

ALASKA LEGISLATIVE COMMITTEE FILES 1900-1900

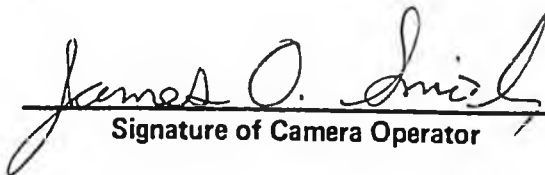
3422 HJUD SB 377/HB 532 (FILE 3: BILLS, FISCAL NOTES & AMENDMENTS)

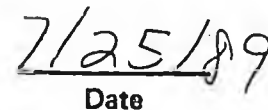


RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

SB

377/532 File #3

TORT REFORM

(BILLS, FISCAL NOTES,
Amendments)

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

| | | |
|-----------------|---------|----------|
| House Judiciary | 4/10/86 | 1:30 pm |
| " " | 4/15/86 | 8:00 Am |
| " " | 4/17/86 | 8:00 Am |
| " " | 4/17/86 | 1:30 pm |
| " " | 4/22/86 | 8:00 Am |
| " " | 4/24/86 | 8:00 Am |
| " " | 4/25/86 | 8:00 Am |
| " " | 4/26/86 | 8:30 Am |
| " " | 4/28/86 | 8:00 Am |
| " " | 4/29/86 | 8:00 Am |
| " " | 5/2/86 | 8:00 Am. |
| " " | 5/3/86 | 9:00 Am |
| " " | 5/5/86 | 1:30 pm |
| " " | 5/6/86 | 8:00 Am |
| " " | 5/6/86 | 7:00 pm |
| " " | 5/7/86 | 8:00 Am |
| " " | 5/7/86 | 1:30 pm |

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

FOUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

*Joint House Labor & Commerce
And House Judiciary committee*

2-25-86

1:15pm

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 532 (L&C)
 Title : An Act Relating to Tort
Reform

 Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Alaska Court System
 BRU : Trial Courts

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | | 80.7 | 80.7 | 80.7 | 80.7 | 80.7 |
| TRAVEL | | 6.2 | 6.2 | 6.2 | 6.2 | 6.2 |
| CONTRACTUAL | | 721.8 | 721.8 | 721.8 | 721.8 | 721.8 |
| SUPPLIES | | 1.0 | 1.0 | 1.0 | 1.0 | 1.0 |
| EQUIPMENT | | 6.7 | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 816.4 | 809.7 | 809.7 | 809.7 | 809.7 |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|--------------|--------------|--------------|--------------|--------------|
| GENERAL FUND | | 816.4 | 809.7 | 809.7 | 809.7 | 809.7 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 816.4 | 809.7 | 809.7 | 809.7 | 809.7 |

POSITIONS :

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL-TIME | | 2 | 2 | 2 | 2 | 2 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Prepared by : Karla Forsythe/Robert G. Fisher Phone : 264-8215
 Division : Alaska Court System Date : 4/9/85

Approved by Commissioner : Arthur H. Snowden, II Date : 4/9/85
 Agency : Alaska Court System

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CSHB 532 (L & C) Fiscal Note Narrative

This legislation impacts the court system in two areas: expanded judicial workload and mandatory arbitration.

Expanded Judicial Workload

The presiding judge for the third judicial district anticipates that new procedures incorporated in this bill (such as hearings to determine whether defendants who have defaulted on periodic payments should be held in contempt and the amount of related damages which should be assessed) will increase the court's workload by 20% for each trial. This estimate also includes judge time expended on additional litigation which will result from attempts to transfer proportional liability to persons who have signed releases before trial, and litigation to resolve interpretation questions with the legislation. Also, more cases will go to trial because of diminished incentives to settle resulting from the prohibition on the award of Civil Rule 82 Attorneys Fees.

It is anticipated that the increased workload could be handled statewide by funding the equivalent of a pro tem judge. Pro tem funding is less costly than funding new judge positions because salary and benefits for retired pro tem judges are significantly lower. Additionally, since these judges are not permanently assigned to one court location, normal space and staffing requirements are avoided.

The provisions of this legislation which establish new procedures for the court come into play only when a case goes to trial. According to figures provided by the Anchorage trial court, approximately 5% of the cases filed go to trial, resulting in 105 personal injury trials statewide.

It is estimated that a personal injury trial averages two weeks. The total number of personal injury trials multiplied by two weeks of a judge's time total 210 judge weeks.

The estimated 20% additional judicial workload attributable to these expanded proceedings totals 42 judge weeks. Since a standard judicial work year averages 40 work weeks (excluding holidays, vacation and training), it is estimated that one judge would be required to process the additional statewide workload.

In order to avoid duplicative hearings, the court system favors binding arbitration rather than the option of de novo court trials. In the event that this legislation is not amended to provide for binding arbitration, the court system assumes for purposes of this fiscal note that the court would be required to bear the cost of arbitrators for those parties who are unable to afford this expense. It is estimated that 1216 personal injury cases statewide would be subject to the mandatory arbitration provision because they fall under \$75,000. It is assumed that a third of the parties will not be able to afford the expenses of arbitrators. Thus, the court system will be required to bear these expenses in 401 cases.

Assuming an arbitration lasting 12 hours and an estimated average hourly compensation rate for the arbitrator of \$150, the cost of an arbitration totals \$1,800. The estimated total cost of an arbitrator for all cases under \$75,000 is \$721,800. Additionally, the court system assumes that for parties in outlying rural areas who are unable to afford the costs of arbitrators, it will be less costly to fly these persons to central urban areas rather than to fly arbitrators to the outlying areas and pay for their room and board. The additional air fare and per diem costs total \$6,155. Based on these assumptions, the total costs of mandatory arbitration is \$727,955.

ALASKA COURT SYSTEM
 CSHB 532 (L & C) - TORT REFORM
 FISCAL IMPACT

Personnel:

| | Salary | Benefits | Total |
|--|----------|----------|-------------|
| Pro Tem, Superior Court Judge (PFT, using fully-vested retired judge) (See Schedule #2) | \$19,332 | \$26,779 | \$46,111 |
| In-Court Clerk (PFT, 12B) | 25,740 | 8,863 | 34,603 |
| | | | ----- |
| Total Personnel | | | 80,714 |
| Travel costs for indigent bush parties in manda- tory arbitration cases. (See Schedule #3) | | | 6,155 |
| Contractual cost of arbitrators for indigent parties in mandatory arbitration cases. (See Schedule #3) | | | 721,800 |
| Supplies | | | 1,000 |
| Equipment: (one-time items) | | | |
| New employee equipment - office furniture and reference materials | | | 6,759 |
| | | | ----- |
| Total FY 87 Cost | | | \$816,428 |
| | | | ===== |

ALASKA COURT SYSTEM

ESTIMATION OF JUDICIAL RESOURCES
NEEDED TO PROCESS INCREASED WORKLOAD

CSHB 532 (L & C) - TORT REFORM

| | Anchorage | Rest of State | Total |
|---|-----------|------------------|-------|
| Number of civil damage cases (a) | 1,458 | 638 | 2,096 |
| Estimated percentage of cases going to trial | 5% | 5% | 5% |
| Estimated number of trials | 73 | 32 | 105 |
| Estimated length of trial in weeks | 2 | 2 | 2 |
| Estimated judicial time in weeks | 146 | 64 | 210 |
| Estimated workload increase from legislation | 20% | 20% | 20% |
| Estimated additional judicial workload in weeks | 29 | 13 | 42 |
| Estimated average number of work- weeks in judicial year (b) | 40 | 40 | 40 |
| Estimated number of judges needed to process additional workload | 0.73 | 0.33 | 1.05 |

Notes:

- (a) Based on FY 85 case filings. All civil damage case filings assumed to be personal injury cases.
- (b) Estimated number of work-weeks, net of holidays, vacation and training.

ALASKA COURT SYSTEM
ESTIMATED FISCAL IMPACT OF MANDATORY ARBITRATION
CSHB 532 (L & C) - TORT REFORM

| | Anchorage | Rest of State | Total |
|--|-----------|------------------|-----------|
| Number of civil damage cases (a) | 1,458 | 638 | 2,096 |
| Estimated percentage of cases under \$75,000 | 58% | 58% | 58% |
| Estimated number of cases under \$75,000 | 846 | 370 | 1,216 |
| Estimated percentage of indigent parties | 33% | 33% | 33% |
| Estimated number of cases involving indigent parties | 279 | 122 | 401 |
| Estimated average length of arbi- tration hearing in hours | 12 | 12 | 12 |
| Estimate average hourly rate of arbitrator | \$150 | \$150 | \$150 |
| Estimated average cost of each case | \$1,800 | \$1,800 | \$1,800 |
| Estimated total cost of arbitrators | \$502,200 | \$219,600 | \$721,800 |
| Estimated travel cost for indigent parties living in bush areas. (See Schedule #4) | \$0 | \$6,155 | \$6,155 |
| Estimated total cost of mandatory arbitration | \$502,200 | \$225,755 | \$727,955 |

Notes:

- (a) Based on FY 85 case filings. All civil damage case filings assumed to be personal injury cases.

ALASKA COURT SYSTEM
 ESTIMATED TRAVEL COSTS FOR INDIGENT BUSH PARTIES
 CSHB 532 (L & C) - TORT REFORM

| Bush Courts | Number of Case Filings | Percent Under \$75,000 | Number of Cases Under \$75,000 | Percent Indigent Defendants | Number of Indigent Cases | Air Fare to Nearest Urban Court (a) | Estimated Air Fare Cost | Estimated Per Diem Cost (b) | Estimated Total Travel Cost |
|-------------|------------------------|------------------------|--------------------------------|-----------------------------|--------------------------|-------------------------------------|-------------------------|-----------------------------|-----------------------------|
| Barrow | 5 | 58% | 3 | 33% | 1 | \$500 | \$500 | \$315 | \$815 |
| Bethel | 30 | 58% | 17 | 33% | 6 | 302 | 1,812 | 1,680 | 3,492 |
| Kotzebue | 5 | 58% | 3 | 33% | 1 | 426 | 426 | 280 | 706 |
| Nome | 6 | 58% | 3 | 33% | 1 | 426 | 426 | 280 | 706 |
| Valdez | 6 | 58% | 3 | 33% | 1 | 156 | 156 | 280 | 436 |
| | | | | | | | | Total Cost | \$6,155 |

Notes:

(a) Bush courts served by urban courts:

Barrow served by Fairbanks
 Bethel served by Anchorage
 Kotzebue served by Anchorage
 Nome served by Anchorage
 Valdez served by Anchorage

(b) Estimated to require three and one half days of per diem.



Trial Courts

State of Alaska

THIRD JUDICIAL DISTRICT
303 K STREET
ANCHORAGE, ALASKA 99501

GOLDEEN GOODFELLOW
Assistant Area Court Administrator/
Clerk of Court

(907) 264-0440

Memorandum

To: Karla Forsythe
Staff Counsel

From: Goldeen Goodfellow
AACA/Clerk of Court

Re: Personal Injury Statistics

Date: April 9, 1986

We again went through all of the Case Characterization Forms which we have in LeEllen's office at this time. They picked out the personal injury cases and put them into categories of (1) \$75,000 or less, (2) more than \$75,000 and (3) no amount stated. They looked at a total of 203 Case Characterization Forms for personal injury cases. The breakdown is as follows:

| | | |
|----------------------|-------------|-------|
| \$75,000 and under - | 118 cases - | 58.1% |
| more than \$75,000 - | 61 cases - | 30.1% |
| amounts not stated - | 24 cases - | 11.8% |

If you want me to, I can continue to monitor the Case Characterization Sheets as they come in and add to the above figures.

cc: Douglas J. Serdahely, Presiding Judge
Albert H. Szal, Area Court Administrator

Alaska State Legislature
House of Representatives



Labor and Commerce Committee

TO: Members House Judiciary Committee
FR: Sid Billingslea, Comm. Aide, HL&C
DT: 4/7/86
RE: Table of contents HB 532

AB

-
1. Sectional of latest draft
 2. Fiscal note
 3. Latest draft of bill
 4. Copies of each draft of bill
 5. Amendments offered (those with blue dots were included)
 6. White Paper on Insurance Capacity crunch, South Carolina
 7. Arbitration information, AS 09.43.130
 8. Memo from Rep. Rieger re collateral sources
 9. Letter from Doug Pope re cap on noneconomic damage awards
 10. Copy with notes of each civil rule amended in bill
 11. Law Review article, Collateral Sources
 12. Rand Institute study on arbitration
 13. Various state codes re arbitration
 14. Washington State's bill on tort reform
 15. Definitions from Black's

NB: There is a book, yet to be published, on attorney fees in the U.S. It is by Bill Eldridge, Director of Research Division of Federal Judicial Center, Wash., D.C. (202)633-6344. In it is a chapter by Allen S. Tomkins called State's Taxation of Attorney Fees: The Alaska Program. Essentially, Rule 82 is being used as a model for attorney fees rules in the U.S. I am working on getting a copy of that chapter.

Alaska State Legislature
House of Representatives



Labor and Commerce Committee

TO: Members, House Labor & Commerce Committee
FR: Sid Billingslea, Committee Aide
DT: 4/4/86
RE: HB 532 Sectional analysis

The following is a sectional analysis of the latest draft of HB 532. I have excluded policy statements and background information.

.010 Limit and cap on noneconomic damages: Awards shall not exceed 25% of the present value of the amount awarded for economic damages, and in no cases shall the amount exceed 500,000 dollars.

.011 Defines noneconomic damages.

.020 Punitive damages: Raises the burden of proof from current "preponderance of evidence" to "clear and convincing" - the highest standard of proof in civil law. 50% of punitives go to the plaintiff, 50% to the state general fund. Precludes the state from joining a suit for damages.

.025 Damages resulting from intoxication, or in commission of a felony: If a claimant was legally under the influence of drugs or alcohol at the time of injury or death, and if he contributed more than 50% to that harm, he is barred from any recovery. The same applies if the claimant was engaged in the commission of a felony, if the felony was causally related to the injury or death. Nothing in this section is intended to bar the claimant's rights under 42USCsec.1983, the Civil Rights Statute.

.030 Itemized verdicts: Requires a jury or court to divide noneconomic and economic damages and itemize them.

.035 Periodic payments: Where the future damages in a personal injury case exceed 50 thousand dollars the court may require periodic payments to be scheduled, if it is in

the best interest of the party. The fund allocated for the total future damages award would be placed in escrow or trust.

(b) The remaining payments go to the judgment creditor's estate upon his death.

(c) Costs of structuring periodic payments are included in the award to the claimant.

(d) Allows for modification if unanticipated medical expenses arise.

(e) If the judgment debtor displays a continuing pattern of nonpayment, the court may hold him in contempt and order him to pay any damages resulting from his failure to pay, including costs and attorney fees.

(f) If a judgment debtor fails to pay in a timely manner, the judgment creditor may ask the court to order the rest of the periodic payments to be made in a lump sum. The lump sum would not be reduced to present value, and interest may be awarded.

.040 Verification of Claims: Every pleading entered by either the plaintiff or defendant shall be verified. Requires element of intent.

.045 Limits liability of directors, officers and superintendents of non profit corporations, public and private hospitals and school districts to gross negligence and to acts or omissions outside the scope of duty.

.050 Effect of contributory fault. The percentage of fault for which the plaintiff is to blame is reduced from the award, but does not bar recovery.

.055 Collateral benefits: After the award is rendered the defendant may introduce evidence of nonsubrogated benefits received by the plaintiff, which may be deducted from the award. The plaintiff may in response introduce evidence of the cost of the collateral benefits received by him; these may be offset from the amount credited to the defendant. Plaintiff may also admit costs of actual attorney fees which exceeded the amount awarded by the court. The defendant may not introduce evidence of benefits which are subrogated, life insurance benefits or gratuitous benefits.

.060 Apportionment of damages: Factfinder determines the percentage of fault to each party. Factfinder may treat two parties as a single party in a master-servant, principal-agent relationship, also allows two or more persons to be treated as a single person if the cause and the separate acts of each person cannot be distinguished. Example: A&B independently start fires. The fires burn, join, and destroy plaintiff's property. Each fire itself would have destroyed the property, A&B are each 100% at fault. Only 100% may be collected as damages. The

factfinder may hold each defendant jointly liable for 100% of the damages. This is the classic joint liability situation.

(c) Court states each party's share of fault and obligation to pay the award.

(d) Each party is jointly and severally liable for damages, except if a party is under 50% at fault he may be held responsible for no more than twice that percentage of the award, should there be insolvent defendants, or defendants who cannot pay their entire share.

Example 1: A&B are sued. A is held 10% at fault, B 90%. B has money and can pay his amount. A pays 10% and B 90%

Example 2: same, only B cannot pay all of his portion. A's 10% is doubled, and A is responsible for 20% of the total.

Example 3: If A is 51% or more at fault and B cannot pay, A pays total award.

.070 Effect of release: When a party is released from the suit for whatever reason, the dollar amount of that release is deducted from the award.

.900 Defines fault

09.10.075: Actions under \$75,000 must be arbitrated before resorting to the courts.

.065 Offers of judgment: Up until 10 days before trial a party may offer to settle. If the offer is not accepted, and if the offeree does not better the offer in trial, the offeree is penalized by either adding (if the offeree is the defense) or subtracting (if the offeree is the plaintiff) 5% interest to the award per year. The amount is in addition to the statutory percentage. The interest penalty dates back to the occurrence.

.43.110 Confirmation of award

.160 Allows 60 days to file appeal from arbitration for a trial de novo.

.55.548 damages are awarded under principles of common law.

.60.010 Attorney fees: Except where statute authorizes payment of attorney fees, the Supreme Court shall determine by rule or order what fees and costs shall be awarded the prevailing party in a case. But--unless authorized by statute or agreement between parties attorney fees may not be awarded in a civil case. Abolishes Civil Rule 82, by the Supreme Court, authorizing payment of attorney fees.e

.60.035 Costs and Attorney fees for arbitration appeal: If a party appeals from arbitration and does not better his lot by 10% over (or under) the arbitration award, he is to pay the prevailing party's actual costs and fees.

A new section has been added which would enable a party to petition the court for review of the fees that party paid its attorney for reasonableness. Establishes certain criteria the court may consider in its review. Remaining sections grant and restate jurisdiction of the courts and note civil rules amended by the bill.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

| | |
|---|--|
| REQUEST <u>Bill/Resolution No.:</u> <u>CSSSHE 532 L&C</u> <u>Title:</u> <u>An Act Relating to Civil</u> <u>Actions</u> <u>Sponsor:</u> <u>Cotton, Binklev, Collins, et al.</u> <u>Requestor:</u> <u>Navarre</u> <u>Date of Request:</u> <u>April 4, 1986</u> | FISCAL DETAIL <u>Agency Affected:</u> _____ <u>BRU:</u> _____ <u>Components:</u> _____ |
|---|--|

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|---------|---------|-----------|-----------|-----------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | -0- | (306.0) | (658.0) | (1,182.0) | (1,812.0) | (2,514.0) |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | (306.0) | (658.0) | (1,182.0) | (1,812.0) | (2,514.0) |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|---------|---------|-----------|-----------|-----------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | -0- | (306.0) | (658.0) | (1,182.0) | (1,812.0) | (2,514.0) |
| TOTAL | -0- | (306.0) | (658.0) | (1,182.0) | (1,812.0) | (2,514.0) |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: Attach a separate page if necessary. The final benefit is impossible to accurately project, given that it will only affect liability claims not yet incurred. Based on the State's past liability claims experience, we project a 20% reduction in estimated ultimate loss and loss expense per fiscal year. The attached projection details the calculations using the State of Alaska's actuarial experience.

Prepared By: Don Hitchcock Phone: 465-2180
 Division: Risk Management Date: April 7, 1986
 Approved by Commissioner: Eleanor Andrews Date: 4/7/86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill No. CSSSHB 532 L&C

CASH FLOW SAVINGS ESTIMATED BY FISCAL YEAR

| | YEAR OF OCCURRENCE | | | | | | TOTAL |
|---|--------------------|--------------|----------------|----------------|----------------|----------------|---------|
| | 1986 | 1987 | 1988 | 1989 | 1990 | 1991 | |
| FY 86 | -0- | | | | | | |
| FY 87 | | 306.0 | | | | | 306.0 |
| Y E A R O F S A V I N G F Y 88 | | 274.0 | 384.0 | | | | 658.0 |
| FY 89 | | 360.0 | 342.0 | 420.0 | | | 1,182.0 |
| FY 90 | | 336.0 | 448.0 | 428.0 | 600.0 | | 1,812.0 |
| FY 91 | | 252.0 | 420.0 | 558.0 | 534.0 | 750.0 | 2,514.0 |
| FY 92 | | | 316.0 | 526.0 | 698.0 | 668.0 | |
| FY 93 | | | | 394.0 | 656.0 | 872.0 | |
| FY 94 | | | | | 492.0 | 820.0 | |
| FY 95 | | | | | | 616.0 | |
| Future | | <u>874.0</u> | <u>1,092.0</u> | <u>1,366.0</u> | <u>1,706.0</u> | <u>2,132.0</u> | |
| TOTAL | | 2,400.0 | 3,000.0 | 3,750.0 | 4,686.0 | 5,858.0 | |

These represent estimated future payments pattern over a twelve year payout period, i.e., each year.

| | |
|-----------|-------|
| 12 months | 12.8% |
| 24 months | 11.4% |
| 36 months | 14.9% |
| 48 months | 14.0% |
| 60 months | 10.5% |
| Balance | 36.4% |

WAB
A. Hanley
ML

A M E N D M E N T 1(A)

Offered in the HOUSE

By Collins

TO: CSSSHB 532(L&C)

include in bill

Page 1, lines 12 - 16, delete all material and insert:

"Sec. 09.17.010. NONECONOMIC DAMAGES. An award of noneconomic damages shall not exceed 25 percent of the present value of the amount awarded for economic damages but in no case shall the award exceed \$500,000.00."

Subsistence lifestyles →
no \$

EIA ~~least~~ hospital -
no medical costs
victims get ∅

A M E N D M E N T / 1(B)

Offered in the HOUSE

By Collins

TO: CSSSHB 532(L&C)

Page 1, lines 12 - 16, delete all material and insert:

"Sec. 09.17.010. NONECONOMIC DAMAGES. An award of noneconomic damages shall not exceed 25 percent of the present value of the amount awarded for economic damages but in no case shall the award exceed \$1,000,000.00."

A. Hanley
DA B
AK

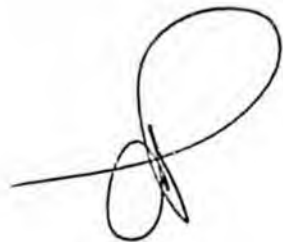
TO HB 532

A M E N D M E N T # 2

BY COLLINS

RE: PERIODIC PAYMENTS

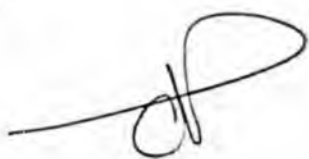
On page 2, line 25, delete "\$50,000.00" and insert the figure "\$75,000.00."



line 2 p.3

included

MC
A. H. H. H.
RAB
writing sent on review w/ Gossard



TO HB 532

A M E N D M E N T # 3

BY COLLINS

RE: PERIODIC PAYMENTS

Page 3, after line 23, insert new sections to read:

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

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

included

Will
A. Collins
Collins

d

A M E N D M E N T # 4

TO HB 532

BY COLLINS

RE: ATTORNEYS' FEES

AS 09.60.010 is amended to read COST ALLOWED PREVAILING PARTY. Except as otherwise provided by statute, the supreme court shall determine by rule or order what costs, if any, including attorney fees, shall be allowed the prevailing party in any case. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in any case. Unless specifically authorized by statute or by agreement between the parties, attorney fees may not be awarded to a party in a civil action. If a court awards attorney fees authorized by statute, the award may not exceed the limits established under AS 09.17.100(a)(1) - (4)."

"AS 09.60.010 as amended by Sec. 11 of this act has the effect of amending Alaska Rule of Civil Procedure 82 by prohibiting the award of attorney fees in civil actions unless specifically authorized by Statute or by agreement between the parties."

p. 9 - 10
include in bill

ml

A M E N D M E N T # 5 A

TO HB 532

BY COLLINS

RE: CONTINGENT FEE AGREEMENTS

Insert new section to read:

"(a) An attorney may not contract for or collect a contingency fee for representing a person seeking damages in connection with an action for personal injury based on negligence in excess of the following limits:

- (1) 40 percent of the first \$50,000 recovered;
- (2) 33-1/3 percent of the next \$50,000 recovered;
- (3) 25 percent of the next \$200,000 recovered;
- (4) 10 percent of any amount recovered which exceeds \$200,000.

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

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

W *B. Hamilton* *W* *D*

A M E N D M E N T # 5 B

TO HB 532

BY COLLINS

RE: ATTORNEYS' FEES

A new section is added to read as follows: *fee agreement*



"The court shall, upon petition by a named party in any tort action determine the reasonableness of that party's attorneys' fees. The court shall take into consideration the following: ⁷

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) The fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) The time limitations imposed by the client or by the circumstances;
- (6) The nature and length of the professional relationship with the client;
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services;
- (8) Whether the fee is fixed or contingent;
- (9) Whether the fixed or contingent fee agreement was in writing and whether the client was aware of his or her right to petition the court under this section.

include in bill

MM

A M E N D M E N T # 2

TO C S S S H E 532

A. Handley
D. B. B.

8

BY PEARCE

RE: DEFENSES

On page 3, after line 14, insert a new section to read:

"DEFENSES. It is a complete defense to any action for damages for personal injury or wrongful death that the person injured or killed was engaged in the commission of a felony, if the felony was causally related to the injury or death in time, place, or activity. However, nothing in this section shall affect a right of action under 42 U.S.C 1983.

HB-532
Draft CS 3/26/86

M. Harts
A. Healey

By Boucher

P. 6 Lines 21 and 22

Delete all after the word "parties" and substitute the following language:

"shall be only severally liable for the percentage of fault allocated to that party."

This amendment makes all those persons who are less than 50% at fault in causing an injury liable only for the amount of damages allocated to them in proportion to their percentage of fault. This will eliminate the so-called deep pocket problem where defendants who possess insurance or substantial assets may pay 100% of judgements in which they were not substantially responsible for the injuries suffered.

Original sponsors: Cotten, Binkley,
Collins, et al

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. In an action to recover
13 damages for personal injury based on negligence, damages for noneco-
14 nomic losses shall be limited to 25 percent of the present value of
15 the damages awarded for economic losses, or \$500,000 whichever amount
16 is lower.

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

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

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

29 Sec. 09.17.025 DAMAGES RESULTING FROM INTOXICATION OF
30 CSSH B 532(L&C)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) an elected or appointed official of a political subdivision of the state.

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the corporation or the corporation's shareholders may not be limited or modified.

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

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

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

(1) the amount that the actual attorney fees incurred by the claimant exceed the amount of attorney fees awarded to the claimant; 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 amount awarded the claimant, the amount by which the value of the benefits 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 cannot be reduced or offset by federal law;

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

(3) gratuitous benefits provided to the claimant.

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.

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 dollar amount of the release, covenant not to sue, or similar agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (6) for the recovery of the possession of premises in the
9 manner provided under AS 09.45.070 - 09.45.160 when the value of the
10 property or of the arrears and damage to the property does not exceed
11 \$25,000;

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

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

17 (9) over civil actions for taking utility service and for
18 damages to or interference with a utility line filed under AS 42.20.-
19 030;

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

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

25 * Sec. 11. AS 09.16 is repealed.

26 * Sec. 12. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
27 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
28 the jury to answer the special interrogatories listed in AS 09.17.060
29 regarding the amount of damages and the percentages of fault to be

1 allocated among the parties and to itemize the verdict regarding economic
2 and noneconomic loss as specified in AS 09.17.030.

3 * Sec. 13. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
4 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
5 specific findings regarding the amount of damages and the percentages of
6 fault to be allocated among the parties.

7 * Sec. 14. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
8 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
9 the court to include a specific item in its judgment.

10 * Sec. 15. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
11 amending Alaska Rule of Civil Procedure 11 by requiring verification of
12 claims, answers, counterclaims, and cross-claims.

13 * Sec. 16. AS 09.30.065 as amended by sec. 3 of this Act has the effect
14 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
15 interest accrues from the day the cause of action accrues.

16 * Sec. 17. APPLICABILITY. Sections 1 - 10 of this Act apply to all
17 causes of action accruing on or after the effective date of this Act.

18 * Sec. 18. This Act takes effect immediately in accordance with AS 01.-
19 10.070(c).

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Ford
3/25/36 ✓

Original sponsors: Cotten, Binkley,
Collins, et al

Attn: Sid

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. In an action to recover
13 damages for personal injury based on negligence, damages for noneco-
14 nomic losses shall be limited to compensation for pain, suffering,
15 inconvenience, physical impairment, disfigurement, loss of enjoyment
16 of life and other nonpecuniary damage.

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

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

26 (c) The state may not bring or be joined in an action, based on
27 punitive damages that may be awarded under this section.

28 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION. A person
29 who suffers personal injury or death may not recover damages for the

1 personal injury or death if the injuries or death occurred while the
2 person was under the influence of intoxicating liquor or a controlled
3 substance listed in AS 11.71.140 - 11.71.190. If there was 0.10
4 percent or more by weight of alcohol in the person's blood or 0.10
5 grams or more of alcohol per 210 liters of the person's breath, it is
6 presumed that the person was under the influence of intoxicating
7 liquor.

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

21 Sec. 09.17.035. PERIODIC PAYMENTS. In an action to recover
22 damages for personal injury, the court may, at the request of a party,
23 enter judgment ordering that amounts awarded a judgment creditor for
24 future damages be paid to the maximum extent feasible by periodic
25 payments rather than by a lump-sum payment if the award equals or
26 exceeds \$50,000 in future damages. The court may require a judgment
27 debtor to post security adequate to assure full payment of future
28 periodic payment damages awarded by judgment.

29 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. Every complaint.

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

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

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

16 (2) a member of the board of directors of a public or
17 private hospital;

18 (3) a member of a school board or superintendent of a
19 school district.

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

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

1 Sec. 09.17.055. COLLATERAL BENEFITS. (a) After the fact finder
2 has rendered an award to a claimant, including an award of costs and
3 attorney fees, a defendant may introduce evidence of amounts received
4 or to be received by the claimant as compensation for the same injury
5 from collateral sources that do not have a right of subrogation
6 against the plaintiff by law or contract.

7 (b) If the claimant elects to introduce evidence under (a) of
8 this section, the claimant may introduce evidence of

9 (i) the amount that the actual attorney fees incurred by
10 the claimant exceed the amount of attorney fees awarded to the claim-
11 ant; and

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

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

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

23 (1) benefits that cannot be reduced or offset by federal
24 law;

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

26 (3) gratuitous benefits provided to the claimant by a
27 relative of the claimant.

28 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
29 involving fault of more than one party to the action, including third-

1 party defendants and persons who have been released under AS 09.17.-
2 070, the court, unless otherwise agreed by all parties, shall instruct
3 the jury to answer special interrogatories or, if there is no jury,
4 shall make findings, indicating

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

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

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

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

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

29 Sec. 09.17.070. EFFECT OF RELEASE. A release, covenant not to

1 sue, or similar agreement entered into by a claimant and a person
2 liable discharges that person from liability to the claimant, but it
3 does not discharge another person liable upon the same claim unless
4 the release, covenant not to sue, or similar agreement provides for
5 discharge. However, the claim of the releasing person against other
6 persons is reduced by the dollar amount of the release, covenant not
7 to sue, or similar agreement.

8 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
9 acts or omissions that are in any measure negligent or reckless toward
10 the person or property of the actor or others, or that subject a
11 person to strict tort liability; the term also includes breach of
12 warranty, unreasonable assumption of risk not constituting an enforce-
13 able express consent, misuse of a product for which the defendant
14 otherwise would be liable, and unreasonable failure to avoid an injury
15 or to mitigate damages; legal requirements of causal relation apply
16 both to fault as the basis for liability and to contributory fault.

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

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

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

24 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
25 days before the trial begins [ON OR BEFORE THE 60TH DAY FOLLOWING THE
26 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
27 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT], either the party
28 making a claim or the party defending against a claim may serve upon
29 the adverse party an offer to allow judgment to be entered in complete

1 satisfaction of the claim for the money or property or to the effect
2 specified in the offer, with cost then accrued. If within 10 days
3 after the service of the offer the adverse party serves written notice
4 that the offer is accepted, either party may then file the offer and
5 notice of acceptance together with proof of service, and the clerk
6 shall enter judgment. An offer not accepted within 10 days is con-
7 sidered withdrawn and evidence of that offer is not admissible except
8 in a proceeding to determine the form of judgment after verdict. If
9 the judgment finally entered on the claim as to which an offer has
10 been made under this section is not more favorable to the offeree than
11 the offer, the interest awarded under AS 45.45.010(a) and accrued up
12 to the date judgment is entered shall be adjusted as follows:

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

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

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

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

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

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

25 (1) within the time limits imposed by AS 09.43.120 and
26 09.43.130 grounds are urged for vacating or modifying or correcting
27 the award, in which case the court shall proceed as provided in
28 AS 09.43.120 and 09.43.130; or

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

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

2 (c) An award made as a result of arbitration required by AS 09.-
3 10.075 may be appealed to the proper court. The appeal shall be filed
4 within 60 days after notice of an award is made under AS 09.43.080.
5 The court shall grant a trial de novo if an appeal is filed under this
6 subsection.

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

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

11 * Sec. 8. AS 09.60 is amended by adding a new section to read:

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

18 * Sec. 9. AS 22.10.020(d) is amended to read:

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

26 * Sec. 10. AS 22.15.030(a) is amended to read:

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

29 (1) For the recovery of money or damages when the amount

1 claimed exclusive of costs, interest and attorney fees does not exceed
2 \$25,000;

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

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

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

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

13 (6) for the recovery of the possession of premises in the
14 manner provided under AS 09.45.070 - 09.45.160 when the value of the
15 property or of the arrears and damage to the property does not exceed
16 \$25,000;

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

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

22 (9) over civil actions for taking utility service and for
23 damages to or interference with a utility line filed under AS 42.20.-
24 030;

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

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

- 1 * Sec. . AS 09.16 is repealed.
- 2 * Sec. 12. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
3 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
4 the jury to answer the special interrogatories listed in AS 09.17.060
5 regarding the amount of damages and the percentages of fault to be allocat-
6 ed among the parties and to the verdict regarding economic and
7 noneconomic loss as specified .17.030.
- 8 * Sec. 13. AS 09.17.060 and sec. 1 of this Act has the effect of
9 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
10 specific findings regarding the amount of damages and the percentages of
11 fault to be allocated among the parties.
- 12 * Sec. 14. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
13 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
14 the court to include a specific item in its judgment.
- 15 * Sec. 15. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
16 amending Alaska Rule of Civil Procedure 11 by requiring verification of
17 claims, answers, counterclaims, and cross-claims.
- 18 * Sec. 16. AS 09.30.065 as amended by sec. 3 of this Act has the effect
19 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment
20 interest accrues from the day the cause of action accrues.
- 21 * Sec. 17. APPLICABILITY. Sections 1 - 10 of this Act apply to all
22 causes of action accruing on or after the effective date of this Act.
- 23 * Sec. 18. This Act takes effect immediately in accordance with AS 01.-
24 10.070(c).
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Ford
3/19/36

Original sponsors: Cotten, Binkley,
Collins, et al

Attn: Sid
House
BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. In an action to recover
13 damages for personal injury based on negligence, damages for noneco-
14 nomic losses shall be limited to compensation for pain, suffering,
15 inconvenience, physical impairment, disfigurement, loss of enjoyment
16 of life and other nonpecuniary damage.

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

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

26 (c) The state may not bring or be joined in an action, based on
27 punitive damages that may be awarded under this section.

28 Sec. 09.17.030. ITEMIZED VERDICTS. In every case where damages
29 for personal injury are awarded by the court or jury, the verdict

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

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

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

27 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
28 involving fault of more than one party to the action, including third-
29 party defendants and persons who have been released under

1 AS 09.17.070, the court, unless otherwise agreed by all parties, shall
2 instruct the jury to answer special interrogatories or, if there is no
3 jury, shall make findings, indicating

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

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

10 (b) In determining the percentages of fault, the trier of fact
11 shall consider both the nature of the conduct of each party at fault,
12 the extent of the causal relation between the conduct and the damages
13 claimed and may determine that two or more persons are to be treated
14 as a single party.

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

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

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

1 the release, covenant not to sue, or similar agreement provides for
2 discharge. However, the claim of the releasing person against other
3 persons is reduced by the dollar amount of the release, covenant not
4 to sue, or similar agreement.

5 Sec. 09.17.900. DEFINITION. In this chapter "fault" includes
6 acts or omissions that are in any measure negligent or reckless toward
7 the person or property of the actor or others, or that subject a
8 person to strict tort liability; the term also includes breach of
9 warranty, unreasonable assumption of risk not constituting an enforce-
10 able express consent, misuse of a product for which the defendant
11 otherwise would be liable, and unreasonable failure to avoid an injury
12 or to mitigate damages; legal requirements of causal relation apply
13 both to fault as the basis for liability and to contributory fault.

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

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

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

21 Sec. 09.30.065. OFFERS OF JUDGMENT. At any time more than 10
22 days before the trial begins (ON OR BEFORE THE 60TH DAY FOLLOWING THE
23 FILING OF AN ANSWER IN A CIVIL ACTION, AND ON THE FIFTH DAY FOLLOWING
24 THE DAY DISCOVERY CLOSES AS ORDERED BY THE COURT), either the party
25 making a claim or the party defending against a claim may serve upon
26 the adverse party an offer to allow judgment to be entered in complete
27 satisfaction of the claim for the money or property or to the affect
28 specified in the offer, with cost then accrued. If within 10 days
29 after the service of the offer the adverse party serves written notice

1 that the offer is accepted, either party may then file the offer and
2 notice of acceptance together with proof of service, and the clerk
3 shall enter judgment. An offer not accepted within 10 days is con-
4 sidered withdrawn and evidence of that offer is not admissible except
5 in a proceeding to determine the form of judgment after verdict. If
6 the judgment finally entered on the claim as to which an offer has
7 been made under this section is not more favorable to the offeree than
8 the offer, the interest awarded under AS 45.45.010(a) and accrued up
9 to the date judgment is entered shall be adjusted as follows:

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

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

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

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

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

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

22 (1) within the time limits imposed by AS 09.43.120 and
23 09.43.130 grounds are urged for vacating or modifying or correcting
24 the award, in which case the court shall proceed as provided in
25 AS 09.43.120 and 09.43.130; or

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

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

28 (c) An award made as a result of arbitration required by AS 09.-
29 10.075 may be appealed to the proper court. The appeal shall be filed

1 within 60 days after notice of an award is made under AS 09.43.080.
2 The court shall grant a trial de novo if an appeal is filed under this
3 subsection.

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

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

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

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

16 * Sec. 9. AS 22.15.030(a) is amended to read:

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

19 (1) for the recovery of money or damages when the amount
20 claimed exclusive of costs, interest and attorney fees does not exceed
21 \$25,000;

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

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

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

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

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

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

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

12 (9) over civil actions for taking utility service and for
13 damages to or interference with a utility line filed under AS 42.20.-
14 030;

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

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

20 * Sec. 10. AS 09.16 is repealed.

21 * Sec. 11. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act
22 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
23 the jury to answer the special interrogatories listed in AS 09.17.060
24 regarding the amount of damages and the percentages of fault to be allocat-
25 ed among the parties and to itemize the verdict regarding economic and
26 noneconomic loss as specified in AS 09.17.030.

27 * Sec. 12. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
28 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
29 specific findings regarding the amount of damages and the percentages of

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fault to be allocated among the parties.

* Sec. 13. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 14. AS 09.17.040 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 11 by requiring verification of claims, answers, counterclaims, and cross-claims.

* Sec. 15. AS 09.30.065 as amended by sec. 3 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest accrues from the day the cause of action accrues.

* Sec. 16. APPLICABILITY. Sections 1 - 9 of this Act apply to all causes of action accruing on or after the effective date of this Act.

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

Ford-
3/17/36

Original sponsors: Cotten, Binkley,
Collins, et al

attn Sid

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

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

17 (b) The amount of damages awarded by a court or jury under (a)
18 of this section may not exceed \$250,000 for each claim based on a
19 separate incident or injury.

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

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

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

11 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. Every complaint,
12 cross-claim, and counterclaim shall be signed and verified by the
13 claiming party or the attorney of the claiming party and shall bear a
14 statement that the person signing the claim believes the statements
15 made in the claim are true. If the court finds that a statement made
16 in the complaint, cross-claim, or counterclaim is untrue, and upon
17 motion of a party defending against the claim, the person signing the
18 claim shall be compelled to show cause why the person signing the
19 claim should not be held in contempt of court.

20 Sec. 09.17.050. COLLATERAL BENEFITS. (a) Except when the
21 collateral benefit is received from a federal program that by law must
22 seek subrogation and except death benefits paid under life insurance,
23 a claimant, in an action for personal injury, may only recover damages
24 from the defendant that exceed the amount received by the claimant as
25 compensation for the same injury from collateral sources, whether
26 private, group or governmental, and whether contributory or noncon-
27 tributory. Evidence of collateral sources is admissible after the
28 fact finder has rendered an award. The court may take into account
29 the value of a claimant's rights to future or contingent benefits by

1 including a reasonable estimate of their probable value, or by speci-
2 fying and holding for possible future payment that amount of the award
3 that would otherwise have been deducted, to determine if payment of
4 the collateral benefit actually takes place.

5 (b) Collateral benefits introduced under (a) of this section may
6 not be used to recover an amount against the plaintiff nor may the
7 source of the benefits be subrogated to the rights of the plaintiff
8 against a defendant.

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
11 person or harm to property, contributory fault chargeable to the
12 claimant diminishes proportionately the amount awarded as compensatory
13 damages for an injury attributable to the claimant's contributory
14 fault, but does not bar recovery.

15 Sec. 09.17.070. APPORTIONMENT OF DAMAGES. (a) In all actions
16 involving fault of more than one party to the action, including third-
17 party defendants and persons who have been released under AS 09.17.-
18 080, the court, unless otherwise agreed by all parties, shall instruct
19 the jury to answer special interrogatories or, if there is no jury,
20 shall make findings, indicating

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

23 (2) the percentage of the total fault of all of the parties
24 to each claim that is allocated to each claimant, defendant, third-
25 party defendant, and person who has been released from liability under
26 AS 09.17.080; for this purpose the court may determine that two or
27 more persons are to be treated as a single party.

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

1 and the extent of the causal relation between the conduct and the
2 damages claimed.

3 (c) The court shall determine the award of damages to each
4 claimant in accordance with the findings, subject to a reduction under
5 AS 09.17.080, and enter judgment against each party liable. The court
6 also shall determine and state in the judgment each party's equitable
7 share of the obligation to each claimant in accordance with the re-
8 spective percentages of fault.

9 (d) The court shall enter judgment against each party liable on
10 the basis of joint and several liability, except that a party who is
11 allocated less than 30 percent of the total fault allocated to all the
12 parties may not be jointly liable for more than twice the percentage
13 of fault allocated to that party.

14 Sec. 09.17.080. EFFECT OF RELEASE. A release, covenant not to
15 sue, or similar agreement entered into by a claimant and a person
16 liable discharges that person from liability to the claimant, but it
17 does not discharge another person liable upon the same claim unless
18 the release, covenant not to sue, or similar agreement provides for
19 discharge. However, the claim of the releasing person against other
20 persons is reduced by the amount of the released person's equitable
21 share of the obligation, determined under AS 09.17.070.

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

1 both to fault as the basis for liability and to contributory fault.

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

3 Sec. 09.10.075. PERSONAL INJURY ACTIONS THAT MUST BE ARBITRATED.

4 A person may not bring an action for damages based on personal injury
5 when the amount in controversy is less than \$50,000, exclusive of
6 costs, interest and attorney fees, unless the controversy is first
7 arbitrated under AS 09.43.

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

9 Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day
10 following the filing of an answer in a civil action, and on the fifth
11 day following the day discovery closes as ordered by the court, either
12 the party making a claim or the party defending against a claim may
13 serve upon the adverse party an offer to allow judgment to be entered
14 in complete satisfaction of the claim for the money or property or to
15 the effect specified in the offer, with cost then accrued. If within
16 10 days after the service of the offer the adverse party serves writ-
17 ten notice that the offer is accepted, either party may then file the
18 offer and notice of acceptance together with proof of service, and the
19 clerk shall enter judgment. An offer not accepted within 10 days is
20 considered withdrawn and evidence of that offer is not admissible
21 except in a proceeding to determine the form of judgment after ver-
22 dict. If the judgment finally entered on the claim as to which an
23 offer has been made under this section is not more favorable to the
24 offeree than the offer, the interest awarded under AS 45.45.010(a) and
25 accrued up to the date judgment is entered shall be adjusted as fol-
26 lows:

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

29 (2) if the offeree is the party defending against the

1 claim, the interest rate shall be increased by five [TWO] percent a
2 year.

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

4 (b) Except when the court finds that the parties have agreed
5 otherwise, prejudgment interest accrues from the day the cause of
6 action accrues.

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

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

10 (1) within the time limits imposed by AS 09.43.120 and
11 09.43.130 grounds are urged for vacating or modifying or correcting
12 the award, in which case the court shall proceed as provided in
13 AS 09.43.120 and 09.43.130; or

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

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

16 (c) An award made as a result of arbitration required by AS 09.-
17 10.075 may be appealed to the proper court. The appeal shall be filed
18 within 60 days after notice of an award is made under AS 09.43.080.
19 The court shall grant a trial de novo if an appeal is filed under this
20 subsection.

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

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

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

26 (d) The superior court has jurisdiction in all matters appealed
27 to it (1) from a subordinate court; (2) by a party to an arbitration
28 award under AS 09.43.160(c); [,] or (3) an administrative agency when
29 appeal is provided by law. The hearings on appeal from a final order

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or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 9. 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 \$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 \$25,000;

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

(9) over civil actions for taking utility service and for

1 damages to or interference with a utility line filed under AS 42.20.-
2 030;

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

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

8 * Sec. 10. AS 09.16 is repealed.

9 * Sec. 11. AS 09.17.030 and 09.17.070 enacted in sec. 1 of this Act
10 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
11 the jury to answer the special interrogatories listed in AS 09.17.070
12 regarding the amount of damages and the percentages of fault to be allocat-
13 ed among the parties and to itemize the verdict regarding economic and
14 noneconomic loss as specified in AS 09.17.030.

15 * Sec. 12. AS 09.17.070 enacted in sec. 1 of this Act has the effect of
16 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
17 specific findings regarding the amount of damages and the percentages of
18 fault to be allocated among the parties.

19 * Sec. 13. AS 09.17.030 and 09.17.070 enacted in sec. 1 of this Act
20 have the effect of amending Alaska Rule of Civil Procedure 58 by requiring
21 the court to include a specific item in its judgment.

22 * Sec. 14. AS 09.17.040 enacted in sec. 1 of this Act has the effect of
23 amending Alaska Rule of Civil Procedure 11 by requiring verification of
24 claims, counterclaims, and cross-claims.

25 * Sec. 15. AS 09.17.050, enacted in sec. 1 of this Act, has the effect
26 of amending Alaska Rule of Civil Procedure 58 by requiring the court to
27 reduce a judgment by the amount of certain collateral benefits received by
28 a claimant.

29 * Sec. 16. AS 09.30.005 as amended by sec. 3 of this Act has the effect

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

3 * Sec. 17. APPLICABILITY. Sections 1 - 9 of this Act apply to all
4 causes of action accruing on or after the effective date of this Act.

5 * Sec. 18. This Act takes effect immediately in accordance with AS 01.-
6 10.070().

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Ford
3/27/36

Original sponsors: Cotten, Binkley,
Collins, et al

*Navarre
attn: Sid*

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

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

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 CHAPTER 17. LIMITATIONS ON CIVIL LIABILITY.

12 Sec. 09.17.010. NONECONOMIC DAMAGES. In an action to recover
13 damages for personal injury based on negligence, damages for noneco-
14 nomic losses shall be limited to compensation for pain, suffering,
15 inconvenience, physical impairment, disfigurement, loss of enjoyment
16 of life and other nonpecuniary damage.

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

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

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

29 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (3) gratuitous benefits provided to the claimant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 * Sec. 8. AS 09.60 is amended by adding a new section to read:

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

7 * Sec. 9. AS 22.10.020(d) is amended to read:

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

15 * Sec. 10. AS 22.15.030(a) is amended to read:

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

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

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

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

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

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

1 manner prescribed in AS 09.55.020 - 09.55.060;

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

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7 troversy does not exceed \$25,000;

8 (8) for the recovery of money or damages in motor vehicle
9 tort cases when the amount claimed exclusive of costs, interest and
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12 damages to or interference with a utility line filed under AS 42.20.-
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21 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring
22 the jury to answer the special interrogatories listed in AS 09.17.060
23 regarding the amount of damages and the percentages of fault to be allocat-
24 ed among the parties and to itemize the verdict regarding economic and
25 noneconomic loss as specified in AS 09.17.030.

26 * Sec. 13. AS 09.17.060 enacted in sec. 1 of this Act has the effect of
27 amending Alaska Rule of Civil Procedure 52 by requiring the court to make
28 specific findings regarding the amount of damages and the percentages of
29 fault to be allocated among the parties.

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* Sec. 14. AS 09.17.030 and 09.17.060 enacted in sec. 1 of this Act have the effect of amending Alaska Rule of Civil Procedure 58 by requiring the court to include a specific item in its judgment.

* Sec. 15. AS 09.17.040 enacted in sec. 1 of this Act has the effect of amending Alaska Rule of Civil Procedure 11 by requiring verification of claims, answers, counterclaims, and cross-claims.

* Sec. 16. AS 09.30.065 as amended by sec. 3 of this Act has the effect of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment interest accrues from the day the cause of action accrues.

* Sec. 17. APPLICABILITY. Sections 1 - 11 of this Act apply to all causes of action accruing on or after the effective date of this Act.

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

Ford
7/26/86

Original sponsors: Cotten, Binkley,
Collins, et al

Cotton

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

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3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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21 party defending the claim shall be awarded to the benefit of the state
22 and when paid deposited in the general fund.

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

26 (c) The state may not bring or be joined in an action, based on
27 punitive damages that may be awarded under this section.

28 Sec. 09.17.025. DAMAGES RESULTING FROM INTOXICATION. A person
29 who suffers personal injury or death may not recover damages for the

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personal injury or death if the injuries or death occurred while the person was under the influence of intoxicating liquor or a controlled substance listed in AS 11.71.140 - 11.71.190 and the condition of being under the influence of the intoxicating liquor or controlled substance contributed more than 50 percent to the person's injuries or death. If there was 0.10 percent or more by weight of alcohol in the person's blood or 0.10 grams or more of alcohol per 210 liters of the person's breath, it is presumed that the person was under the influence of intoxicating liquor.

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

Sec. 09.17.035. PERIODIC PAYMENTS. (a) In an action where the damages for personal injury include an award for future damages in excess of \$50,000, the court may, if it determines that it is in the interest of the injured party or the public, require that the portion of the total award allocated for future damages be paid into the court and placed in a trust account in a bank or savings and loan association or placed with a licensed escrow agent and paid to the

1 judgment creditor in periodic payments rather than in a lump-sum
2 payment.

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

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

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

24 Sec. 09.17.040. VERIFICATION OF CIVIL CLAIMS. Every complaint,
25 answer, cross-claim, and counterclaim shall be signed and verified by
26 the party or the attorney of the party filing the pleading and shall
27 bear a statement that the person signing the pleading believes the
28 statements made in the pleading are true. If the court finds that a
29 statement made in the complaint, answer, cross-claim, or counterclaim

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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.

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

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

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

(3) a member of a school board or superintendent of a school district.

(b) Notwithstanding (a) of this section, the duties and liabilities of a director or officer of a nonprofit corporation to the corporation or the corporation's shareholders may not be limited or modified.

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

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

1 subrogation against the claimant by law or contract.

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

4 (1) the amount that the actual attorney fees incurred by
5 the claimant exceed the amount of attorney fees awarded to the claim-
6 ant; and

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

10 (c) If the total amount of collateral benefits introduced as
11 evidence under (a) of this section exceeds the total amount that the
12 claimant introduced as evidence under (b) of this section, the court
13 shall deduct from the amount awarded the claimant, the amount by which
14 the value of the benefits under (a) of this section exceeds the amount
15 of payments under (b) of this section.

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

18 (1) benefits that cannot be reduced or offset by federal
19 law;

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

21 (3) gratuitous benefits provided to the claimant.

22 Sec. 09.17.060. APPORTIONMENT OF DAMAGES. (a) In all actions
23 involving fault of more than one party to the action, including third-
24 party defendants and persons who have been released under AS 09.17.-
25 070, the court, unless otherwise agreed by all parties, shall instruct
26 the jury to answer special interrogatories or, if there is no jury,
27 shall make findings, indicating

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

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

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

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

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

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