

Chapter 44.77 CLAIMS AGAINST THE STATE

Sec. 44.77.010. Presentation of claims. (a) Except as provided in (d) of this section, every claim for reimbursement for money expended, or for compensation for labor, materials, or supplies furnished, or services given to or for the state, whether based on a contract or on a ratification, shall be promptly presented to the appropriate administrative or executive officer for approval and payment.

(b) *[Repealed, Sec. 14 ch 105 SLA 1986]*.

(c) *[Repealed, Sec. 67 ch 106 SLA 1986]*.

(d) A claim that is governed by AS 36.30.560 - 36.30.699 is not governed by this chapter.

Article 03. CLAIMS AGAINST THE STATE OR STATE EMPLOYEES Sec.

09.50.250. Actionable claims against the state. A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in a state court that has jurisdiction over the claim. A person who may present the claim under AS 44.77 may not bring an action under this section except as set out in AS 44.77.040(c). A person who may bring an action under AS 36.30.560 - 36.30.695 may not bring an action under this section except as set out in AS 36.30.685. However, an action may not be brought if the claim

(1) is an action for tort, and is based upon an act or omission of an employee of the state exercising due care in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;

(2) is for damages caused by the imposition or establishment of, or the failure to impose or establish, a quarantine or isolation, or by other actions, by the state or its agents, officers, or employees under AS 18.15.355 - 18.15.395, except for damages caused by negligent medical treatment provided under AS 18.15.355 - 18.15.395 by a state employee, or except that, if a state employee quarantines or isolates a person with gross negligence or in intentional violation of AS 18.15.385, the state shall pay to the person who was quarantined or isolated a penalty of \$500 for each day of the improper quarantine;

(3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c); or

(5) arises out of injury, illness, or death of a seaman that occurs or manifests itself during or in the course of, or arises out of, employment with the state; AS 23.30 provides the exclusive remedy for such a claim, and no action may be brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C. 30104 - 30105), in admiralty, or under the general maritime law.

Sec. 09.50.253. Actionable claims against state employees.

(a) Except as provided in (f) of this section, the remedy against the state provided by AS 09.50.250 for injury or loss of property or personal injury or death arising or resulting from an act or omission of a state employee while acting within the scope of the employee's office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of the employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(b) A state employee against whom a civil action or proceeding is brought under (a) of this section shall deliver all pleadings and process served upon the employee, or a copy of the papers served, to the person designated by the head of the employee's agency to receive the papers and to the attorney general. The state employee shall deliver these documents within the time period established by the attorney general in a regulation adopted under this section. The initial delivery of these documents to the attorney general constitutes an agreement by the employee to cooperate with the attorney general in the state employee's defense of the action or proceeding and a consent that the attorney general conduct the defense as the attorney general considers advisable and in the best interests of the employee, including settlement in the attorney general's discretion.

(c) Upon certification by the attorney general that the state employee was acting within the scope of the employee's office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon the claim in a state court is considered an action or proceeding against the state under the provisions of this title, and the state is substituted as the party defendant. The civil action or proceeding certified under this subsection is subject to the same limitations and defenses applicable to an action or

proceeding against the state. The attorney general or the attorney general's designee shall defend the civil action or proceeding on behalf of the state.

(d) If the attorney general refuses to make the certification under (c) of this section, the state employee may, at any time before trial, petition the superior court to find and certify that the employee was acting within the scope of the employee's office or employment at the time of the incident out of which the claim arose. Upon certification by the court, the civil action is considered to be a civil action or proceeding brought against the state under the provisions of this title, and the state is substituted as the party defendant. Upon certification by the court, the state shall reimburse the state employee the employee's reasonable costs and attorney fees incurred in bringing the petition. A copy of the petition under this subsection shall be served upon the state in accordance with the provisions of Rule 4(d)(7), Alaska Rules of Civil Procedure. The petition to the superior court is the exclusive remedy to challenge the noncertification decision by the attorney general of a state employee under this section.

(e) A claim or suit for damages may not be filed against the state or the attorney general arising out of the process for certification under this section.

(f) This section does not extend or apply to a civil action or proceeding against an employee of the state that is brought for a violation of the Constitution of the United States or that is brought for a violation of a law of the state under which an action or proceeding against an employee is expressly authorized.

(g) The provisions of this section are in addition to and do not supersede a term in a state employee collective bargaining agreement addressing legal defense and indemnity.

(h) In this section,

(1) "acting within the scope of the employee's office or employment" means acts or omissions

(A) that the state employee is employed or authorized to perform;

(B) of the state employee that occur substantially within the authorized time and space limit;

(C) that are activated by a purpose to serve the state; and

(D) that do not constitute acting, or failing to act, with wilful, reckless, or intentional misconduct, or with gross negligence or malice;

(2) "state employee"

(A) means

(i) a permanent, probationary, seasonal,

temporary, provisional, or nonpermanent employee in the executive, legislative, or judicial branch of state government, whether in the classified, partially exempt, or exempt service; or

(ii) a person appointed to a board or commission of state government;

(B) does not include an employee of

(i) the University of Alaska;

(ii) the Alaska Railroad Corporation; or

(iii) a political subdivision of the state, including a regional educational attendance area.

Sec. 09.50.260. Undertaking. [Repealed, Sec. 2 ch 19 SLA 1975].

Repealed or Renumbered

Sec. 09.50.270. Payment of judgment against the state. An attachment or execution may not issue against the state. When a final judgment is rendered against the state in an action, the clerk of the court shall immediately transmit a certified copy of the judgment to the Department of Administration which shall either approve payment of the judgment against the state if a sufficient appropriation exists for payment, or audit the amount and transmit a copy to the legislature with the recommendation that an appropriation be made for its payment.

Sec. 09.50.280. Judgment for plaintiff; punitive damages. If judgment is rendered for the plaintiff, it shall be for the legal amount found due from the state with interest as provided under AS 09.30.070 and without punitive damages.

Sec. 09.50.290. Trial by court. [Repealed, Sec. 1 ch 147 SLA 1975].

Repealed or Renumbered

Sec. 09.50.300. Compromise by attorney general. Except as provided in AS 09.50.253, the attorney general may, with the approval of the court, arbitrate, compromise, or settle any action filed under AS 09.50.250 - 09.50.300.

Sec. 44.77.070. Applicability of AS 44.77.010 - 44.77.060. AS 44.77.010 - 44.77.060 do not apply to a department in the executive branch or to the legislative or judicial branches if that department or branch has adopted a mandatory claims and appeal procedure.