

**HOUSE BILL NO. 277**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**EIGHTEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE PORTER**

**Introduced: 4/7/93**  
**Referred: State Affairs, Judiciary, Finance**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to public employers defending and indemnifying public employees**  
2 **with respect to claims arising out of conduct that is within the scope of**  
3 **employment."**

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

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

6 **Sec. 39.90.160. DEFENSE AND INDEMNIFICATION OF EMPLOYEES.**

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

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

1 (1) the employee notifies the public employer in writing, in the manner  
2 required by the employer, within 10 days after receipt of a claim, demand, or suit,  
3 unless there is good cause for the employee's failure to provide timely or proper notice  
4 and the employer has not been materially prejudiced;

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

7 (3) the act or omission was not a result of gross negligence or  
8 intentional or wilful misconduct on the part of the employee.

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

12 (d) If a public employer refuses to provide legal defense for an employee, the  
13 employer shall provide the employee with written notice of this decision. The notice  
14 must include a copy of this section. An employee whose employer refuses to provide  
15 legal defense under this section may file an action for declaratory relief in superior  
16 court. The employee must file the action for declaratory relief within 30 days after the  
17 employee received a written notice of refusal to defend from the employer.

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

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

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

31 (2) may not bring the action under this subsection before the

1 employee's liability in the case has been determined.

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

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

4 (2) defend or indemnify an employee in a

5 (A) disciplinary, administrative, or criminal action brought

6 against the employee or in an appeal from a disciplinary, administrative, or

7 criminal action; or

8 (B) civil action based on conduct for which the employee has

9 been convicted of a criminal offense or terminated from employment by the

10 public employer.

11 (h) A public employer may adopt an internal policy or enter into an agreement

12 with an employee that requires the employer to defend or indemnify the employee or

13 pay punitive damages in circumstances in which the employer would not otherwise

14 have an obligation to do so.

15 (i) A public employer is not required to provide legal defense or

16 indemnification to a public employee who settled or compromised a claim or action

17 before requesting the public employer to provide legal defense or indemnification. If

18 the employer denies a request for legal defense, the employee may settle without the

19 employer's consent and may seek indemnification under (e) or (f) of this section. An

20 employee on whose behalf a public employer has undertaken representation under this

21 section may not settle the claim brought against the employee unless the public

22 employer approves the settlement.

23 (j) A public employer may provide legal defense while contesting the

24 obligation to indemnify an employee. A public employer who has defended an

25 employee may bring an action against the employee for expenses incurred in the

26 defense if the trier of fact found that the employee's conduct was not within the course

27 or scope of employment. The action for expenses under this subsection must be

28 brought not later than one year after the execution of a written agreement settling the

29 underlying claim or action or entry of the final judgment in the action. Defense or

30 indemnification provided to a public employee under this section does not constitute

31 a waiver, limitation, or expansion of sovereign immunity or of other immunity.

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(k) In this section,

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

(2) "employer" or "public employer" means the state, a public or quasi-public corporation or authority established by state law, and a political subdivision of the state including a municipality and a public or quasi-public corporation established by a municipality; however, "employer" or "public employer" does not include the University of Alaska, a school district, or a rural educational attendance area.