CS FOR HOUSE BILL NO. 277(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/11/94
Referred: Finance

Sponsor(s): REPRESENTATIVE PORTER

A BILL

FOR AN ACT ENTITLED

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

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

*** Section 1.** AS 39 is amended by adding a new chapter to read:

CHAPTER 55. DEFENSE AND INDEMNIFICATION OF PUBLIC EMPLOYEES.

Sec. 39.55.010. PUBLIC EMPLOYER'S DUTY TO PROVIDE DEFENSE. (a) Except as otherwise provided in this chapter, a public employer shall provide legal defense of civil claims against, and pay settlements and judgments including attorney fees and costs entered against, a public employee when the claims, settlements, or judgments are based on acts or omissions that occurred during the course and within the scope of the employee's employment with the public employer.

(b) A public employer does not have an obligation to defend or indemnify if

1 the

2 (1) acts or omissions at issue were a result of gross negligence or
3 intentional or wilful misconduct on the part of the employee; however, a public
4 employer may not, based solely on an allegation of gross negligence or intentional or
5 wilful misconduct made by a party other than the public employer, withhold legal
6 defense in a civil action;

7 (2) claim or action involves a disciplinary, administrative, or criminal
8 matter brought against the employee or is an appeal from a disciplinary, administrative,
9 or criminal action;

10 (3) civil claim or action is based on conduct for which the employee
11 has been convicted of a criminal offense or terminated from employment by the public
12 employer; or

13 (4) public employee settled or compromised the claim or action before
14 requesting the public employer to provide legal defense or indemnification or while
15 a request for defense was pending.

16 (c) This chapter does not apply if a collective bargaining agreement that covers
17 the employee includes a provision for defense and indemnification, in which case the
18 terms of the collective bargaining agreement apply.

19 (d) A public employer does not have an obligation to pay an award for
20 punitive damages against an employee.

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

25 (f) Defense or indemnification provided to a public employee under this
26 chapter does not constitute a waiver, limitation, or expansion of sovereign immunity
27 or of other immunity.

28 (g) A public employer that is obligated to provide legal defense under this
29 chapter shall, through its designated legal counsel, provide legal services to the
30 employee. The public employer has the right to determine which attorney shall
31 represent the employee.

(h) This chapter applies to a former employee to the same extent as a current employee.

Sec. 39.55.020. EMPLOYEE'S DUTIES WHEN REQUESTING DEFENSE AND INDEMNIFICATION. (a) A public employer's obligation to defend and indemnify an employee under this chapter arises only if

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

(2) the employee makes a good faith effort to cooperate in the defense and resolution of the claim or action.

(b) An employee for whom a public employer has provided legal defense under this chapter or who has a request for the provision of legal defense pending may not settle the claim brought against the employee unless the public employer approves the settlement.

(c) An employer who has provided legal defense and indemnification may settle a claim or action without the consent of the employee so long as the settlement resolves all the outstanding claims against the employee.

Sec. 39.55.030. EMPLOYEE'S RIGHTS WHEN EMPLOYER REFUSES TO PROVIDE LEGAL DEFENSE. (a) If a public employer refuses to provide legal defense for an employee, the employer shall provide the employee with written notice of this decision within 60 days after receiving a request for legal defense from the employee or service of the summons and complaint on the employee, whichever is later. The notice must include a copy of this chapter.

(b) An employee whose employer refuses to provide legal defense under this chapter may file an action for declaratory relief in superior court if the employee wants the employer to provide legal defense. The employee must file the action for declaratory relief within 30 days after the employee received a written notice of refusal to defend from the employer.

(c) If an employee who has been denied legal defense settles the claim or action without filing a declaratory relief action under (b) of this section, the employee

1 waives any right to defense or indemnification. If the employee files a declaratory
2 relief action under (b) of this section, the employee may settle the claim for a
3 reasonable amount without the employer's consent.
4 (d) If an employee prevails in a declaratory relief action against the employer,
5 the employee may bring an action for indemnification no later than one year after the
6 final judgment in the declaratory relief action or final judgment or dismissal of the
7 underlying action, whichever is later.
8 Sec. 39.55.040. DEFENSE WITH RESERVATION OF RIGHTS; DENIAL OF
9 INDEMNIFICATION; EMPLOYEE LIABILITY FOR EXPENSES. (a) A public
10 employer may undertake the defense of an employee under this chapter while
11 contesting the obligation to indemnify the employee, either partially or fully. A public
12 employer that offers a defense with a reservation of rights to an employee, may
13 provide legal defense and place limitations on its agreement to indemnify an employee
14 pending the outcome of the case.
15 (b) If an employer denies indemnification or offers a defense with a
16 reservation of rights to an employee, the employer shall provide written notice to the
17 employee. The notice must include the reason for the denial or reservation of rights
18 and a copy of this chapter.
19 (c) If a final judgment is entered against an employee in a claim or action in
20 which the employer provided a legal defense and the employer agrees to only partially
21 indemnify the employee or denies indemnification entirely, the employee may bring
22 an action for indemnification against the employer not later than one year after the
23 entry of the final judgment against the employee.
24 (d) A public employer who has defended an employee may bring an action
25 against the employee for expenses incurred in the defense if the trier of fact found that
26 the employee's conduct was not within the course or scope of employment. The action
27 for expenses under this subsection must be brought not later than one year after the
28 execution of a written agreement settling the underlying claim or action or entry of
29 final judgment in the action.
30 Sec. 39.55.100. DEFINITIONS. In this chapter,
31 (1) "employee" or "public employee" means a person who performs a

1 service for wages or other remuneration under a direct contract of hire, written or oral,
2 express or implied, for a public employer and includes a member of a board or
3 commission established by the employer; "employee" or "public employee" does not
4 include an independent contractor;
5 (2) "employer" or "public employer" means the state, a public or
6 quasi-public corporation or authority established by state law, and a political
7 subdivision of the state including a municipality and a public or quasi-public
8 corporation established by a municipality; however, "employer" or "public employer"
9 does not include the University of Alaska, a municipal school district, or a rural
10 educational attendance area;
11 (3) "settlement" means the execution of a written agreement settling the
12 claim or action that gave rise to the employer's obligation to defend or indemnify the
13 public employee.