

**CS FOR SENATE BILL NO. 338(STA) am H**  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE SENATE STATE AFFAIRS COMMITTEE**

**Amended: 5/9/04**

**Offered: 3/19/04**

**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.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

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

11 \* **Sec. 2.** AS 09.50 is amended by adding a new section to read:

12 **Sec. 09.50.253. Actionable claims against state employees.** (a) Except as  
13 provided in (f) of this section, the remedy against the state provided by AS 09.50.250  
14 for injury or loss of property or personal injury or death arising or resulting from an

1 act or omission of a state employee while acting within the scope of the employee's  
2 office or employment is exclusive of any other civil action or proceeding for money  
3 damages by reason of the same subject matter against the employee whose act or  
4 omission gave rise to the claim or against the estate of the employee. Any other civil  
5 action or proceeding for money damages arising out of or relating to the same subject  
6 matter against the employee or the employee's estate is precluded without regard to  
7 when the act or omission occurred.

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

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

28 (d) If the attorney general refuses to make the certification under (c) of this  
29 section, the state employee may, at any time before trial, petition the superior court to  
30 find and certify that the employee was acting within the scope of the employee's office  
31 or employment at the time of the incident out of which the claim arose. Upon

1 certification by the court, the civil action is considered to be a civil action or  
 2 proceeding brought against the state under the provisions of this title, and the state is  
 3 substituted as the party defendant. Upon certification by the court, the state shall  
 4 reimburse the state employee the employee's reasonable costs and attorney fees  
 5 incurred in bringing the petition. A copy of the petition under this subsection shall be  
 6 served upon the state in accordance with the provisions of Rule 4(d)(7), Alaska Rules  
 7 of Civil Procedure. The petition to the superior court is the exclusive remedy to  
 8 challenge the noncertification decision by the attorney general of a state employee  
 9 under this section.

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

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

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

19 (h) In this section,

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

22 (A) that the state employee is employed or authorized to  
 23 perform;

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

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

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

29 (2) "state employee"

30 (A) means

31 (i) a permanent, probationary, seasonal, temporary,

1 provisional, or nonpermanent employee in the executive, legislative, or  
 2 judicial branch of state government, whether in the classified, partially  
 3 exempt, or exempt service; or

4 (ii) a person appointed to a board or commission of  
 5 state government;

6 (B) does not include an employee of

7 (i) the University of Alaska;

8 (ii) the Alaska Railroad Corporation; or

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

11 \* **Sec. 3.** AS 09.50.300 is amended to read:

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

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

16 (a) A civil action for damages may not be brought by or on behalf of a  
 17 member of the military services against the state or against any [EMPLOYEE OF  
 18 THE STATE OR ANY] member or former member of the Alaska militia for wrongful  
 19 death, personal injury, or other tort claim or injury arising out of activities that were  
 20 incident to the member's military service. **However, if an action is brought by or on**  
 21 **behalf of a member of the United States military services against an employee of**  
 22 **the state for wrongful death, personal injury, or other tort claim or injury arising**  
 23 **out of activities that were incident to the member's military service, the state**  
 24 **shall defend and indemnify the state employee, if the action against the state**  
 25 **employee is based on acts or omissions within the scope of the employee's state**  
 26 **employment and the state employment was not as a member of the Alaska**  
 27 **Militia.**

28 \* **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to  
 29 read:

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

1     \* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

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

6     \* **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).