

CS FOR HOUSE BILL NO. 145(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/25/01

Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a civil remedy available to the state or a municipality against
2 persons who make false claims for, or certain misrepresentations regarding, state or
3 municipal money or other property; and providing for an effective date."

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

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

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

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

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

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

1 * **Sec. 2.** AS 37.10.090 is repealed and reenacted to read:

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

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

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

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

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

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

20 (6) knowingly buys or receives as a pledge of an obligation or a debt
 21 property of the state or a municipality from a person who may not lawfully sell or
 22 pledge the property;

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

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

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

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

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

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

7 (c) The court may reduce the amount of damages under (b)(1) of this section
8 and may waive entirely the civil penalties under (b)(2) of this section if the standards
9 set out in this subsection are met. To be eligible for reduction or waiver, the person
10 must prove, and the court must find, all of the following:

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

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

17 (3) at the time the person furnished the state or the municipality with
18 information, a criminal prosecution, civil action, or administrative action had not
19 started, and the person did not have actual knowledge of the existence of an
20 investigation.

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

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

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

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

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

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

31 (3) AS 43 (revenue and taxation);

1 (4) AS 47.25 (public assistance); or

2 (5) AS 47.27 (Alaska temporary assistance program).

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

4 **Sec. 37.10.092. Limitation of actions; standard of proof.** (a) A civil action
5 under AS 37.10.090 may not be filed more than six years after the date of discovery
6 by the official of the state or municipality charged with responsibility to act in the
7 circumstances or, in any event, not more than 10 years after the date on which the act
8 giving rise to civil liability under AS 37.10.090 was committed.

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

12 (c) A guilty verdict rendered in a criminal proceeding charging false
13 statements or fraud, whether upon a verdict after trial or upon a plea of guilty, estops
14 the defendant from denying the essential elements of the offense in a civil action
15 brought under AS 37.10.090 that involves the same activity as in the criminal
16 proceeding.

17 **Sec. 37.10.094. Action by attorney general or municipal attorney.** (a) The
18 attorney general shall investigate acts giving rise to civil liability under AS 37.10.090
19 involving state money or property. If the attorney general finds that a person has
20 committed or is committing any of the acts covered by AS 37.10.090, the attorney
21 general may bring a civil action under AS 37.10.090 against that person. If the
22 attorney general brings a civil action under AS 37.10.090 that involves municipal
23 money or property as well as state money or property, the attorney general shall, on
24 the same date that the complaint is filed in that action, provide a copy of the complaint
25 to the appropriate prosecuting authority of the municipality.

26 (b) The prosecuting authority of a municipality shall investigate acts giving
27 rise to civil liability under AS 37.10.090 involving municipal money or property. If
28 the prosecuting authority of the municipality finds that a person has committed or is
29 committing any of the acts covered by AS 37.10.090, the prosecuting authority may
30 bring a civil action under AS 37.10.090 against that person. If the prosecuting
31 authority brings a civil action under AS 37.10.090 that involves 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 that action, provide a copy of the complaint
 3 to 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
 6 the 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;

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
 11 the action; notwithstanding AS 37.10.090, if the attorney general declines to proceed
 12 with 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 (c) If an action brought under AS 37.10.090 involves both state and municipal
 16 money or property, any damages and civil penalties awarded shall be shared by the
 17 state and the municipality after deducting and reimbursing the costs of recovery
 18 incurred by the parties not covered by the award of costs and fees. Unless the state
 19 and municipality agree otherwise, the share of each is determined according to the
 20 proportion of the money or property of each involved to the total money or property
 21 involved in the action.

22 * **Sec. 4.** AS 37.10 is amended by adding a new section to article 4 to read:

23 **Sec. 37.10.190. Definitions.** In AS 37.10.090 - 37.10.190, unless the context
 24 requires otherwise,

25 (1) "controversy" means any one or more acts committed by the same
 26 person in violation of AS 37.10.090, either singly or in the aggregate;

27 (2) "municipality" includes a school district; in this paragraph, "school
 28 district" does not include a regional educational attendance area;

29 (3) "state" means a state agency or administrative unit, whether in the
 30 legislative, judicial, or executive branch, and includes the University of Alaska, the
 31 Alaska Railroad Corporation, a regional educational attendance area, and any public or

1 quasi-public corporation, board, or commission of the state.

2 * **Sec. 5.** AS 36.30.687(c) and AS 37.10.100 are repealed.

3 * **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).