

Introduced: 1/20/77
Referred: Judiciary and Finance

1 IN THE SENATE

BY RODEY, COLLETTA AND KERTTULA

2 SENATE BILL NO. 67

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to tort claims against state employees
7 based on acts or omissions occurring within the scope
8 of their employment; and providing for an effective
9 date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 09.50 is amended by adding new sections to read:

12 Sec. 09.50.253. PAYMENT BY STATE OF TORT CLAIMS AGAINST EMPLOYEES.

13 (a) If an employee requests the state to defend him against a claim or
14 action brought for an injury arising out of an act or omission occurring
15 within the scope of his employment as an employee, the state shall pay a
16 judgment based on the claim or action, or a compromise or settlement of
17 it to which the state has agreed. Payment by the state under this sec-
18 tion is contingent on

19 (1) the required request being given to the state by notice
20 to the division of insurance at least 10 days before the day of trial;

21 (2) the employee's reasonable good faith cooperation in the
22 defense of the claim or action; and

23 (3) if the state conducts the defense under an agreement
24 reserving rights as provided in (b) of this section, determination that
25 the act or omission occurred within the scope of the employee's employ-
26 ment.

27 (b) If the state conducts the defense of an employee against the
28 claim or action with the employee's reasonable good faith cooperation,
29 the state shall pay a judgment based on the claim or action, or a com-

1 promise or settlement of the claim or action to which it has agreed.
2 However, the state may conduct the defense of an employee under an
3 agreement with the employee reserving the rights of the state not to pay
4 a judgment, compromise or settlement until it is established that the
5 injury arose out of an act or omission occurring within the scope of his
6 employment as an employee.

7 (c) Nothing in secs. 253 - 257 of this chapter authorizes the
8 state to pay that part of a claim or judgment representing punitive or
9 exemplary damages.

10 Sec. 09.50.255. RECOVERY BY EMPLOYEE FROM STATE. If the employee
11 pays a claim or judgment, or a part of it, against him which the state
12 is required to pay under sec. 253 of this chapter, the employee is en-
13 titled to recover the amount of the payment from the state. However, if
14 the state does not conduct the employee's defense against the action or
15 claim, or if the state conducts the defense under an agreement reserving
16 rights as provided in sec. 253(b) of this chapter, the employee may
17 recover from the state under this section only if he establishes that
18 the act or omission upon which the claim or judgment is based occurred
19 within the scope of his employment as an employee, and the state fails
20 to establish that the employee

21 (1) acted or failed to act because of actual malice, fraud or
22 corruption; or

23 (2) wilfully failed or refused to conduct the defense of the
24 claim or action in good faith or to reasonably cooperate in good faith
25 in the defense conducted by the state.

26 Sec. 09.50.257. RECOVERY BY STATE FROM EMPLOYEE. If the state
27 pays a claim or judgment, or a part of it, against itself or against an
28 employee for an injury arising out of an act or omission of the employee
29 occurring within the scope of his employment as an employee, the

1 employee is not liable to indemnify the state, except that the state may
2 recover payment if it

3 (1) did not conduct the defense, and

4 (A) the employee acted or failed to act because of
5 actual malice, fraud or corruption, or

6 (B) the employee wilfully failed or refused to conduct
7 the defense of the claim or action in good faith;

8 (2) conducted the defense under an agreement reserving rights
9 as provided in sec. 253(b) of this chapter unless the employee estab-
10 lishes that the act or omission upon which the judgment is based oc-
11 curred within the scope of his employment and the state fails to estab-
12 lish that the employee

13 (A) acted or failed to act because of actual malice,
14 fraud or corruption, or

15 (B) wilfully failed or refused to reasonably cooperate
16 in good faith in the defense conducted by the state;

17 (3) conducted the defense in the absence of an agreement re-
18 serving the rights of the state as provided in sec. 253(b) of this
19 chapter and the employee wilfully failed or refused to cooperate in good
20 faith in the defense conducted by the state.

21 Sec. 09.50.259. DEFINITIONS. In secs. 253 - 259 of this chapter

22 (1) "employee" means an employee or former employee of the
23 state, or his estate;

24 (2) "injury" means damage to or loss of property or personal
25 injury or death.

26 * Sec. 2. This Act applies to all legal actions set for trial at least 10
27 days after the effective date of this Act.

28 * Sec. 3. This Act takes effect immediately in accordance with AS 01.10.-
29 070(c).