

**CS FOR HOUSE BILL NO. 395 (JUDICIARY)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

**Offered: 4/8/92
Referred: Rules**

Sponsor(s): REPRESENTATIVE DONLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to public employers defending and indemnifying public employees for
2 injuries occurring within the scope of employment."

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

4 * **Section 1.** AS 39.90 is amended by adding a new section to read:

5 Sec. 39.90.160. **DEFENSE AND INDEMNIFICATION OF EMPLOYEES.** (a) Unless
6 a collective bargaining agreement that covers the employee includes a provision on defense and
7 indemnification, a public employer shall provide legal defense of claims against, and pay
8 settlements and judgments including attorney fees and costs entered against, a public employee
9 when the claims, settlements, or judgments are based on acts or omissions that occurred during
10 the course and within the scope of the employee's employment with the public employer.

11 (b) A public employer's obligation to defend and indemnify an employee under (a) of
12 this section arises only if

13 (1) the employee notifies the public employer in writing, in the manner required
14 by the employer, within 10 days after receipt of a claim, demand, or suit, unless there is good

1 cause for the employee's failure to provide timely or proper notice and the employer has not been
2 materially prejudiced;

3 (2) the employee makes a good faith effort to cooperate in the defense of the
4 claim or action; and

5 (3) the act or omission was not a result of intentional or wilful misconduct on the
6 part of the employee.

7 (c) A public employer may not, based solely on an allegation of intentional or wilful
8 misconduct made by a party other than the public employer, withhold legal defense in a civil
9 action.

10 (d) If a public employer refuses to provide legal defense for an employee, the employee
11 may file an action for declaratory relief in superior court. The employee must file the action for
12 declaratory relief within 30 days after the employee received a written notice of refusal to defend
13 from the employer unless there is good cause for the employee's failure to timely file the action
14 and the employer has not been materially prejudiced by the delay.

15 (e) If a public employer denies indemnification to an employee in an action in which the
16 plaintiff has named the public employer and the employee as parties to the action and from which
17 the public employer has not been dismissed, the employee's exclusive remedy is to bring a cross-
18 claim for indemnification against the employer.

19 (f) If a public employer denies indemnification to an employee in an action in which the
20 plaintiff has not named the employer as a party or, if the employer was made a party, from which
21 the employer has been dismissed, the employee's exclusive remedy is to bring an action for
22 indemnification against the employer. Notwithstanding any other provision of law, the employee

23 (1) must bring the action for indemnification under this subsection not later than
24 one year after the execution of a written agreement settling the underlying claim or action against
25 the employee or the entry of the final judgment against the employee;

26 (2) may not bring the action under this subsection before the employee's liability
27 in the case has been determined.

28 (g) A public employer does not have an obligation under this section to

29 (1) pay an award of punitive damages entered against an employee;

30 (2) defend or indemnify an employee in a

31 (A) disciplinary, administrative, or criminal action brought against the

1 employee or in an appeal from a disciplinary, administrative, or criminal action; or
2 (B) civil action based on conduct for which the employee has been
3 convicted of a criminal offense or terminated from employment by the public employer.
4 (h) A public employer may adopt an internal policy or enter into an agreement with an
5 employee that requires the employer to defend or indemnify the employee or pay punitive
6 damages in circumstances in which the employer would not otherwise have an obligation to do
7 so.
8 (i) A public employer is not required to provide legal defense or indemnification to a
9 public employee who settled or compromised a claim or action before requesting the public
10 employer to provide legal defense or indemnification. If the employer denies a request for legal
11 defense, the employee may settle without the employer's consent and may seek indemnification
12 under (e) or (f) of this section. An employee on whose behalf a public employer has undertaken
13 representation under this section may not settle the claim brought against the employee unless
14 the public employer approves the settlement.
15 (j) A public employer may provide legal defense while contesting the obligation to
16 indemnify an employee. A public employer who has defended an employee may bring an action
17 against the employee for expenses incurred in the defense if the trier of fact found that the
18 employee's conduct was not within the course or scope of employment. The action for expenses
19 under this subsection must be brought not later than one year after the execution of a written
20 agreement settling the underlying claim or action or entry of the final judgment in the action.
21 Defense or indemnification provided to a public employee under this section does not constitute
22 a waiver, limitation, or expansion of sovereign immunity or of other immunity.
23 (k) In this section,
24 (1) "employee" or "public employee" means a person who performs a service for
25 wages or other remuneration under a contract of hire, written or oral, express or implied, for a
26 public employer and includes a member of a board or commission established by the employer;
27 "employee" or "public employee" does not include an independent contractor;
28 (2) "employer" or "public employer" means the state, a public or quasi-public
29 corporation or authority established by state law, and a political subdivision of the state including
30 a municipality, but not including the University of Alaska, a school district, or a rural educational
31 attendance area.