance rate
19 increases and coverage limitations in Alaska are, or are not, cost-
20 justified in relation to awards, settlements, and relevant court
21 decisions in Alaska involving personal injury, death, or property
22 damage based on fault; and

23 (B) the extent to which legislative or regulatory actions
24 affecting the tort system in Alaska are necessary to resolve the
25 state's liability insurance crisis.

26 (b) The departments may not hire additional staff or expend funds
27 that would necessitate a supplemental appropriation for the studies
28 required under (a) of this section.

29 * Sec. 17. This Act takes effect immediately in accordance with

1 AS 01.10.070(c).

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Ford
5/7/86 *WMM*

Original sponsors: Kelly, Abood,
Bennett, et al

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 377 (Judiciary)
 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; directing the
 7 Department of Law to conduct a study; amending Alaska
 8 Rules of Civil Procedure 11, 49, 52, 58, 68, and 82;
 9 and providing for an effective date."

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

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

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 14 recover damages for personal injury based on negligence, damages for
 15 noneconomic losses shall be limited to \$1,000,000 for each person
 16 injured.

17 (b) The limit under (a) of this section does not apply to dam-
 18 ages for physical impairment or disfigurement.

19 Sec. 09.17.020. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
 20 person who suffers personal injury or death may not recover damages
 21 for the personal injury or death if the injuries or death occurred
 22 while the person was engaged in the commission of a felony, the person
 23 has been convicted of the felony, including conviction based on a
 24 guilty plea or plea of nolo contendere, and the felony substantially
 25 contributed to the injury or death. This section does not affect a
 26 right of action under 42 U.S.C. 1983.

27 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
 28 for personal injury are awarded by the court or jury, the verdict
 29 shall be itemized between economic loss, noneconomic loss, and

1 punitive damages if any, and economic loss shall be further itemized
 2 by category. Itemization of economic loss by category includes: (1)
 3 amounts intended to compensate for reasonable expenses that have been
 4 incurred, or which will be incurred, for necessary medical, surgical,
 5 x-ray, dental, or other health or rehabilitative services, drugs, and
 6 therapy; (2) amounts intended to compensate for lost wages or loss of
 7 earning capacity; and (3) all other economic losses granted by the
 8 fact finder. A verdict shall further determine the amounts intended
 9 to compensate for injury or losses incurred before the verdict and
 10 amounts intended to compensate for losses that will be incurred in the
 11 future.

12 Sec. 03.17.040. PERIODIC PAYMENTS. (a) In an action to recover
 13 damages, the court shall, at the request of an injured party, enter
 14 judgment ordering that amounts awarded a judgment creditor for future
 15 damages be paid to the maximum extent feasible by periodic payments
 16 rather than by a lump-sum payment: if the award equals or exceeds
 17 \$100,000 in future damages.

18 (b) The court may require security be posted, in order to ensure
 19 that funds are available as periodic payments become due. The court
 20 may not require security to be posted if an authorized insurer, as
 21 defined in AS 21.90.900, acknowledges to the court its obligation to
 22 discharge the judgment.

23 (c) A judgment ordering payment of future damages by periodic
 24 payment shall specify the recipient, the dollar amount of the pay-
 25 ments, the interval between payments, and the number of payments or
 26 the period of time over which payments shall be made. Periodic pay-
 27 ments shall be cumulatively adjusted annually by applying each year
 28 the annual rate of change in the consumer price index for all urban
 29 consumers for the Anchorage Metropolitan Area as published by the

1 Bureau of Labor Statistics of the United States Department of Labor
2 for the immediately preceding year. Payments may be modified only in
3 the event of the death of the judgment creditor, in which case pay-
4 ments may not be reduced or terminated, but shall be paid to persons
5 to whom the judgment creditor owed a duty of support, as provided by
6 law, immediately before death. If the judgment creditor owed no duty
7 of support to dependents at the time of the judgment creditor's death,
8 the money remaining shall be distributed in accordance with a will of
9 the deceased judgment creditor accepted into probate or under the
10 intestate laws of the state if the deceased had no will.

11 (d) If the court finds that the judgment debtor has exhibited a
12 continuing pattern of failing to make payments required under (c) of
13 this section, the court shall, in addition to the required periodic
14 payments, order the judgment debtor to pay the judgment creditor any
15 damages caused by the failure to make periodic payments, including
16 costs and attorney fees.

17 Sec. 09.17.050. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
18 OFFICERS. (a) Unless the act or omission constituted gross negli-
19 gence, a person may not recover tort damages for personal injury,
20 death, or damage to property for an act or omission to act in the
21 course and scope of official duties, as a member or officer of the
22 following:

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

25 (2) a member of the board of directors of a public or
26 nonprofit hospital, or a member of a citizen's advisory board of any
27 hospital;

28 (3) a member of a school board of a school district;

29 (4) a member of the governing body, a commission, or a

1 citizen's advisory committee of a municipality of the state.

2 (b) Notwithstanding (a) of this section, the duties and liabil-
3 ities of a director or officer of a nonprofit corporation to the
4 corporation or the corporation's shareholders may not be limited or
5 modified.

6 (c) In this section "nonprofit corporation" means a corporation
7 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
8 or (4) (Internal Revenue Code).

9 Sec. 09.17.060. EFFECT OF CONTRIBUTORY FAULT. In an action
10 based on fault seeking to recover damages for injury or death to a
11 person or harm to property, contributory fault chargeable to the
12 claimant diminishes proportionately the amount awarded as compensatory
13 damages for the injury attributable to the claimant's contributory
14 fault, but does not bar recovery.

15 Sec. 09.17.070. COLLATERAL BENEFITS. (a) After the fact finder
16 has rendered an award to a claimant, and after the court has awarded
17 costs and attorney fees, a defendant may introduce evidence of amounts
18 received or to be received by the claimant as compensation for the
19 same injury from collateral sources that do not have a right of subro-
20 gation by law or contract.

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

23 (1) the amount that the actual attorney fees incurred by
24 the claimant in obtaining the award exceed the amount of attorney fees
25 awarded to the claimant by the court; and

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

29 (c) If the total amount of collateral benefits introduced as

1 evidence under (a) of this section exceeds the total amount that the
2 claimant introduced as evidence under (b) of this section, the court
3 shall deduct from the total award the amount by which the value of the
4 nonsubrogated sum awarded under (a) of this section exceeds the amount
5 of payments under (b) of this section.

6 (d) Notwithstanding (a) of this section, the defendant may not
7 introduce evidence of

8 (1) benefits that under federal law cannot be reduced or
9 offset;

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

11 (3) gratuitous benefits provided to the claimant.

12 (e) This section does not apply to a medical malpractice action
13 filed under AS 09.55.

14 Sec. 09.17.080. APPORTIONMENT OF DAMAGES. (a) In all actions
15 involving fault of more than one party to the action, including third-
16 party defendants and persons who have been released under AS 09.17.-
17 090, the court, unless otherwise agreed by all parties, shall instruct
18 the jury to answer special interrogatories or, if there is no jury,
19 shall make findings, indicating

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

22 (2) the percentage of the total fault of all of the parties
23 to each claim that is allocated to each claimant, defendant, third-
24 party defendant, and person who has been released from liability under
25 AS 09.17.090.

26 (b) In determining the percentages of fault, the trier of fact
27 shall consider both the nature of the conduct of each party at fault,
28 and the extent of the causal relation between the conduct and the
29 damages claimed. The trier of fact may determine that two or more

1 persons are to be treated as a single party if their conduct was a
2 cause of the damages claimed and the separate act or omission of each
3 person cannot be distinguished.

4 (c) The court shall determine the award of damages to each
5 claimant in accordance with the findings, subject to a reduction under
6 AS 09.17.090, and enter judgment against each party liable. The court
7 also shall determine and state in the judgment each party's equitable
8 share of the obligation to each claimant in accordance with the re-
9 spective percentages of fault.

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

15 Sec. 09.17.090. EFFECT OF RELEASE. When a release or covenant
16 not to sue or not to enforce judgment is given in good faith to one of
17 two or more persons liable in tort for the same injury or the same
18 wrongful death

19 (1) it does not discharge any of the other tortfeasors from
20 liability for the injury or wrongful death unless its terms so pro-
21 vide; but it reduces the claim against the others to the extent of any
22 amount stipulated by the release or the covenant, or in the amount of
23 the consideration paid for it, whichever is the greater; and

24 (2) it discharges the tortfeasor to whom it is given from
25 all liability for contribution to any other tortfeasor.

26 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
27 acts or omissions that are in any measure negligent or reckless toward
28 the person or property of the actor or others, or that subject a
29 person to strict tort liability. The term also includes breach of

1 warranty, unreasonable assumption of risk not constituting an enforce-
2 able express consent, misuse of a product for which the defendant
3 otherwise would be liable, and unreasonable failure to avoid an injury
4 or to mitigate damages. Legal requirements of causal relation apply
5 both to fault as the basis for liability and to contributory fault.

6 * Sec. 2. AS 09.30.065 is amended to read:

7 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
8 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
9 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
10 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
11 making a claim or the party defending against a claim may serve upon
12 the adverse party an offer to allow judgment to be entered [IN COM-
13 PLETE SATISFACTION OF THE CLAIM] for the money or property or to the
14 effect specified in the offer, with costs [COST] then accrued. If
15 within 10 days after the service of the offer the adverse party serves
16 written notice that the offer is accepted, either party may then file
17 the offer and notice of acceptance together with proof of service, and
18 the clerk shall enter judgment. An offer not accepted within 10 days
19 is considered withdrawn and evidence of that offer is not admissible
20 except in a proceeding to determine costs and attorney fees [THE FORM
21 OF JUDGMENT AFTER VERDICT]. If the judgment finally entered on the
22 claim as to which an offer has been made under this section is not
23 more favorable to the offeree than the offer, the offeree shall pay
24 costs incurred after service of the offer, and the court may also
25 require payment of reasonable actual attorney fees incurred after
26 service of the offer, and the interest awarded under AS 45.45.010(a)
27 and accrued up to the date judgment is entered shall be adjusted as
28 follows:

29 (1) if the offeree is the party making the claim, the

1 interest rate shall be reduced by five [TWO] percent a year;

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

5 * Sec. 3. AS 09.30.065 is amended by adding new subsections to read:

6 (b) The fact that an offer is made but not accepted does not
7 preclude a subsequent offer. When the liability of one party to
8 another has been determined by verdict, order, or judgment, but the
9 amount or extent of the liability remains to be determined by further
10 proceedings, the party adjudged liable may make an offer of judgment,
11 which shall have the same effect as an offer made before trial if it
12 is served within a reasonable time not less than 10 days before the
13 commencement of hearings to determine the amount or extent of liability.
14 ty.

15 (c) Except for civil commitment and child custody actions, this
16 section applies to all civil actions.

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

18 (b) Except when the court finds that the parties have agreed
19 otherwise, prejudgment interest accrues from the day the cause of
20 action accrues.

21 * Sec. 5. AS 09.55.548(a) is repealed and reenacted to read:

22 (a) Except as provided in AS 09.17, damages in a malpractice
23 action shall be awarded in accordance with principles of the common
24 law.

25 * Sec. 6. AS 09.60.010 is amended by adding a new subsection to read:

26 (b) In making an award of attorney fees to a prevailing party,
27 the court shall consider the actual attorney fees incurred by each
28 party in the civil action. Actual attorney fees shall be supported by
29 affidavit from the attorney representing each party.

1 * Sec. 7. AS 09.63 is amended by adding a new section to read:

2 Sec. 09.63.045. VERIFICATION OF CIVIL CLAIMS. (a) Except as
3 provided in (b) of this section, every complaint, answer, cross-claim,
4 and counterclaim shall be signed and verified by the party or the
5 attorney of the party filing the pleading and shall bear a statement
6 that the person signing the pleading believes the statements made in
7 the pleading are true. If the court finds that a statement made in
8 the complaint, answer, cross-claim, or counterclaim was knowingly
9 untrue, upon motion of a party, the person signing the pleading may be
10 compelled to show cause why the person signing the pleading should not
11 be held in contempt of court.

12 (b) For good cause, a complaint, answer, cross-claim or coun-
13 ter-claim may be filed without verification; provided, however, that
14 verification of the pleading by the party or attorney of the party
15 shall be made within 15 days of the filing of the pleading.

16 * Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and
17 09.16.060 are repealed.

18 * Sec. 9. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act have
19 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the
20 jury to answer the special interrogatories listed in AS 09.17.080 regarding
21 the amount of damages and the percentages of fault to be allocated among
22 the parties and to itemize the verdict regarding economic, noneconomic, and
23 punitive damages as specified in AS 09.17.030.

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

28 * Sec. 11. AS 09.17.030 and 09.17.080 enacted in sec. 1 of this Act
29 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring

1 the court to include a specific item in its judgment.

2 * Sec. 12. AS 09.63.045 enacted in sec. 7 of this Act has the effect of
3 amending Alaska Rule of Civil Procedure 11 by requiring verification of
4 claims, answers, counterclaims, and cross-claims.

5 * Sec. 13. AS 09.30.070(b) as added by sec. 4 of this Act has the
6 effect of amending Alaska Rule of Civil Procedure 68 by providing that
7 prejudgment interest accrues from the day the cause of action accrues.

8 * Sec. 14. AS 09.60.010 as amended by sec. 6 of this Act has the effect
9 of amending Alaska Rule of Civil Procedure 82 by requiring the court to
10 consider the actual attorney fees incurred in the civil action.

11 * Sec. 15. APPLICABILITY. Sections 1 - 8 of this Act apply to all
12 causes of action accruing after the effective date of this Act.

13 * Sec. 16. The Department of Law, with the assistance of the Department
14 of Commerce and Economic Development, shall conduct

15 (1) a study of closed insurance claims to identify

16 (A) the extent to which the legal system has or has not
17 been the cause of dramatic liability insurance increases and coverage
18 reduction in crisis lines in Alaska;

19 (B) how victims are faring under the present system; and

20 (C) what the various specific tort reform proposals will
21 actually accomplish;

22 (2) a study of insurance company finances to determine

23 (A) the extent to which dramatic liability insurance rate
24 increases and coverage limitations in Alaska are, or are not, cost-
25 justified in relation to awards, settlements, and relevant court
26 decisions in Alaska involving personal injury, death, or property
27 damage based on fault; and

28 (B) the extent to which legislative or regulatory actions
29 affecting the tort system in Alaska are necessary to resolve the

1 state's liability insurance crisis.

2 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
3 10.070(c).

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Original sponsors: Cotten, Binkley,
Collins, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
 2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 532 (Judiciary)
 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, 19, 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. DAMAGES RESULTING FROM COMMISSION OF A CRIME. A
 13 person who suffers personal injury or death may not recover damages
 14 for the personal injury or death if the injuries or death occurred
 15 while the person was engaged in the commission of a felony, the person
 16 has been convicted of the felony, including conviction based on a
 17 guilty plea or plea of nolo contendere, and the felony substantially
 18 contributed to the injury or death. This section does not affect a
 19 right of action under 42 U.S.C. 1983.

20 Sec. 09.17.020. ITEMIZED VERDICTS. In every case where damages
 21 for personal injury are awarded by the court or jury, the verdict
 22 shall be itemized between economic loss and noneconomic loss, if any,
 23 and economic loss shall be further itemized by category. Itemization
 24 of economic loss by category includes: (1) amounts intended to com-
 25 pensate for reasonable expenses that have been incurred, or which will
 26 be incurred, for necessary medical, surgical, x-ray, dental, or other
 27 health or rehabilitative services, drugs, and therapy; (2) amounts
 28 intended to compensate for lost wages or loss of earning capacity; and
 29 (3) all other economic losses granted by the fact finder. A verdict

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1 shall further determine the amounts intended to compensate for injury
 2 or losses incurred before the verdict and amounts intended to compen-
 3 sate for losses that will be incurred in the future.

4 Sec. 09.17.030. FUTURE DAMAGES. (a) The court shall reduce a
 5 lump-sum award of future damages to its present value. In reducing
 6 the award to present value, the court shall consider inflation and the
 7 estimated future earning capacity of the injured person.

8 (b) The court may enter a judgment that future damages be paid
 9 in whole or in part by periodic payments rather than by a lump-sum
 10 payment; the judgment shall include, if necessary, other provisions to
 11 assure that funds are available as periodic payments become due.
 12 Insurance from an authorized insurer as defined in AS 21.90.900 or
 13 from the Medical Indemnity Corporation of Alaska is sufficient assur-
 14 ance that funds will be available. Any part of the award that is paid
 15 on a periodic basis shall be adjusted annually according to changes in
 16 the consumer price index in the community where the claimant resides.
 17 The court shall include as a part of the costs awarded to the claimant
 18 the costs of providing periodic payment of future damages.

19 (c) A judgment ordering payment of future damages by periodic
 20 payment shall specify the recipient, the dollar amount of the pay-
 21 ments, the interval between payments, and the number of payments or
 22 the period of time over which payments shall be made. Payments may be
 23 modified only as provided in (d) of this section or in the event of
 24 the death of the judgment creditor, in which case payments may not be
 25 reduced or terminated, but shall be paid to persons to whom the judg-
 26 ment creditor owed a duty of support, as provided by law, immediately
 27 before death. In the event the judgment creditor owed no duty of
 28 support to dependents at the time of the judgment creditor's death,
 29 the money remaining shall be distributed in accordance with a will of

1 the deceased judgment creditor or under the intestate laws of the
2 state if the deceased had no will.

3 (d) The court that rendered the original judgment may, upon
4 petition of the judgment creditor, modify the judgment to award addi-
5 tional damages if the judgment creditor incurs medical expenses that
6 were not included in the original judgment and could not have been
7 reasonably anticipated at the time of trial.

8 (e) If the court finds that the judgment debtor has exhibited a
9 continuing pattern of failing to make payments required under this
10 section, the court shall, in addition to the required periodic
11 payments, order the judgment debtor to pay the judgment creditor any
12 damages caused by the failure to make periodic payments, including
13 costs and attorney fees.

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

24 Sec. 09.17.040. LIMITED LIABILITY OF CERTAIN DIRECTORS AND
25 OFFICERS. (a) Unless the act or omission constituted gross negli-
26 gence, a person may not recover tort damages for personal injury,
27 death, or damage to property for an act or omission to act in the
28 course and scope of official duties, as a member or officer of 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 nonprofit hospital, or a member of a citizen's advisory board of any
5 hospital;

6 (3) a member of a school board of a school district;

7 (4) a member of the governing body, a commission, or a
8 citizen's advisory committee of a municipality 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 (c) In this section "nonprofit corporation" means a corporation
14 that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3)
15 (Internal Revenue Code). also (c) (4)?

16 Sec. 09.17.050. EFFECT OF CONTRIBUTORY FAULT. In an action
17 based on fault seeking to recover damages for injury or death to
18 person or harm to property, contributory fault chargeable to the
19 claimant diminishes proportionately the amount awarded as compensatory
20 damages for an injury attributable to the claimant's contributory
21 fault, but does not bar recovery.

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

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

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(1) the amount that the actual attorney fees incurred by the claimant in obtaining the award exceed the amount of attorney fees awarded to the claimant by the court; and

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

(c) If the total amount of collateral benefits introduced as evidence under (a) of this section exceeds the total amount that the claimant introduced as evidence under (b) of this section, the court shall deduct from the total award the amount by which the value of the nonsubrogated sum awarded under (a) of this section exceeds the amount of payments under (b) of this section.

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

(1) benefits that under federal law cannot be reduced or offset;

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

(3) gratuitous benefits provided to the claimant.

DEBIT LEAVE
CITY CHAIR

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

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

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

1 AS 09.17.070.

2 (b) In determining the percentages of fault, the trier of fact
3 shall consider both the nature of the conduct of each party at fault
4 and the extent of the causal relation between the conduct and the
5 damages claimed. The trier of fact may determine that two or more
6 persons are to be treated as a single party if their conduct was
7 cause of the damages claimed and the separate act or omission of each
8 person cannot be distinguished.

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 09.17.070, and enter judgment against each party liable. The court
12 also shall determine and state in the judgment each party's equitable
13 share of the obligation to each claimant in accordance with the re-
14 spective percentages of fault.

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

20 Sec. 09.17.070. EFFECT OF RELEASE. When a release or covenant
21 not to sue or not to enforce judgment is given in good faith to one of
22 two or more persons liable in tort for the same injury or the same
23 wrongful death

24 (1) it does not discharge any of the other tortfeasors from
25 liability for the injury or wrongful death unless its terms so pro-
26 vide; but it reduces the claim against the others to the extent of any
27 amount stipulated by the release or the covenant, or in the amount of
28 the consideration paid for it, whichever is the greater; and

29 (2) it discharges the tortfeasor to whom it is given from