

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

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered: 5/5/94**  
**Referred: Rules**

**Sponsor(s): REPRESENTATIVE PORTER**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

5 \* Section 1. AS 23.40.075 is amended to read:

6 Sec. 23.40.075. ITEMS NOT SUBJECT TO BARGAINING. The parties may  
 7 not negotiate terms contrary to

8 (1) the reemployment rights for injured state employees under  
 9 AS 39.25.158; [OR]

10 (2) the reemployment rights of the organized militia under  
 11 AS 26.05.075; or

12 (3) the rights of an employer to discharge an employee when the  
 13 entry of a final judgment has made the employer liable for damages as the result  
 14 of the negligence of the employee under AS 39.55.050.

1 \* **Sec. 2.** AS 39 is amended by adding a new chapter to read:

2 **CHAPTER 55. DEFENSE AND INDEMNIFICATION OF**  
3 **PUBLIC EMPLOYEES.**

4 **Sec. 39.55.010. PUBLIC EMPLOYER'S DUTY TO PROVIDE DEFENSE.**

5 (a) Except as otherwise provided in this chapter, a public employer shall provide legal  
6 defense of civil claims against, and pay settlements and judgments including attorney  
7 fees and costs entered against, a public employee when the claims, settlements, or  
8 judgments are based on acts or omissions that occurred during the course and within  
9 the scope of the employee's employment with the public employer.

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

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

17 (2) claim or action involves a disciplinary, administrative, or criminal  
18 matter brought against the employee or is an appeal from a disciplinary, administrative,  
19 or criminal action;

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

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

26 (c) Except for AS 39.55.050, this chapter does not apply if a collective  
27 bargaining agreement that covers the employee includes a provision for defense and  
28 indemnification, in which case the terms of the collective bargaining agreement apply.

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

31 (e) A public employer may adopt an internal policy or enter into an agreement

1 with an employee that requires the employer to defend or indemnify the employee or  
2 pay punitive damages in circumstances in which the employer would not otherwise  
3 have an obligation to do so.

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

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

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

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

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

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

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

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

29 Sec. 39.55.030. EMPLOYEE'S RIGHTS WHEN EMPLOYER REFUSES TO  
30 PROVIDE LEGAL DEFENSE. (a) If a public employer refuses to provide legal  
31 defense for an employee, the employer shall provide the employee with written notice

1 of this decision within 60 days after receiving a request for legal defense from the  
2 employee or service of the summons and complaint on the employee, whichever is  
3 later. The notice must include a copy of this chapter.

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

9 (c) If an employee who has been denied legal defense settles the claim or  
10 action without filing a declaratory relief action under (b) of this section, the employee  
11 waives any right to defense or indemnification. If the employee files a declaratory  
12 relief action under (b) of this section, the employee may settle the claim for a  
13 reasonable amount without the employer's consent.

14 (d) If an employee prevails in a declaratory relief action against the employer,  
15 the employee may bring an action for indemnification no later than one year after the  
16 final judgment in the declaratory relief action or final judgment or dismissal of the  
17 underlying action, whichever is later.

18 **Sec. 39.55.040. DEFENSE WITH RESERVATION OF RIGHTS; DENIAL OF**  
19 **INDEMNIFICATION; EMPLOYEE LIABILITY FOR EXPENSES.** (a) A public  
20 employer may undertake the defense of an employee under this chapter while  
21 contesting the obligation to indemnify the employee, either partially or fully. A public  
22 employer that offers a defense with a reservation of rights to an employee, may  
23 provide legal defense and place limitations on its agreement to indemnify an employee  
24 pending the outcome of the case.

25 (b) If an employer denies indemnification or offers a defense with a  
26 reservation of rights to an employee, the employer shall provide written notice to the  
27 employee. The notice must include the reason for the denial or reservation of rights  
28 and a copy of this chapter.

29 (c) If a final judgment is entered against an employee in a claim or action in  
30 which the employer provided a legal defense and the employer agrees to only partially  
31 indemnify the employee or denies indemnification entirely, the employee may bring

1 an action for indemnification against the employer not later than one year after the  
2 entry of the final judgment against the employee.

3 (d) A public employer who has defended an employee may bring an action  
4 against the employee for expenses incurred in the defense if the trier of fact found that  
5 the employee's conduct was not within the course or scope of employment. The action  
6 for expenses under this subsection must be brought not later than one year after the  
7 execution of a written agreement settling the underlying claim or action or entry of  
8 final judgment in the action.

9 Sec. 39.55.050. EMPLOYER'S RIGHT TO TERMINATE NEGLIGENT  
10 EMPLOYEE. If, as the result of the entry of a final judgment, an employer who has  
11 provided defense or indemnification under this chapter is found liable for damages that  
12 were held to be at least in part the result of the negligence of an employee, the  
13 employer may discharge the employee. The reversal or modification of a decision of  
14 the superior court imposing liability on a public employer for the negligence of a  
15 public employee does not give the public employee a right to reinstatement, back  
16 wages, or other civil or equitable remedies against the public employer. A collective  
17 bargaining contract entered into under AS 23.40.070 - 23.40.260 may not contain terms  
18 contrary to this section.

19 Sec. 39.55.100. DEFINITIONS. In this chapter,

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

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

31 (3) "settlement" means the execution of a written agreement settling the

1 claim or action that gave rise to the employer's obligation to defend or indemnify the  
2 public employee.

3 \* Sec. 3. Nothing in this Act terminates or modifies a collective bargaining agreement in  
4 effect on the effective date of this Act.

5 \* Sec. 4. This Act applies only to claims and actions that arise on or after the effective  
6 date of this Act.