

23-GS2065HL4
Bullock
5/9/04

AMENDMENT #1

Stephanie Dalton
Garcia
Crawford
Berkowitz
KOTT
LYNN

OFFERED IN THE HOUSE
TO: CSSB 338(STA)

BY:

1 Page 1, following line 3:

2 Insert a new bill section to read:

3 **** Section 1.** The uncodified law of the State of Alaska is amended by adding a new
4 section to read:

5 **PURPOSE.** The purpose of sec. 4 of this Act is to permit a civil action by or on behalf
6 of a member of the military services against an employee of the state when the state is
7 otherwise immune from the suit under the doctrine of intramilitary immunity, and to require
8 the state to defend and indemnify the state employee if the state employee was acting within
9 the scope of state employment but not as a member of the Alaska Militia."
10

11 Page 1, line 4:

12 Delete "Section 1"

13 Insert "Sec. 2"

14

15 Renumber the following bill sections accordingly.

16

17 Page 4, following line 7:

18 Insert new bill sections to read:

19 **** Sec. 4.** AS 26.05.145(a) is amended to read:

20 (a) A civil action for damages may not be brought by or on behalf of a
21 member of the military services against the state or against any [EMPLOYEE OF
22 THE STATE OR ANY] member or former member of the Alaska militia for wrongful
23 death, personal injury, or other tort claim or injury arising out of activities that were

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1 incident to the member's military service. However, if an action is brought by or on
2 behalf of a member of the military services against an employee of the state for
3 wrongful death, personal injury, or other tort claim or injury arising out of
4 activities that were incident to the member's military service, the state shall
5 defend and indemnify the state employee, if the action against the state employee
6 is based on acts or omissions within the scope of the employee's state employment
7 and the state employment was not as a member of the Alaska Militia."

8

9 Renumber the following bill sections accordingly.

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MEMORANDUM

May 4, 2004

SUBJECT: The applicability of the Feres doctrine to the state (HB 359)

TO: Representative Les Gara

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

You asked for a simple summary of the effect of the Feres doctrine on the state.

Q. What is the Feres doctrine?

A. The Feres doctrine is a legal doctrine that bars suits against the federal government for injuries that arise out of or occur in the course of military service.¹

Q. Does Alaska have a law with provisions similar to the Feres doctrine that bars suits against the state?

A. Yes. In 2003, the legislature enacted AS 26.05.145 that bars suits against the state to the same extent the Feres doctrine bars suits against the federal government.²

Q. Without the enactment of AS 26.05.145, would the Feres doctrine bar these type of suits against the state?

A. No. When presented with the issue, the Alaska Supreme Court held that the Feres doctrine is "strictly speaking, a federal doctrine, we are not bound by its holding."³

If I may be of further assistance, please advise.

DMB:med
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¹ *Estate of Kenneth W. Himsel v. State of Alaska*, 36 P.3d 35, 38 (Alaska 2001), discussing *Feres v. United States*, 340 U.S. 135, 71 S.Ct. 153, 95 L.Ed. 152 (1950).

² Sec. 4, ch. 43, SLA 2003. The law was enacted to legislatively overrule the *Himsel* decision.

³ 36 P.3d at 39 (notes and citations omitted).