

CS FOR HOUSE BILL NO. 425(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered: 3/15/00

Referred: Judiciary, Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to misrepresentation and false claims made against the state or
2 a municipality; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 36.30.687(a) is amended to read:

5 (a) A person who makes or uses in support of a contract claim under this
6 chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any
7 stage of proceedings relating to a procurement or contract controversy under this
8 chapter

9 (1) forfeits all claims relating to that procurement or contract; and

10 (2) is liable to the state for **a false claim as provided in AS 37.10.090**

11 [REIMBURSEMENT OF ALL SUMS PAID ON THE CLAIM, FOR ALL COSTS
12 ATTRIBUTABLE TO REVIEW OF THE CLAIM, AND FOR A CIVIL PENALTY
13 EQUAL TO THE AMOUNT BY WHICH THE CLAIM IS MISREPRESENTED].

14 * **Sec. 2.** AS 37.10.090 is repealed and reenacted to read:

1 **Sec. 37.10.090. False claims and misrepresentation against state or**
2 **municipality.** (a) A person is civilly liable to the state or a municipality in
3 accordance with the provisions of this section if the person commits any of the
4 following acts:

5 (1) knowingly presents or causes to be presented to an officer or
6 employee of the state or of a municipality, a false claim for payment or approval by
7 the state or municipality;

8 (2) knowingly makes, uses, or causes to be made or used a false record
9 or statement to get a false claim paid or approved by the state or a municipality;

10 (3) conspires to defraud the state or a municipality by getting a false
11 claim allowed or paid by the state or municipality;

12 (4) has possession, custody, or control of public property or money
13 used or to be used by the state or a municipality and knowingly delivers or causes to
14 be delivered less money or property than the amount for which the person receives a
15 document certifying receipt;

16 (5) is authorized to make or deliver a document certifying receipt of
17 property used or to be used by the state or a municipality and knowingly makes or
18 delivers a receipt that falsely represents the property used or to be used;

19 (6) knowingly buys, or receives as a pledge of an obligation or a debt,
20 public property from a person who lawfully may not sell or pledge the property;

21 (7) knowingly makes, uses, or causes to be made or used a false record
22 or statement to conceal, avoid, or decrease an obligation to pay or transmit money or
23 property to the state or a municipality; or

24 (8) is a beneficiary of an inadvertent submission of a false claim to the
25 state or a municipality, subsequently discovers the falsity of the claim, and fails to
26 disclose the false claim to the state or the municipality within a reasonable time after
27 discovery of the false claim.

28 (b) If civil liability is found under (a) of this section, the person is liable to the
29 state or municipality for the following:

30 (1) except as provided in (c) of this section, three times the amount of
31 the damages that the state or municipality sustains because of the act of that person;

1 (2) a civil penalty of up to \$10,000 for each act for which liability is
2 found under (a) of this section;

3 (3) attorney fees and costs awarded in accordance with Alaska Rules
4 of Civil Procedure to recover amounts under (1) or (2) of this subsection.

5 (c) The court may reduce the amount of damages under (b)(1) of this section
6 to an amount not less than two times the amount of the damages sustained and may
7 waive entirely the civil penalties under (b)(2) of this section if the standards set out
8 in this subsection are met. To be eligible for reduction or waiver, the person must
9 prove, and the court must find, all of the following:

10 (1) the person committing the violation furnished officials of the state
11 or of the municipality responsible for investigating violations of this section with all
12 information known to that person about the violation within 30 days after the date on
13 which the person first obtained the information;

14 (2) the person fully cooperated with any investigation of the violation
15 by the state or a municipality; and

16 (3) at the time the person furnished the state or the municipality with
17 information about the violation, no criminal prosecution, civil action, or administrative
18 action had started with respect to the violation, and the person did not have actual
19 knowledge of the existence of an investigation into the violation.

20 (d) Liability under this section is joint and several for any act committed by
21 two or more persons.

22 (e) Except as provided in (g) of this section, the remedies provided under this
23 section are in addition to any other remedies provided by law.

24 (f) This section does not apply to any controversy involving an amount or
25 value of less than \$500.

26 (g) This section does not apply to claims, records, or statements made to
27 present or support a claim under

28 (1) AS 23.20 (Alaska Employment Security Act);

29 (2) AS 23.30 (Alaska Workers' Compensation Act);

30 (3) AS 43 (Revenue and Taxation);

31 (4) AS 47.25 (Public Assistance); or

1 (5) AS 47.27 (Alaska Temporary Assistance Program).

2 (h) In this section, "controversy" means any one or more acts committed by
3 the same person in violation of this section.

4 * **Sec. 3.** AS 37.10 is amended by adding new sections to read:

5 **Sec. 37.10.092. Limitation of actions; standard of proof.** (a) A civil action
6 under AS 37.10.090 may not be filed more than six years after the date of discovery
7 by the official of the state or municipality charged with responsibility to act in the
8 circumstances or, in any event, no more than 10 years after the date on which the
9 violation under AS 37.10.090 was committed.

10 (b) In an action brought under AS 37.10.090, the state or a municipality is
11 required to prove all essential elements of the cause of action, including damages, by
12 a preponderance of the evidence.

13 (c) A guilty verdict rendered in a criminal proceeding charging false statements
14 or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere,
15 estops the defendant from denying the essential elements of the offense in a civil
16 action brought under AS 37.10.090 that involves the same activity as in the criminal
17 proceeding. This subsection does not apply to a guilty verdict upon a plea of nolo
18 contendere made before July 1, 2000.

19 **Sec. 37.10.094. Action by attorney general or municipal attorney.** (a) The
20 attorney general shall investigate violations under AS 37.10.090 involving state money
21 or property. If the attorney general finds that a person has violated or is violating
22 AS 37.10.090, the attorney general may bring a civil action under AS 37.10.090
23 against that person. If the attorney general brings a civil action on a claim involving
24 municipal money or property as well as state money or property, the attorney general
25 shall, on the same date that the complaint is filed in this action, serve a copy of the
26 complaint on the appropriate prosecuting authority of the municipality.

27 (b) The prosecuting authority of a municipality shall investigate violations
28 under AS 37.10.090 involving municipal money or property. If the prosecuting
29 authority of the municipality finds that a person has violated or is violating
30 AS 37.10.090, the prosecuting authority may bring a civil action against that person.
31 If the prosecuting authority brings a civil action on a claim involving state money or

1 property as well as municipal money or property, the prosecuting authority shall, on
2 the same date that the complaint is filed in this action, serve a copy of the complaint
3 on the attorney general. Within 60 days after receiving the complaint, the attorney
4 general shall do one of the following:

5 (1) notify the court that the attorney general intends to proceed with the
6 action, in which case the attorney general shall assume primary responsibility for
7 conducting the action and the prosecuting authority of the municipality may continue
8 as a party; or

9 (2) notify the court that the attorney general declines to proceed with
10 the action, in which case the prosecuting authority of the municipality may conduct the
11 action; notwithstanding AS 37.10.090, if the attorney general declines to proceed with
12 the action, the attorney general may authorize the prosecuting authority of the
13 municipality to assume lead responsibility for conducting the action for any state
14 money or property remaining in the action.

15 * **Sec. 4.** AS 36.30.687(c) and AS 37.10.100 are repealed.

16 * **Sec. 5.** This Act takes effect July 1, 2000.