

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

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/9/92  
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 gross negligence or intentional or  
6 wilful misconduct on the part of the employee.

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

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

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

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

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

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

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

29 (2) defend or indemnify an employee in a

30 (A) disciplinary, administrative, or criminal action brought against the  
31 employee or in an appeal from a disciplinary, administrative, or criminal action; or

1 (B) civil action based on conduct for which the employee has been  
2 convicted of a criminal offense or terminated from employment by the public employer.

3 (h) A public employer may adopt an internal policy or enter into an agreement with an  
4 employee that requires the employer to defend or indemnify the employee or pay punitive  
5 damages in circumstances in which the employer would not otherwise have an obligation to do  
6 so.

7 (i) A public employer is not required to provide legal defense or indemnification to a  
8 public employee who settled or compromised a claim or action before requesting the public  
9 employer to provide legal defense or indemnification. If the employer denies a request for legal  
10 defense, the employee may settle without the employer's consent and may seek indemnification  
11 under (e) or (f) of this section. An employee on whose behalf a public employer has undertaken  
12 representation under this section may not settle the claim brought against the employee unless  
13 the public employer approves the settlement.

14 (j) A public employer may provide legal defense while contesting the obligation to  
15 indemnify an employee. A public employer who has defended an employee may bring an action  
16 against the employee for expenses incurred in the defense if the trier of fact found that the  
17 employee's conduct was not within the course or scope of employment. The action for expenses  
18 under this subsection must be brought not later than one year after the execution of a written  
19 agreement settling the underlying claim or action or entry of the final judgment in the action.  
20 Defense or indemnification provided to a public employee under this section does not constitute  
21 a waiver, limitation, or expansion of sovereign immunity or of other immunity.

22 (k) In this section,

23 (1) "employee" or "public employee" means a person who performs a service for  
24 wages or other remuneration under a contract of hire, written or oral, express or implied, for a  
25 public employer and includes a member of a board or commission established by the employer;  
26 "employee" or "public employee" does not include an independent contractor;

27 (2) "employer" or "public employer" means the state, a public or quasi-public  
28 corporation or authority established by state law, and a political subdivision of the state including  
29 a municipality, but not including the University of Alaska, a school district, or a rural educational  
30 attendance area.