

Offered: 4/22/89
Referred: Judiciary and Finance

6-0327J

Original sponsor: Labor and Commerce
Committee

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 SENATE CS FOR CS FOR HOUSE BILL NO. 91 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to protection for certain public
7 employees and certain other persons who report or
8 participate in a proceeding connected with a matter
9 of public concern."

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

11 * Section 1. AS 39.90 is amended by adding new sections to read:

12 ARTICLE 2. PROTECTION FOR WHISTLEBLOWERS.

13 Sec. 39.90.100. PERSONS PROTECTED. (a) A public employer may
14 not discharge, threaten, or otherwise discriminate against an employee
15 regarding the employee's compensation, terms, conditions, location, or
16 privileges of employment because

17 (1) the employee, or a person acting on behalf of the
18 employee, reports to a public body or is about to report to a public
19 body a matter of public concern; or

20 (2) the employee participates in a court action, an inves-
21 tigation, a hearing, or an inquiry held by a public body on a matter
22 of public concern.

23 (b) A public employer may not disqualify a public employee or
24 other person who reports a matter of public concern or participates in
25 a proceeding connected with a matter of public concern before a public
26 body or court, because of the report or participation, from eligibili-
27 ty to

28 (1) bid on contracts with the public employer;

29 (2) receive land under a law of the state or an ordinance

1 of the municipality; or

2 (3) receive another right, privilege, or benefit.

3 (c) The provisions of AS 39.90.100 - 39.90.150 do not

4 (1) require an employer to compensate an employee for
5 participation in a court action or in an investigation, hearing, or
6 inquiry by a public body;

7 (2) prohibit an employer from compensating an employee for
8 participation in a court action or in an investigation, hearing, or
9 inquiry by a public body;

10 (3) authorize the disclosure of information that is legally
11 required to be kept confidential; or

12 (4) diminish or impair the rights of an employee under a
13 collective bargaining agreement.

14 (d) An employer shall post notices and use other appropriate
15 means to inform employees of their protections and obligations under
16 AS 39.90.100 - 39.90.150.

17 Sec. 39.90.110. LIMITATION TO PROTECTIONS. (a) A person is not
18 entitled to the protections under AS 39.90.100 - 39.90.150 unless the
19 person

20 (1) reasonably believes that the information reported is or
21 is about to become a matter of public concern; and

22 (2) reports the information in good faith.

23 (b) A person is entitled to the protections under AS 39.90.100 -
24 39.90.150 only if the matter of public concern

25 (1) is not the result of conduct by the person seeking
26 protection; or

27 (2) is the result of conduct by the person that was re-
28 quired by the person's employer.

29 (c) As part of its written personnel policy, a public employer

1 may require that, before an employee initiates a report on a matter of
2 public concern under AS 39.90.100, the employee shall submit a written
3 report concerning the matter to the employer. However, the employee
4 is not required to submit a report if the employee

5 (1) reasonably believes that reports to the employer will
6 not result in prompt action to remedy the matter of public concern;

7 (2) believes with reasonable certainty that the activity,
8 policy, or practice is already known to one or more supervisors;

9 (3) reasonably believes that an emergency is involved; or

10 (4) reasonably fears reprisal or discrimination as a result
11 of disclosure.

12 Sec. 39.90.120. RELIEF AND PENALTIES. (a) A person who alleges
13 a violation of AS 39.90.100 may bring a civil action and the court may
14 grant appropriate relief, including punitive damages.

15 (b) A person who violates or attempts to violate AS 39.90.100 is
16 also liable for a civil fine of not more than \$10,000. The attorney
17 general may enforce this subsection.

18 (c) A person who attempts to prevent another person from making
19 a report or participating in a matter under AS 39.90.100(a) with
20 intent to impede or prevent a public inquiry on the matter is liable
21 for a civil fine of not more than \$10,000.

22 Sec. 39.90.130. EXEMPTION FOR MUNICIPALITIES. A municipality is
23 not required to comply with the provisions of AS 39.90.100 - 39.90.150
24 if the municipality has adopted an ordinance that provides protections
25 for its employees and other persons that are substantially similar to
26 the protections under AS 39.90.100 - 39.90.150. Notwithstanding
27 AS 29.25.070, the ordinance may provide for a civil penalty for viola-
28 tion of the ordinance not to exceed \$10,000.

29 Sec. 39.90.140. DEFINITIONS. In AS 39.90.100 - 39.90.150

1 (1) "employee" or "public employee" means a person who
2 performs a service for wages or other remuneration under a contract of
3 hire, written or oral, express or implied, for a public employer;

4 (2) "employer" or "public employer" includes the state, a
5 public or quasi-public corporation or authority established by state
6 law, the University of Alaska, and a political subdivision of the
7 state including a municipality, school district, and rural educational
8 attendance area;

9 (3) "matter of public concern" means

10 (A) a violation of a state, federal, or municipal law,
11 regulation, or ordinance;

12 (B) a danger to public health or safety;

13 (C) gross mismanagement, a substantial waste of funds,
14 or a clear abuse of authority; or

15 (D) a matter accepted for investigation by the office
16 of the ombudsman under AS 24.55.100 or 24.55.320;

17 (4) "public body" includes an officer or agency of

18 (A) the federal government;

19 (B) the state;

20 (C) a political subdivision of the state including

21 (i) a municipality;

22 (ii) a school district; and

23 (iii) a rural educational attendance area;

24 (D) a public or quasi-public corporation or authority
25 established by state law including the Alaska Railroad Corpora-
26 tion; and

27 (E) the University of Alaska.

28 Sec. 39.90.150. SHORT TITLE. AS 39.90.100 - 39.90.150 may be
29 cited as the Alaska Whistleblower Act.