

ALASKA LEGISLATURE COMMITTEE FILED

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SLAB

SB 377

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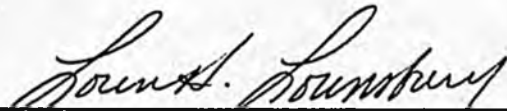
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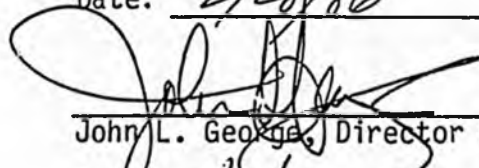
SB 377: "An Act relating to civil actions; amending Alaska Rules of Civil Procedure 11, 49, 52, 58, 68, and 82; and providing for an effective date."

This bill is focused on a variety of tort reforms. The position of the department on these issues is neutral.



Loren H. Lounsbury, Commissioner  
Department of Commerce & Economic  
Development

Date: 2/28/86



John L. George, Director of Insurance

Date: 2/28/86



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### CSSB 377(L&C): Sectional Analysis

Section 1) Creates a new chapter which provides for limits on amounts and recoveries through civil action.

#### CAP ON NON ECONOMIC DAMAGES

09.17.010: limits non economic damages to \$250,000 for each claim based on a separate incident or injury.

09.17.020: Requires that verdicts be itemized between economic and noneconomic loss. Further provides that economic losses include certain categories of compensation and that a verdict must determine compensation for existing and future losses.

#### STRUCTURED SETTLEMENTS/PERIODIC PAYMENTS

09.17.030 Requires that an award of future damages, at the request of a judgement creditor, in excess of \$50,000 must be paid to the maximum extent feasible by periodic payments rather than lump sum payments. Requires the court to make specific findings regarding periodic payment, and provides the court may require the judgement debtor to post security. A judgement requiring periodic payment must specify the recipient, amount, interval between payments, and number of payments to be made. Judgement may be modified only if the creditor dies, in which case the payments go to persons the judgement creditor owed a duty of support prior to death. Allows the court to penalize a judgement debtor who fails to make required payments. Upon expiration of the obligation, any security given reverts to the judgement debtor. The judgement may be recorded but does not become a lien before payment is due.

Modification in the latest CS removes an interest rate provision for increasing periodic payments at an annual rate of 5% from the date that judgement is entered.

09.17.040 Establishes by statute the rule already established by case law, that contributory fault diminishes recovery, but does not bar a plaintiff from seeking compensation.

#### SEVERAL LIABILITY

09.17.050 Requires the jury or court to apportion damages between each party to the lawsuit, if there is more than one party to the action. Each party is assigned a percentage of fault, and damages are awarded based on the percentage. Changes the existing rule of joint and several liability to one of several liability only.

#### SEVERAL LIABILITY

09.17.060 Provides that if a person settles a claim, the settlement does not release anyone else unless the agreement so provides. However the sum of the total claim is reduced by the amount of the released persons share of the damages determined under 09.17.050 (several liability).

09.17.900: Definition of "fault"

#### MANDATORY ARBITRATION

Section 2) Requires personal injury actions seeking damages less than \$100,000, exclusive of costs, interest, and attorney fees, must first be arbitrated under 09.43, before a lawsuit can be commenced.

#### PREJUDGEMENT INTEREST

Section 3) Provides that if a party defending against a claim makes an offer of settlement that is more favorable than the judgement finally entered, the claim shall bear no interest from the date of offer of settlement, to the date of judgement.

Section 4) MANDATORY ARBITRATION provides that an award made under arbitration may be appealed to the proper court.

#### 60 DAY APPEAL TO THE MANDATED ARBITRATION

Section 5) Provides that an appeal of an arbitration award must be filed within 60 days of an award. Also requires a new trial of the issues, if an appeal is filed.

AMENDMENT TO CIVIL RULE 82

- Section 6) Provides that attorney fees can not be awarded unless the court finds malice, bad faith, or reckless disregard of the rights of another in causing the injury. The current CS also defines "reckless disregard of the rights of another".
- Section 7) amendment on mandatory arbitration following from section 4)
- Section 8) Repeals current 09.16, the existing chapter concerning contribution among joint tortfeasors
- Section 9) provides for the amendment of Civil Rule 49; requires the jury to answer special questions on the amount of damages, percentages of fault, and to itemize the verdict between economic and noneconomic damage.
- Section 10) Provides for the amendment of Civil rule 52; requires court to make findings regarding amount of damages and percentage of fault to be allocated among parties.
- Section 11) Provides for the amendment of Civil Rule 58; requires the court to include a specific item in its judgement.
- Section 12) Provides for the amendment of Civil Rule 68; on prejudgement interest;
- Section 13) Provides for the amendment of Civil Rule 82; would only allow for attorneys fees and costs in an action after findings of bad faith, malice, or reckless disregard for another in causing the injury.
- Section 14) Applicability section
- Section 15) Review requirements on the effect of tort reform changes. Legislature requests the Governor to direct the Division of Insurance to assess the effects of of this act on premiums being charged for liability insurance. Reports would be due on March 1st, 87, 88, and 89.
- Section 16) Immediate effective date.

AMENDMENT 2

Page 2, line 23, through page 3, line 2, delete all material and insert the following:

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

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

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

2. Punitive Damages. Throughout the debate in the legislature, the major issue surrounding punitive damages was whether to raise the level of standard of proof from a "preponderance of the evidence" to "clear and convincing evidence" and also whether those damages (since they are like fines) should go to the state or to the individual who is injured. The compromise embodied in this amendment provides that the standard of proof will be raised to "clear and convincing evidence" and that 50 percent of the damages will go to the state, thus providing public benefits while at the same time retaining an incentive for an injured party to sue for the damages.

The Senate Finance version went at the problem from a wholly different direction. It provides that the plaintiff keeps all of the punitive damages, but he can only receive them if he can prove that the conduct complained of was malicious, deliberate or constitutes a felony. This is a major change in present law.

Punitive damages under present law can be awarded when a party's conduct is in "reckless disregard" of the rights of others, in addition to acts done with malice toward another. The Senate Finance bill also requires a pre-hearing on whether punitive damages may even be claimed. This adds an unnecessary and costly step to the process.

The ultimate effect of these two changes from existing law is that no one will ever claim them, even in circumstances where the defendant's behavior is outrageous or reckless.

This amendment does not change the general circumstances under which punitive damages may be awarded but does affect who gets them.

AMENDMENT 3

Page 4, line 2 through page 5, line 7, delete all material.

3. Periodic Payments. To understand the periodic payments section of the bill, you have to understand how damages are computed in tort actions under present law. Under present law, if a 55 year old man is permanently disabled and he is making \$10,000 a year, his wage loss is figured at his present salary over his remaining useful work life, i.e. \$10,000 for 10 years or \$100,000. No account is made under the present system of the fact that due to inflation, the injured party would probably be making \$15,000 in the sixth year, \$17,500 in the eighth year and more in the tenth year. In addition, no account is taken of the fact that through normal advancement in his job he would receive higher pay over time than he received when he was injured. The theory is that if you give him now all the money he would have earned over time computed on the basis of his present salary, he can invest that sum and stay even with inflation and what he might have earned through advancement.

Other states reduce the lump sum to present value since it is compensation for future losses. But other states compute future wage loss to reflect inflation and advancement. Alaska law does not permit reduction of awards for future wage loss to present value. But it also does not allow awards to reflect inflation or future advancement.

Thus, the results in Alaska are roughly equal to those in other states.

The section of the Senate Finance bill regarding periodic payments really has nothing to do with the fact that payments are spread out over time. Most large settlements today are paid periodically as a voluntary matter. What this section really does is to vastly reduce the amount injured parties receive by paying over time only a fraction of the amounts they would have received in wages if they had not been injured, even with the cost of living adjustment provided for in the bill. For example, information from the firm of Legal Economic Evaluations of Palo Alto indicates that if a jury awards \$500,000 to a 20 year old person with a future life expectancy of 59.5 years, the base annual periodic payment would be \$8,403 (\$500,000 divided by 59.5 years). Assuming 3% annual inflation, the value of the \$500,000 judgment is effectively reduced under the mandatory periodic payments provisions of this bill to \$129,082, the amount that needs to be invested now to produce \$8,403 per year. Similarly, a \$500,000 award to a 50 year old with a life expectancy of 31.07 years, would mean a base annual periodic payment of \$16,092. Again assuming 3% inflation, the value of the \$500,000 judgment in

that case is effectively reduced under this bill to \$215,028.

This amendment eliminates the provision on periodic payments since they are already being done voluntarily and the only real reason for treating the subject in the legislation is to reduce the amount that plaintiffs would receive over time. If people are not allowed to show a jury what their future damages really would have been, it makes no sense to reduce the award for future damage to "present value." The system we have is not broken; it does not require fixing in this area.

AMENDMENT 4

Page 7, line 28, delete "several liability" and insert, "joint and several liability, except that a party who is allocated less than 50 percent of the total fault of all the parties may not be jointly liable for more than twice the percentage of fault allocated to that party."

4. Apportionment of Damages. Under present law, if three defendants are held liable for an injury to a plaintiff, they each bear full responsibility for the total amount of the damage. This is "joint and several" liability. If one of the defendants pays the full amount of the judgment he has rights under law to contribution from the other defendants. If one of those defendants has no money, the courts uniformly conclude that the problem of insolvency is one that the remaining defendants who contributed to the accident will have to bear, rather than reducing the award of an injured plaintiff who is not at fault. That is, the defendants will get less contribution from one another, but the plaintiff's award will not be reduced.

Some persons are concerned that juries are holding some defendants, like states and cities with "deep pockets," only minimally liable, but the result under joint and several liability is that they end up getting stuck for the whole judgment. Accordingly, this amendment seeks a compromise which would insure that defendants only minimally liable would not be held responsible for all the damage, while still providing a cushion for innocent parties who were seriously injured by multiple defendants, some of whom might be insolvent. The amendment continues the rule of joint and

several liability but changes it to provide that a defendant is never more responsible in damages than for twice his percentage of fault for the injury. If in fact then a defendant is only liable for five percent of an injury, he cannot be held responsible for more than ten percent of the total damages. Only if a defendant is responsible for at least 50 percent of the injury can he be held liable for the entire amount of the damages. Even then, he would still have the right to seek contribution from the other defendants who were also liable for the injury.

The proposed Senate Finance version would limit responsibility on the basis of "several" liability by saying that you are responsible in damages only for your percentage of fault as decreed by a jury. Even if the allocation of fault were an exact science, which it is not, this proposal would entirely shift the risk of insolvent defendants from the remaining defendants who are at fault to a plaintiff who is blameless and injured. The issue here is not whether a party should be responsible in damages for more than their percent of fault; the issue is when a party who is at fault has no money, who should bear the risk -- the plaintiff or other parties at fault. This amendment attempts to compromise that issue; the Senate Finance version, which to

our knowledge has been adopted no where in the U.S., does  
not.

**AMENDMENT 7**

Page 10, line 24, through page 11, line 2, delete all material and renumber remaining sections accordingly.

Page 11, line 29 through page 12, line 3, delete all material and renumber remaining sections accordingly.

7. Award of Attorney Fees - Rule 82. This amendment would delete the provision concerning the award of attorney fees, and thus leaves in place Rule 82 of the Supreme Court which permits the court to award at least a token fee to the victorious party in a lawsuit. Rule 82 is the major weapon against persons who file frivolous lawsuits. Coverage for Rule 82 - attorney fees is generally exempted in most insurance policies already so its existence or nonexistence will have no impact on insurance rates. The Senate Finance version eliminates Rule 82 for negligence and product liability actions. This means if some one sues you without cause for negligence and you win, you will not be able to receive even minimal help in paying your attorney fees. The Senate Judiciary version is clearly better.

# health association of alaska

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790  
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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President  
Dennis DeWitt  
Juneau

May 1, 1986

Honorable Fred Zharoff  
Alaska State Senate  
Pouch V  
Juneau, AK 99811

Dear Senator Zharoff:

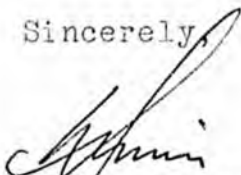
Senate Bill 377 is before you on the Senate Floor for consideration. The Health Association of Alaska respectfully requests your favorable consideration of this legislation.

We support the Finance Committee substitute which has been reported to the floor. We request that you vote for it in its present form and vote against any amendments. It is a bill which is not everything we would like to see, but it is in a form that we believe will assist markedly in relieving the crisis in liability insurance availability while being sensitive to the rights of individuals.

We believe that the fiscal note that was prepared for the Finance Committee demonstrates the potential savings from the reforms included in SB 377. Additionally, it should be noted that in California where many of these reforms have been applied to medical cases there has been a measurable difference in both price and availability of insurance.

Thank you for your consideration in this matter.

Sincerely,



Dennis L. DeWitt  
Executive Director

FORMERLY

alaska  
state  
hospital  
association

P1 LINES 18-19  
P2 LINES 6-7  
P6 LINES 24-27

Original sponsors: Kelly, Abood,  
Bennett, et al

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 377 (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 49, 52, 58, 68, and 82; 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. ITEMIZED VERDICTS. In every case where damages  
21 for personal injury are awarded by the court or jury, the verdict  
22 shall be itemized between economic loss and noneconomic loss, if any,  
23 and economic loss shall be further itemized by category. Itemization  
24 of economic loss by category includes: (1) amounts intended to com-  
25 pensate for reasonable expenses that have been incurred, or which will  
26 be incurred, for necessary medical, surgical, x-ray, dental, or other  
27 health or rehabilitative services, drugs, and therapy; (2) amounts  
28 intended to compensate for lost wages or loss of earning capacity; and  
29 (3) all other economic losses claimed by the plaintiff or granted by

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

5 Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover  
6 damages for personal injury, the court shall, at the request of a  
7 judgment creditor, enter judgment ordering that amounts awarded for  
8 future damages be paid to the maximum extent feasible by periodic  
9 payments rather than by a lump-sum payment if the award equals or  
10 exceeds \$50,000 in future damages. The court may require a judgment  
11 debtor to post security adequate to assure full payment of future  
12 damages awarded by judgment.

13 (b) A judgment ordering payment of future damages by periodic  
14 payments shall specify the recipient, the dollar amount of the pay-  
15 ments, the interval between payments, and the number of payments or  
16 the period of time over which payments shall be made. Payments may be  
17 modified only in the event of the death of the judgment creditor, in  
18 which case payments may not be reduced or terminated, but shall be  
19 paid to persons to whom the judgment creditor owed a duty of support,  
20 as provided by law, immediately before death. The court that rendered  
21 the original judgment, may, upon petition of a party in interest,  
22 modify the judgment to award and apportion the unpaid future damages  
23 in accordance with this section.

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

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

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

9 Sec. 09.17.040. 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. 09.17.050. 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.-  
18 060, 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 09.17.060; 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 09.17.060, and enter judgment against each party liable on the  
6 basis of rules of several liability. The court also shall determine  
7 and state in the judgment each party's equitable share of the obliga-  
8 tion to each claimant in accordance with the respective percentages of  
9 fault.

10 Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to  
11 sue, or similar agreement entered into by a claimant and a person  
12 liable discharges that person from liability to the claimant, but it  
13 does not discharge another person liable upon the same claim unless  
14 the release, covenant not to sue, or similar agreement provides for  
15 discharge. However, the claim of the releasing person against other  
16 persons is reduced by the amount of the released person's equitable  
17 share of the obligation, determined in accordance with the provisions  
18 of AS 09.17.050.

19 Sec. 09.17.900. DEFINITIONS. In this chapter

20 (1) "fault" includes acts or omissions that are in any  
21 measure negligent or reckless toward the person or property of the  
22 actor or others, or that subject a person to strict tort liability;  
23 the term also includes breach of warranty, unreasonable assumption of  
24 risk not constituting an enforceable express consent, misuse of a  
25 product for which the defendant otherwise would be liable, and unrea-  
26 sonable failure to avoid an injury or to mitigate damages; legal  
27 requirements of causal relation apply both to fault as the basis for  
28 liability and to contributory fault;

29 (2) "future damages" includes damages for future medical

1 treatment, care or custody; loss of future earning capacity; or any  
2 future noneconomic loss.

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

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

5 A person may not bring an action for damages based on personal injury  
6 when the amount in controversy is less than \$100,000, exclusive of  
7 costs, interest and attorney fees, unless the controversy is first  
8 arbitrated under AS 09.43.

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

10 Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day  
11 following the filing of an answer in a civil action, and on the fifth  
12 day following the day discovery closes as ordered by the court, [EI-  
13 THER THE PARTY MAKING A CLAIM OR] the party defending against a claim  
14 may serve upon the party making the claim [ADVERSE PARTY] an offer to  
15 allow judgment to be entered in complete satisfaction of the claim  
16 against that defending party for the money or property or to the  
17 effect specified in the offer, with cost then accrued. If within 10  
18 days after the service of the offer the claiming [ADVERSE] party  
19 serves written notice that the offer is accepted, either party may  
20 then file the offer and notice of acceptance together with proof of  
21 service, and the clerk shall enter judgment. An offer not accepted  
22 within 10 days is considered withdrawn and evidence of that offer is  
23 not admissible except in a proceeding to determine the form of judg-  
24 ment after verdict. If the judgment finally entered on the claim as  
25 to which an offer has been made under this section is not more favor-  
26 able to the claiming party [OFFEREE] than the offer, the claim may not  
27 bear interest from the date of the offer to the date of judgment [THE  
28 INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE  
29 JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

1 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE  
2 INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

3 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE  
4 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

5 \* Sec. 4. AS 09.43.110 is amended to read:

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

8 (1) within the time limits imposed by AS 09.43.120 and  
9 09.43.130 grounds are urged for vacating or modifying or correcting  
10 the award, in which case the court shall proceed as provided in  
11 AS 09.43.120 and 09.43.130; or

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

13 \* Sec. 5. AS 09.43.160 is amended by adding a new subsection to read:

14 (c) An award made as a result of arbitration required by AS 09.-  
15 10.075 may be appealed to the proper court. The appeal shall be filed  
16 within 60 days after notice of an award is made under AS 09.43.080.  
17 The court shall grant a trial de novo if an appeal is filed under this  
18 subsection.

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

20 (b) Notwithstanding (a) of this section, the court may not award  
21 attorney fees to a prevailing party in an action for damages to the  
22 person or to property in the absence of a specific finding that the  
23 party at fault acted with malice, in bad faith, or with reckless  
24 disregard of the rights of another in causing the injury. In this  
25 subsection, "reckless disregard of the rights of another" means a lack  
26 of consideration of the rights of another in a manner that is reason-  
27 ably likely to cause damage to the person or property of another.

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

29 (d) The superior court has jurisdiction in all matters appealed

1 to it (1) from a subordinate court; (2) by a party to an arbitration  
2 award under AS 09.43.160(c); [,] or (3) an administrative agency when  
3 appeal is provided by law. The hearings on appeal from a final order  
4 or judgment of a subordinate court or administrative agency shall be  
5 on the record unless the superior court, in its discretion, grants a  
6 trial de novo, in whole or in part.

7 \* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and  
8 09.16.060 are repealed.

9 \* Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have  
10 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the  
11 jury to answer the special interrogatories listed in AS 09.17.050 regarding  
12 the amount of damages and the percentages of fault to be allocated among  
13 the parties and to itemize the verdict regarding economic and noneconomic  
14 loss as specified in AS 09.17.020.

15 \* Sec. 10. AS 09.17.050 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. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of  
20 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by  
21 requiring the court to include a specific item in its judgment.

22 \* Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect  
23 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
24 interest stops accruing from the date of an offer by a defending party that  
25 a claiming party fails to increase at judgment.

26 \* Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect  
27 of amending Alaska Rule of Civil Procedure 82 by allowing costs and attor-  
28 ney fees in an action for personal injury or property damage only after a  
29 specific finding of malice, bad faith, or reckless disregard of the rights

1 of another in causing the injury.

2 \* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all  
3 causes of action accruing after the effective date of this Act.

4 \* Sec. 15. LEGISLATIVE INTENT. The legislature intends that the  
5 changes made in this Act to the code of civil procedure should be reviewed  
6 three years after the effective date of the Act, to determine if additional  
7 modifications or changes are necessary. To achieve effective review, the  
8 legislature requests that the governor direct the division of insurance to  
9 monitor the effect of this Act on premiums being charged for liability  
10 insurance and to report the effect to the legislature no later than  
11 March 1, in 1987, 1988, and 1989.

12 \* Sec. 16. This Act takes effect immediately in accordance with AS 01.-  
13 10.070(c).

*To man e*

*P2 IN 11-12  
P8 IN 3-10*

*Victim's report  
Frivolous lawsuits  
Punitive damages  
Regulation of  
2) - cancelled  
6) disclosure  
Forde  
3/14/86*

Original sponsors: Kel , Abood,  
Bennett, et al

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 377 (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 49, 52, 58, 68, and 82; 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. per incident per suit.

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

→ Re-phrased plus substantive change on interest payments;

1 compensate for injury or losses incurred before the verdict and  
2 amounts intended to compensate for losses that will be incurred in the  
3 future.

4 Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover  
5 damages for personal injury, the court shall, at the request of <sup>(injured)</sup> (a)  
6 party, enter judgment ordering that amounts awarded a judgment credi-  
7 tor for future damages be paid to the maximum extent feasible by  
8 periodic payments rather than by a lump-sum payment if the award  
9 equals or exceeds \$50,000 in future damages. [A judgment ordering the  
10 payment of future damages by periodic payments must also require that  
11 each periodic payment be increased at the annual rate of five percent  
12 from the date that judgment is entered.] The court may require a  
13 judgment debtor to post security adequate to assure full payment of  
14 future damages awarded by judgment.

15 (b) A judgment ordering payment of future damages by periodic  
16 payments shall specify the recipient, the dollar amount of the pay-  
17 ments, the interval between payments, and the number of payments or  
18 the period of time over which payments shall be made. Payments may be  
19 modified only in the event of the death of the judgment creditor, in  
20 which case payments may not be reduced or terminated, but shall be  
21 paid to persons to whom the judgment creditor owed a duty of support,  
22 as provided by law, immediately before death. The court that rendered  
23 the original judgment, may, upon petition of a party in interest,  
24 modify the judgment to award and apportion the unpaid future damages  
25 in accordance with this section.

26 (c) If the court finds that the judgment debtor has exhibited a  
27 continuing pattern of failing to make payments under (b) of this  
28 section, the court shall find the judgment debtor in contempt of court  
29 and, in addition to the required periodic payments, shall order the

1 judgment debtor to pay the judgment creditor any damages caused by the  
2 failure to make periodic payments, including costs and attorney fees.

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

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

11 Sec. ~~09.17.040~~. EFFECT OF CONTRIBUTORY FAULT. In an action  
12 based on fault seeking to recover damages for injury or death to  
13 person or harm to property, contributory fault chargeable to the  
14 claimant diminishes proportionately the amount awarded as compensatory  
15 damages for an injury attributable to the claimant's contributory  
16 fault, but does not bar recovery.

17 Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions  
18 involving fault of more than one party to the action, including  
19 third-party defendants and persons who have been released under  
20 AS 09.17.060, the court, unless otherwise agreed by all parties, shall  
21 instruct the jury to answer special interrogatories or, if there is no  
22 jury, shall make findings, indicating

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

25 (2) the percentage of the total fault of all of the parties  
26 to each claim that is allocated to each claimant, defendant, third-  
27 party defendant, and person who has been released from liability under  
28 AS 09.17.060; for this purpose the court may determine that two or  
29 more persons are to be treated as a single party.

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(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.

(c) The court shall determine the award of damages to each claimant in accordance with the findings, subject to a reduction under AS 09.17.060, and enter judgment against each party liable on the basis of rules of several liability. 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.

Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to sue, or similar agreement entered into by a claimant and a person liable discharges that person from liability to the claimant, but it does not discharge another person liable upon the same claim unless the release, covenant not to sue, or similar agreement provides for discharge. However, the claim of the releasing person against other persons is reduced by the amount of the released person's equitable share of the obligation, determined in accordance with the provisions of AS 09.17.050.

Sec. 09.17.900. DEFINITIONS. In this chapter

(1) "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

1 liability and to contributory fault;

2 (2) "future damages" include; damages for future medical  
3 treatment, care or custody; loss of future earning capacity; or any  
4 future noneconomic loss.

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

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

7 A person may not bring an action for damages based on personal injury  
8 when the amount in controversy is less than \$100,000, exclusive of  
9 costs, interest and attorney fees, unless the controversy is first  
10 arbitrated under AS 09.43.

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

12 Sec. 09.30.065. OFFERS OF JUDGMENT. On or before the 60th day  
13 following the filing of an answer in a civil action, and on the fifth  
14 day following the day discovery closes as ordered by the court,  
15 [EITHER THE PARTY MAKING A CLAIM OR] the party defending against a  
16 claim may serve upon the party making the claim [ADVERSE PARTY] an  
17 offer to allow judgment to be entered in complete satisfaction of the  
18 claim against that defending party for the money or property or to the  
19 effect specified in the offer, with cost then accrued. If within 10  
20 days after the service of the offer the claiming [ADVERSE] party  
21 serves written notice that the offer is accepted, either party may  
22 then file the offer and notice of acceptance together with proof of  
23 service, and the clerk shall enter judgment. An offer not accepted  
24 within 10 days is considered withdrawn and evidence of that offer is  
25 not admissible except in a proceeding to determine the form of judg-  
26 ment after verdict. If the judgment finally entered on the claim as  
27 to which an offer has been made under this section is not more favor-  
28 able to the claiming party [OFFEREE] than the offer, the claim may not  
29 bear interest from the date of the offer to the date of judgment [THE

1 INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE  
2 JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

3 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE  
4 INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

5 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE  
6 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

7 \* Sec. <sup>6</sup>4. 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 <sup>8</sup> (2) an appeal is taken under AS 09.43.160(c).

15 \* Sec. 5. 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. <sup>9</sup>6. AS 09.60.010 is amended by adding a new subsection to read:

22 (b) Notwithstanding (a) of this section, the court may not award  
23 attorney fees to a prevailing party in an action for damages to the  
24 person or to property in the absence of a specific finding that the  
25 party at fault acted with malice, in bad faith, or with (reckless  
26 ~~disregard of the rights of another~~) in causing the injury. *definition*

27 \* Sec. <sup>10</sup>7. AS 22.10.020(d) is amended to read:

28 (d) The superior court has jurisdiction in all matters appealed  
29 to it (1) from a subordinate court; (2) by a party to an arbitration

1 award under AS 09.43.160(c); [,] or (3) an administrative agency when  
2 appeal is provided by law. The hearings on appeal from a final order  
3 or judgment of a subordinate court or administrative agency shall be  
4 on the record unless the superior court, in its discretion, grants a  
5 trial de novo, in whole or in part.

6 \* Sec. 8. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050, and  
7 09.16.060 are repealed.

8 \* Sec. 9. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act have  
9 the effect of amending Alaska Rule of Civil Procedure 49 by requiring the  
10 jury to answer the special interrogatories listed in AS 09.17.050 regarding  
11 the amount of damages and the percentages of fault to be allocated among  
12 the parties and to itemize the verdict regarding economic and noneconomic  
13 loss as specified in AS 09.17.020.

14 \* Sec. 10. AS 09.17.050 enacted in sec. 1 of this Act has the effect of  
15 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
16 specific findings regarding the amount of damages and the percentages of  
17 fault to be allocated among the parties.

18 \* Sec. 11. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of  
19 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by  
20 requiring the court to include a specific item in its judgment.

21 \* Sec. 12. AS 09.30.065 as amended by sec. 3 of this Act has the effect  
22 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
23 interest stops accruing from the date of an offer by a defending party that  
24 a claiming party fails to increase at judgment.

25 \* Sec. 13. AS 09.60.010 as amended by sec. 6 of this Act has the effect  
26 of amending Alaska Rule of Civil Procedure 82 by allowing costs and attor-  
27 ney fees in an action for personal injury or property damage only after a  
28 specific finding of malice, bad faith, or reckless disregard of the rights

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\* Sec. 14. APPLICABILITY. Sections 1 - 7 of this Act apply to all causes of action accruing after the effective date of this Act.

\* Sec. 15. LEGISLATIVE INTENT. The legislature intends that the changes made in this Act to the code of civil procedure should be reviewed three years after the effective date of the Act, to determine if additional modifications or changes are necessary. To achieve effective review, the legislature requests that the governor direct the division of insurance to monitor the effect of this Act on premiums being charged for liability insurance and to report the effect to the legislature no later than March 1, in 1987, 1988, and 1989.

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

*Av. Gross*

Ford  
3/7/86 ✓

Original sponsors: Kelly, Abood,  
Bennett, et al

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 377 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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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.

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20 for personal injury are awarded by the court or jury, the verdict  
21 shall be itemized between economic loss and noneconomic loss, if any,  
22 and economic loss shall be further itemized by category. Itemization  
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24 pensate for reasonable expenses that have been incurred, or which will  
25 be incurred, for necessary medical, surgical, x-ray, dental, or other  
26 health or rehabilitative services, drugs, and therapy; (2) amounts  
27 intended to compensate for lost wages or loss of earning capacity; and  
28 (3) all other economic losses claimed by the plaintiff or granted by  
29 the jury. A verdict shall further determine the amounts intended to

*why limit?*

1 compensate for injury or losses incurred before the verdict and  
2 amounts intended to compensate for losses that will be incurred in the  
3 future.

4 Sec. 09.17.030. PERIODIC PAYMENTS. (a) In an action to recover  
5 damages for personal injury, the court shall, at the request of a  
6 party, enter judgment ordering that amounts awarded a judgment credi-  
7 tor for future damages be paid to the maximum extent feasible by  
8 periodic payments rather than by a lump-sum payment if the award  
9 equals or exceeds \$50,000 in future damages. In entering judgment  
10 ordering the payment of future damages by periodic payments, the court  
11 shall make a specific finding as to the dollar amount of periodic  
12 payments that will compensate the judgment creditor for future dam-  
13 ages. The court may require a judgment debtor to post security ade-  
14 quate to assure full payment of future damages awarded by judgment.

15 (b) A judgment ordering payment of future damages by periodic  
16 payments shall specify the recipient, the dollar amount of the pay-  
17 ments, the interval between payments, and the number of payments or  
18 the period of time over which payments shall be made. Payments may be  
19 modified only in the event of the death of the judgment creditor, in  
20 which case payments may not be reduced or terminated, but shall be  
21 paid to persons to whom the judgment creditor owed a duty of support,  
22 as provided by law, immediately before death. The court that rendered  
23 the original judgment, may, upon petition of a party in interest,  
24 modify the judgment to award and apportion the unpaid future damages  
25 in accordance with this section.

26 (c) If the court finds that the judgment debtor has exhibited a  
27 continuing pattern of failing to make payments under (b) of this  
28 section, the court shall find the judgment debtor in contempt of court  
29 and, in addition to the required periodic payments, shall order the

1 judgment debtor to pay the judgment creditor any damages caused by the  
2 failure to make periodic payments, including costs and attorney fees.

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

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

11 Sec. 09.17.040. EFFECT OF CONTRIBUTORY FAULT. In an action  
12 based on fault seeking to recover damages for injury or death to  
13 person or harm to property, contributory fault chargeable to the  
14 claimant diminishes proportionately the amount awarded as compensatory  
15 damages for an injury attributable to the claimant's contributory  
16 fault, but does not bar recovery.

17 Sec. 09.17.050. APPORTIONMENT OF DAMAGES. (a) In all actions  
18 involving fault of more than one party to the action, including  
19 third-party defendants and persons who have been released under  
20 AS 09.17.060, the court, unless otherwise agreed by all parties, shall  
21 instruct the jury to answer special interrogatories or, if there is no  
22 jury, shall make findings, indicating

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

25 (2) the percentage of the total fault of all of the parties  
26 to each claim that is allocated to each claimant, defendant, third-  
27 party defendant, and person who has been released from liability under  
28 AS 09.17.060; for this purpose the court may determine that two or  
29 more persons are to be treated as a single party.

1 (b) In determining the percentages of fault, the trier of fact  
2 shall consider both the nature of the conduct of each party at fault  
3 and the extent of the causal relation between the conduct and the  
4 damages claimed.

5 (c) The court shall determine the award of damages to each  
6 claimant in accordance with the findings, subject to a reduction under  
7 AS 09.17.060, and enter judgment against each party liable on the  
8 basis of rules of several liability. The court also shall determine  
9 and state in the judgment each party's equitable share of the obliga-  
10 tion to each claimant in accordance with the respective percentages of  
11 fault.

12 Sec. 09.17.060. EFFECT OF RELEASE. A release, covenant not to  
13 sue, or similar agreement entered into by a claimant and a person  
14 liable discharges that person from liability to the claimant, but it  
15 does not discharge another person liable upon the same claim unless  
16 the release, covenant not to sue, or similar agreement provides for  
17 discharge. However, the claim of the releasing person against other  
18 persons is reduced by the amount of the released person's equitable  
19 share of the obligation, determined in accordance with the provisions  
20 of AS 09.17.050.

21 Sec. 09.17.900. DEFINITIONS. In this chapter

22 (1) "fault" includes acts or omissions that are in any  
23 measure negligent or reckless toward the person or property of the  
24 actor or others, or that subject a person to strict tort liability;  
25 the term also includes breach of warranty, unreasonable assumption of  
26 risk not constituting an enforceable express consent, misuse of a  
27 product for which the defendant otherwise would be liable, and unrea-  
28 sonable failure to avoid an injury or to mitigate damages; legal  
29 requirements of causal relation apply both to fault as the basis for

1 liability and to contributory fault;

2 (2) "future damages" includes damages for future medical  
3 treatment, care or custody; loss of future earning capacity; or any  
4 future noneconomic loss.

5 \* Sec. 2. AS 09.16 is amended by adding new sections to read:

6 *er...* Sec. 09.16.011. RIGHT TO CONTRIBUTION. (a) Except as otherwise  
7 provided in this chapter, where two or more persons become jointly or  
8 severally liable in tort for the same injury to person or property or  
9 for the same wrongful death, there is a right of contribution among  
10 them even though judgment has not been recovered against all or any of  
11 them.

12 (b) The right of contribution exists only in favor of a tort-  
13 feisor who has paid more than that tortfeisor's pro rata share of the  
14 common liability, and the total recovery of that tortfeisor is limited  
15 to the amount paid in excess of the pro rata share. A tortfeisor is  
16 not compelled to make contribution beyond the tortfeisor's pro rata  
17 share of the entire liability.

18 (c) There is no right of contribution in favor of a tortfeisor  
19 who has intentionally caused or contributed to the injury or wrongful  
20 death.

21 (d) A tortfeisor who enters into a settlement with a claimant is  
22 not entitled to recover contribution from another tortfeisor whose  
23 liability for the injury or wrongful death is not extinguished by the  
24 settlement nor in respect to an amount paid in a settlement that is in  
25 excess of what was reasonable.

26 (e) A liability insurer, who by payment has discharged in full  
27 or in part the liability of a tortfeisor and has thereby discharged in  
28 full its obligation as insurer, is subrogated to the tortfeisor's  
29 right of contribution to the extent of the amount it has paid in

1 excess of the tortfeasor's pro rata share of the common liability.  
2 This provision does not limit or impair a right of subrogation arising  
3 from any other relationship.

4 (f) This chapter does not impair the right of indemnity under  
5 existing law. If one tortfeasor is entitled to indemnity from  
6 another, the right of the indemnity obligee is for indemnity and not  
7 contribution, and the indemnity obligor is not entitled to contribu-  
8 tion from the obligee for any portion of the indemnity obligation.

9 (g) This chapter does not apply to breaches of trust or of other  
10 fiduciary obligation.

11 Sec. 09.16.021. PRO RATA SHARES. In determining the pro rata  
12 shares of tortfeasors in the entire liability

13 (1) their relative degrees of fault may not be considered;

14 (2) if equity requires, the collective liability of some as  
15 a group constitutes a single share; and

16 (3) principles of equity applicable to contribution gen-  
17 erally shall apply.

18 Sec. 09.16.031. ENFORCEMENT. (a) Whether or not judgment has  
19 been entered in an action against two or more tortfeasors for the same  
20 injury or wrongful death, contribution may be enforced by separate  
21 action.

22 (b) Where a judgment has been entered in an action against two  
23 or more tortfeasors for the same injury or wrongful death, contribu-  
24 tion may be enforced in that action by judgment in favor of one  
25 against other judgment defendants by motion upon notice to all parties  
26 to the action.

27 (c) If there is a judgment for the injury or wrongful death  
28 against the tortfeasor seeking contribution, a separate action by that  
29 tortfeasor to enforce contribution must be commenced within one year

1 after the judgment has become final by lapse of time for appeal or  
2 after appellate review.

3 (d) If there is no judgment for the injury or wrongful death  
4 against the tortfeasor seeking contribution, the right of contribution  
5 is barred unless that tortfeasor has either

6 (1) discharged by payment the common liability within the  
7 statute of limitations period applicable to claimant's right of action  
8 against the tortfeasor and has commenced the action for contribution  
9 within one year after payment; or

10 (2) agreed while action is pending against the tortfeasor  
11 to discharge the common liability and has within one year after the  
12 agreement paid the liability and commenced the action for contribu-  
13 tion.

14 (e) The recovery of a judgment for an injury or wrongful death  
15 against one tortfeasor does not of itself discharge the other tort-  
16 feors from liability for the injury or wrongful death unless the  
17 judgment is satisfied. The satisfaction of the judgment does not  
18 impair any right of contribution.

19 (f) The judgment of the court in determining the liability of  
20 the several defendants to the claimant for an injury or wrongful death  
21 is binding as among the defendants in determining their right to  
22 contribution.

23 Sec. 09.16.041. RELEASE OR COVENANT NOT TO SUE. When a release  
24 or covenant not to sue or not to enforce judgment is given in good  
25 faith to one of two or more persons liable in tort for the same injury  
26 or the same wrongful death

27 (1) it does not discharge any of the other tortfeasors from  
28 liability for the injury or wrongful death unless its terms so pro-  
29 vide; but it reduces the claim against the others to the extent of any

1 amount stipulated by the release or the covenant, or in the amount of  
2 the consideration paid for it, whichever is the greater; and

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

5 Sec. 09.16.051. UNIFORMITY OF INTERPRETATION. This chapter  
6 shall be so interpreted and construed as to effectuate as far as  
7 practical the general purpose of making uniform the law of those  
8 states that enact it.

9 Sec. 09.16.061. SHORT TITLE. This chapter may be cited as the  
10 Alaska Uniform Contribution among Tortfeasors Act.

11 \* Sec. 3. AS 09.10 is amended by adding a new section to read:

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13 A person may not bring an action for damages based on personal injury  
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 3 ment after verdict. If the judgment finally entered on the claim as  
 4 to which an offer has been made under this section is not more favor-  
 5 able to the claiming party [OFFEREE] than the offer, the claim may  
 6 not bear interest from the date of the offer to the date of judgment  
 7 [THE INTEREST AWARDED UNDER AS 45.45.010(a) AND ACCRUED UP TO THE DATE  
 8 JUDGMENT IS ENTERED SHALL BE ADJUSTED AS FOLLOWS:

9 (1) IF THE OFFEREE IS THE PARTY MAKING THE CLAIM, THE  
 10 INTEREST RATE SHALL BE REDUCED BY TWO PERCENT A YEAR;

11 (2) IF THE OFFEREE IS THE PARTY DEFENDING AGAINST THE  
 12 CLAIM, THE INTEREST RATE SHALL BE INCREASED BY TWO PERCENT A YEAR].

13 \* Sec. 5. AS 09.30.065 is repealed and reenacted to read:

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

1 accrued up to the date judgment is entered shall be adjusted as fol-  
2 lows:

3 (1) if the offeree is the party making the claim, the  
4 interest rate shall be reduced by two percent a year;

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

7 \* Sec. 6. 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. 7. AS 09.43.110 is repealed and reenacted to read:

16 Sec. 09.43.110. CONFIRMATION OF AN AWARD. Upon application of a  
17 party, the court shall confirm an award unless within the time limits  
18 imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating  
19 or modifying or correcting the award, in which case the court shall  
20 proceed as provided in AS 09.43.120 and 09.43.130.

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

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

27 \* Sec. 9. AS 09.60.010 is amended by adding a new subsection to read:

28 (b) Notwithstanding (a) of this section, the court may not award  
29 attorney fees to a prevailing party in an action for damages to the

1 person or to property in the absence of a specific finding that the  
2 party at fault acted with malice, in bad faith, or with reckless  
3 disregard of the rights of another in causing the injury.

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

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

12 \* Sec. 11. AS 22.10.020(d) is repealed and reenacted to read:

13 (d) The superior court has jurisdiction in all matters appealed  
14 to it from a subordinate court, or administrative agency when appeal  
15 is provided by law. The hearings on appeal from a final order or  
16 judgment of a subordinate court or administrative agency shall be on  
17 the record unless the superior court, in its discretion, grants a  
18 trial de novo, in whole or in part.

19 \* Sec. 12. The following laws are repealed: AS 09.10.075; AS 09.17.-  
20 010, 09.17.020, 09.17.030, 09.17.040, 09.17.050, 09.17.060, 09.17.900;  
21 AS 09.43.160(c); and AS 09.60.010(b).

22 \* Sec. 13. AS 09.16.010, 09.16.020, 09.16.030, 09.16.040, 09.16.050,  
23 and 09.16.060 are repealed.

24 \* Sec. 14. AS 09.17.020 and 09.17.050 enacted in sec. 1 of this Act  
25 have the effect of amending Alaska Rule of Civil Procedure 49 by requiring  
26 the jury to answer the special interrogatories listed in AS 09.17.050  
27 regarding the amount of damages and the percentages of fault to be allo-  
28 cated among the parties and to itemize the verdict regarding economic and  
29

1 noneconomic loss as specified in AS 09.17.020.

2 \* Sec. 15. AS 09.17.050 enacted in sec. 1 of this Act has the effect of  
3 amending Alaska Rule of Civil Procedure 52 by requiring the court to make  
4 specific findings regarding the amount of damages and the percentages of  
5 fault to be allocated among the parties.

6 \* Sec. 16. AS 09.17.020, 09.17.030 and 09.17.050 enacted in sec. 1 of  
7 this Act have the effect of amending Alaska Rule of Civil Procedure 58 by  
8 requiring the court to include a specific item in its judgment.

9 \* Sec. 17. AS 09.30.065 as amended by sec. 4 of this Act has the effect  
10 of amending Alaska Rule of Civil Procedure 68 by providing that prejudgment  
11 interest stops accruing from the date of an offer by a defending party that  
12 a claiming party fails to increase at judgment.

13 \* Sec. 18. AS 09.60.010 as amended by sec. 9 of this Act has the effect  
14 of amending Alaska Rule of Civil Procedure 82 by allowing costs and attor-  
15 ney fees in an action for personal injury or property damage only after a  
16 specific finding of malice, bad faith, or reckless disregard of the rights  
17 of another in causing the injury.

18 \* Sec. 19. APPLICABILITY. Sections 1, 3, 4, 6, 8, 9, and 10 of this  
19 Act apply to all causes of action accruing after the effective date of this  
20 Act.

21 \* Sec. 20. APPLICABILITY. Sections 2, 5, 7, and 12 of this Act apply  
22 to all causes of action accruing on or after July 1, 1989.

23 \* Sec. 21. Sections 2, 5, 7, 11, and 12 of this Act take effect July 1,  
24 1989.

25 \* Sec. 22. Sections 1, 3, 4, 6, 8, 9, 10, and 13 - 19 of this Act take  
26 effect immediately in accordance with AS 01.10.070(c).

CHAPTER = 09.30  
SECTION = 09.30.065  
TITLE = )  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 30.  
Judgments.  
ARTICLE 1.  
Judgments.

CITATION Sec. 09.30.065.

CATCH LINE

OFFERS OF JUDGMENT.

TEXT 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 two percent a year;
- (2) if the offeree is the party defending against the claim, the interest rate shall be increased by two percent a year.

HISTORY (Sec. 3 ch 107 SLA 1980; am sec. 1 ch 48 SLA 1981)

CHAPTER = 09.43  
SECTION = 09.43.010  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.010.

CATCH LINE

ARBITRATION AGREEMENTS VALID; APPLICATION OF ARTICLE.

TEXT

A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 - 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute.

HISTORY

(Sec. 1 ch 232 SLA 1968; am sec. 3 ch 113 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.020  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.020.

CATCH LINE

PROCEEDINGS TO COMPEL OR STAY ARBITRATION.

TEXT

(a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown.

HISTORY

(Sec. 1 ch 232 SLA !968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.030  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.030.  
CATCH LINE

APPOINTMENT OF ARBITRATORS BY COURT.  
TEXT If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.  
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.040  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.040.  
CATCH LINE

MAJORITY ACTION BY ARBITRATORS.  
TEXT The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 - 09.43.180.  
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.050  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.050.

CATCH LINE

HEARING.

TEXT Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.060  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.060.

CATCH LINE

REPRESENTATION BY ATTORNEY.

TEXT A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.070  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.070.

CATCH LINE

WITNESSES, SUBPOENAS, DEPOSITIONS.

TEXT (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.080  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.080.

CATCH LINE

AWARD.

TEXT (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.090  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.090.

CATCH LINE

MODIFICATION OF AWARD BY ARBITRATORS.

TEXT On application to the arbitrators by a party or, if an application to the court by a party is pending under AS 09.43.110 - 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 - 09.43.130.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.100  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.100.

CATCH LINE

FEES AND EXPENSES OF ARBITRATION.

TEXT Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.110  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.110.

CATCH LINE

CONFIRMATION OF AN AWARD.

TEXT Upon application of a party, the court shall confirm an award unless 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.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.120  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.120.

CATCH LINE  
VACATING AN AWARD.

TEXT (a) On application of a party, the court shall vacate an award if

- (1) the award was procured by fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or
- (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

CHAPTER = 09.43  
SECTION = 09.43.130  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.130.

CATCH LINE

MODIFICATION OR CORRECTION OF AWARD BY COURT.

TEXT (a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.140  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.140.

CATCH LINE

JUDGMENT OR DECREE ON AWARD.

TEXT Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.150  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.

CITATION Sec. 09.43.150.

CATCH LINE

APPLICATIONS TO COURT.

TEXT An application to the court under AS 09.43.010 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.160  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.160.  
CATCH LINE

APPEALS.

TEXT (a) An appeal may be taken from  
(1) an order denying an application to compel arbitration made under AS 09.43.020;  
(2) an order granting an application to stay arbitration made under AS 09.43.020(b);  
(3) an order conforming or denying confirmation of an award;  
(4) an order modifying or correcting an award;  
(5) an order vacating an award without directing a rehearing; or  
(6) a judgment or decree entered under the provisions of AS 09.43.010 - 09.43.180.  
(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.  
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.170  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.170.  
CATCH LINE

COURT, JURISDICTION.

TEXT In AS 09.43.010 - 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 - 09.43.180 and to enter judgment on an award under the agreement.  
HISTORY (Sec. 1 ch 232 SLA 1968)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.180  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 1.  
Uniform Arbitration Act.  
CITATION Sec. 09.43.180.  
CATCH LINE  
SHORT TITLE.  
TEXT AS 09.43.010 - 09.43.180 may be cited as the Uniform Arbitration  
Act.  
HISTORY (Sec. 1 ch 232 SLA 1968; am sec. 1 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.190  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 2.  
Arbitration of Small Claims.  
CITATION Sec. 09.43.190.  
CATCH LINE  
ARBITRATION UNDER COURT RULES.  
TEXT The supreme court may provide by rule for compulsory arbitration  
of a cause of action filed in a superior or district court,  
demanding only a money judgment, when it appears that the demand  
on the cause of action is for \$3,000 or less, exclusive of costs,  
or when it appears to the trial court as a result of a pretrial  
conference that the amount which will be recovered on the cause  
is not likely to exceed \$3,000.  
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.200  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 2.  
Arbitration of Small Claims.  
CITATION Sec. 09.43.200.  
CATCH LINE  
APPOINTMENT AND COMPENSATION OF ARBITRATOR.  
TEXT Arbitration of actions shall be by either a member of the Alaska  
Bar Association or a magistrate appointed and compensated by the  
court as provided by its rules.  
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.210  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 2.  
Arbitration of Small Claims.  
CITATION Sec. 09.43.210.  
CATCH LINE  
PRACTICE AND PROCEDURE.  
TEXT The practice and procedure for conducting arbitration, the powers  
of the arbitrators and the assessment of costs shall be  
prescribed by the court rules.  
HISTORY (Sec. 2 ch 94 SLA 1972)

END OF DOCUMENT

CHAPTER = 09.43  
SECTION = 09.43.220  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 43.  
Arbitration.  
ARTICLE 2.  
Arbitration of Small Claims.  
CITATION Sec. 09.43.220.

CATCH LINE

JUDGMENTS AND APPEALS.

TEXT Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules.

HISTORY (Sec. 2 ch 94 SLA 1972)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 09.60  
SECTION = 09.60.010  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 60.  
Costs.  
CITATION Sec. 09.60.010.

CATCH LINE

COSTS ALLOWED PREVAILING PARTY.

TEXT 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.

HISTORY (Sec. 5.14 ch 101 SLA 1962)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 09.16  
SECTION = 09.16.010  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 16.  
Contribution Among Joint Tortfeasors.  
CITATION Sec. 09.16.010.  
CATCH LINE

RIGHT TO CONTRIBUTION.

TEXT (a) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(b) The right of contribution exists only in favor of a tortfeasor who has paid more than that tortfeasor's pro rata share of the common liability, and the total recovery of that tortfeasor is limited to the amount paid in excess of the pro rata share. No tortfeasor is compelled to make contribution beyond the tortfeasor's pro rata share of the entire liability.

(c) There is no right of contribution in favor of any tortfeasor who has intentionally caused or contributed to the injury or wrongful death.

(d) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

(e) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's pro rata share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(f) This chapter does not impair any right of indemnity under existing law. If one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(g) This chapter does not apply to breaches of trust or of other fiduciary obligation.

HISTORY (Sec. 1 ch 80 SLA 1970; am sec. 13 ch 59 SLA 1982)

END OF DOCUMENT

CHAPTER = 09.16  
SECTION = 09.16.020  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 16.  
Contribution Among Joint Tortfeasors.

CITATION Sec. 09.16.020.

CATCH LINE

PRO RATA SHARES.

TEXT In determining the pro rata shares of tortfeasors in the entire liability

(1) their relative degrees of fault shall not be considered;

(2) if equity requires, the collective liability of some as a group constitutes a single share; and

(3) principles of equity applicable to contribution generally shall apply.

HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16  
SECTION = 09.16.030  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 16.  
Contribution Among Joint Tortfeasors.

CITATION Sec. 09.16.030.

CATCH LINE

ENFORCEMENT.

TEXT (a) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(b) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(c) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by that tortfeasor to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(d) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution is barred unless that tortfeasor has either

(1) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced the action for contribution within one year after payment; or

(2) agreed while action is pending against the tortfeasor to discharge the common liability and has within one year after the agreement paid the liability and commenced the action for contribution.

(e) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(f) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death is binding as among the defendants in determining their right to contribution.

HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16  
SECTION = 09.16.040  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 16.  
Contribution Among Joint Tortfeasors.  
CITATION Sec. 09.16.040.  
CATCH LINE

RELEASE OR COVENANT NOT TO SUE.  
TEXT When a release or covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death  
(1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and  
(2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.  
HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16  
SECTION = 09.16.050  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 16.  
Contribution Among Joint Tortfeasors.  
CITATION Sec. 09.16.050.  
CATCH LINE

UNIFORMITY OF INTERPRETATION.  
TEXT This chapter shall be so interpreted and construed as to effectuate as far as practical the general purpose of making uniform the law of those states that enact it.  
HISTORY (Sec. 1 ch 80 SLA 1970)

END OF DOCUMENT

CHAPTER = 09.16  
SECTION = 09.16.060  
TITLE = 09  
HEADINGS TITLE 9.  
Code of Civil Procedure.  
CHAPTER 16.  
Contribution Among Joint Tortfeasors.  
CITATION Sec. 09.16.060.  
CATCH LINE

SHORT TITLE.  
TEXT This chapter may be cited as the Alaska Uniform Contribution among Tortfeasors Act.  
HISTORY (Sec. 1 ch 80 SLA 1970)

R0601 \* END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

CHAPTER = 22.10  
SECTION = 22.10.020  
TITLE = 22  
HEADINGS TITLE 22.  
Judiciary.  
CHAPTER 10.  
The Superior Court.  
CITATION Sec. 22.10.020.  
CATCH LINE

JURISDICTION OF THE SUPERIOR COURT.  
TEXT (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including probate and guardianship of minors and incompetents. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

(b) The jurisdiction of the superior court extends over the whole of the state.

(c) The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court.

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order 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.

(e) An appeal to the superior court is a matter of right, but an appeal from a subordinate court may not be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive. The state has no right to appeal in criminal cases, except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient.

(f) An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to reduce the sentence. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(g) In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

(h) The superior court, in an action for divorce, separation, or child support, affecting inalienable stock in a corporation organized under 43 U.S.C. 1601-1628 (Alaska Native Claims Settlement Act), may order the stock transferred to the spouse, a child, or a guardian or custodian for a child, but may not order it sold on the open market or transferred to other persons.

(i) The superior court is the court of original jurisdiction over all causes of action arising under the provisions of AS 18.80. A person who is injured or aggrieved by an act, practice or policy which is prohibited under AS 18.80 may apply to the superior court for relief. The person aggrieved or injured may maintain an action on behalf of that person or on behalf of a class consisting of all persons who are aggrieved or injured by the act, practice or policy giving rise to the action. In an action brought under this subsection, the court may grant relief as to any act, practice or policy of the defendant which is prohibited by AS 18.80, regardless of whether each act, practice or policy, with respect to which relief is granted, directly affects the plaintiff, so long as a class or members of a class of which the plaintiff is a member are or may be aggrieved or injured by the act, practice or policy. The court may enjoin any act, practice or policy which is illegal under AS 18.80 and may order any other relief, including the payment of money, that is appropriate.

HISTORY (Sec. 17(1) (2) ch 50 SLA 1959; am sec. 2 ch 117 SLA 1969; am sec. 1 ch 240 SLA 1970; am sec. 3 ch 70 SLA 1972; am sec. 8 ch 12 SLA 1980; am sec. 78 ch 6 SLA 1984; am sec. 2 ch 17 SLA 1985)

END OF DOCUMENT