

CS FOR SENATE BILL NO. 338(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/19/04
Referred: Judiciary

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to actionable claims against state employees; and providing for an**
2 **effective date."**

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

4 *** Section 1.** AS 09.50 is amended by adding a new section to read:

5 **Sec. 09.50.253. Actionable claims against state employees.** (a) Except as
6 provided in (f) of this section, the remedy against the state provided by AS 09.50.250
7 for injury or loss of property or personal injury or death arising or resulting from an
8 act or omission of a state employee while acting within the scope of the employee's
9 office or employment is exclusive of any other civil action or proceeding for money
10 damages by reason of the same subject matter against the employee whose act or
11 omission gave rise to the claim or against the estate of the employee. Any other civil
12 action or proceeding for money damages arising out of or relating to the same subject
13 matter against the employee or the employee's estate is precluded without regard to
14 when the act or omission occurred.

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

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

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

1 challenge the noncertification decision by the attorney general of a state employee
2 under this section.

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

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

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

12 (h) In this section,

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

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

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

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

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

22 (2) "state employee"

23 (A) means

24 (i) a permanent, probationary, seasonal, temporary,
25 provisional, or nonpermanent employee in the executive, legislative, or
26 judicial branch of state government, whether in the classified, partially
27 exempt, or exempt service; or

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

30 (B) does not include an employee of

31 (i) the University of Alaska;

1 (ii) the Alaska Railroad Corporation; or

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

4 * **Sec. 2.** AS 09.50.300 is amended to read:

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

8 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 APPLICABILITY. This Act applies to a cause of action that arose on or after the
11 effective date of this Act.

12 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
15 heading of art. 3 of AS 09.50 from "Article 3. Claims Against State" to "Article 3. Claims
16 Against the State or State Employees."

17 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).