

CS FOR HOUSE BILL NO. 425(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/18/00
Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability to the state or a municipality for certain acts
2 involving false claims, misrepresentation, false records, false statements, the failure
3 to disclose a false claim, the purchase of public property from an unlawful
4 source, or the receipt of a pledge of public property from an unlawful source;
5 relating to criminal proceedings charging false statements or fraud; relating to
6 misrepresented or fraudulent contract claims under the State Procurement Code;
7 relating to the recovery of the property of a municipality, school district, or
8 the state; and providing for an effective date."

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

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

11 (a) A person who makes or uses in support of a contract claim under this
12 chapter, a misrepresentation, or who practices or attempts to practice a fraud, at any

1 stage of proceedings relating to a procurement or contract controversy under this
2 chapter

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

4 (2) is liable to the state for **a false claim as provided in AS 37.10.090**
5 [REIMBURSEMENT OF ALL SUMS PAID ON THE CLAIM, FOR ALL COSTS
6 ATTRIBUTABLE TO REVIEW OF THE CLAIM, AND FOR A CIVIL PENALTY
7 EQUAL TO THE AMOUNT BY WHICH THE CLAIM IS MISREPRESENTED].

8 * **Sec. 2.** AS 37.10.090 is repealed and reenacted to read:

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

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

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

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

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

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

27 (6) knowingly buys, or receives as a pledge of an obligation or a debt,
28 state or municipal property from a person who lawfully may not sell or pledge the
29 property;

30 (7) knowingly makes, uses, or causes to be made or used a false record
31 or statement to conceal, avoid, or decrease an obligation to pay or transmit money or

1 property to the state or a municipality; or

2 (8) is a beneficiary of an inadvertent submission of a false claim to the
3 state or a municipality, subsequently discovers the falsity of the claim, and fails to
4 disclose the false claim to the state or the municipality within a reasonable time after
5 discovery of the false claim.

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

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

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

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

14 (c) The court may reduce the amount of damages under (b)(1) of this section
15 to an amount not less than two times the amount of the damages sustained and may
16 waive entirely the civil penalties under (b)(2) of this section if the standards set out
17 in this subsection are met. To be eligible for reduction or waiver, the person who
18 committed the act for which the person is civilly liable under (a) of this section must
19 prove, and the court must find, that

20 (1) the person furnished officials of the state or of the municipality
21 responsible for investigating acts listed under (a) of this section with all information
22 known to that person about the act within 30 days after the date on which the person
23 first obtained the information;

24 (2) the person fully cooperated with any state or federal investigation
25 of the act; and

26 (3) at the time the person furnished the state or the municipality with
27 information about the act, a criminal prosecution, civil action, or administrative action
28 had not started with respect to the act, and the person did not have actual knowledge
29 of the existence of an investigation into the act.

30 (d) Liability under this section is joint and several for an act committed by two
31 or more persons.

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

3 (f) This section does not apply to an act for which a person is civilly liable
4 under (a) of this section if the act involves an amount or value of less than \$500.

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

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

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

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

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

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

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

13 **Sec. 37.10.092. Limitation of actions; standard of proof.** (a) A civil action
14 under AS 37.10.090 may not be filed more than six years after the date of discovery
15 by the official of the state or municipality charged with responsibility to act in the
16 circumstances of the basis for the action or, in any event, no more than 10 years after
17 the date on which the act for which the civil action is filed was committed.

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

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

27 **Sec. 37.10.094. Action by attorney general or municipal attorney.** (a) The
28 attorney general shall investigate acts for which a person may be civilly liable under
29 AS 37.10.090 involving state money or property. If the attorney general finds that a
30 person has committed or is committing an act for which civil liability is imposed under
31 AS 37.10.090, the attorney general may bring a civil action under AS 37.10.090

1 against that person. If the attorney general brings a civil action on a claim involving
 2 municipal money or property as well as state money or property, the attorney general
 3 shall, on the same date that the complaint is filed in this action, provide a copy of the
 4 complaint to the appropriate prosecuting authority of the municipality.

5 (b) The prosecuting authority of a municipality shall investigate acts for which
 6 a person may be civilly liable under AS 37.10.090 involving municipal money or
 7 property. If the prosecuting authority of the municipality finds that a person has
 8 committed or is committing an act for which the person is civilly liable under
 9 AS 37.10.090, the prosecuting authority may bring a civil action against that person.
 10 The prosecuting authority of a municipality may bring a civil action on behalf of the
 11 state on a claim involving state money or property and municipal money or property,
 12 and shall, on the date that the complaint is filed in the action, provide a copy of the
 13 complaint to the attorney general. Within 60 days after receiving the complaint, the
 14 attorney general shall do one of the following:

15 (1) notify the court that the attorney general intends to prosecute the
 16 action on behalf of the state and municipality, in which case the attorney general shall
 17 assume primary responsibility for prosecuting the action; or

18 (2) notify the court that the attorney general declines to prosecute the
 19 action, in which case the prosecuting authority of the municipality may continue to
 20 prosecute the action; notwithstanding AS 37.10.090, if the attorney general declines
 21 to prosecute the action, the attorney general may authorize the prosecuting authority
 22 of the municipality to assume lead responsibility for prosecuting the action for any
 23 state money or property remaining in the action.

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

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