

CS FOR HOUSE BILL NO. 277(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 1/26/94

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVE PORTER

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) 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
9 employee when the claims, settlements, or judgments are based on acts or omissions
10 that occurred during the course and within the scope of the employee's employment
11 with the public employer.

12 (b) The terms of this section apply to the public employer's obligation unless
13 a collective bargaining agreement that covers the employee includes a provision for
14 defense and indemnification, in which case the terms of the collective bargaining

1 agreement apply.

2 (c) A public employer's obligation to defend and indemnify an employee under
3 (a) of this section arises only if

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

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

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

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

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

21 (f) If a public employer denies indemnification to an employee in an action
22 in which the plaintiff has named the public employer and the employee as parties to
23 the action and from which the public employer has not been dismissed, the employee's
24 exclusive remedy is to bring a cross-claim for indemnification against the employer.
25 If a public employer places limitations on its agreement to indemnify an employee and,
26 after settlement or the entry of a final judgment against the employee, denies
27 indemnification, the employee's exclusive remedy is to bring an action for
28 indemnification under (g) of this section.

29 (g) If a public employer denies indemnification to an employee in an action
30 in which either the plaintiff has not named the employer as a party or in which the
31 employer was made a party and has been dismissed, the employee's exclusive remedy

1 is to bring an action for indemnification against the employer. If a public employer
2 places limitations on its agreement to indemnify an employee and, after settlement or
3 the entry of a final judgment against the employee, denies indemnification, the
4 employee's exclusive remedy is to bring an action for indemnification against the
5 employer. Notwithstanding any other provision of law, the employee

6 (1) must bring the action for indemnification under this subsection not
7 later than one year after a settlement against the employee or the entry of the final
8 judgment against the employee;

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

11 (h) A public employer does not have an obligation under this section to

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

13 (2) defend or indemnify an employee in a

14 (A) disciplinary, administrative, or criminal action brought
15 against the employee or in an appeal from a disciplinary, administrative, or
16 criminal action; or

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

20 (i) A public employer may adopt an internal policy or enter into an agreement
21 with an employee that requires the employer to defend or indemnify the employee or
22 pay punitive damages in circumstances in which the employer would not otherwise
23 have an obligation to do so.

24 (j) A public employer is not required to provide legal defense or
25 indemnification to a public employee who settled or compromised a claim or action
26 before requesting the public employer to provide legal defense or indemnification. If
27 the employer denies a request for legal defense, the employee may settle without the
28 employer's consent and may seek indemnification under (f) or (g) of this section. An
29 employee for whom a public employer has provided legal defense under this section
30 may not settle the claim brought against the employee unless the public employer
31 approves the settlement.

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

10 (l) In this section,

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

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

22 (3) "settlement" means the execution of a written agreement settling the
23 claim or action that gave rise to the employer's obligation to defend or indemnify the
24 public employee.