



LAWS OF ALASKA

2003

Source

CSHB 145(FIN)(efd fld S)

Chapter No.

AN ACT

Prohibiting discrimination in the awarding of attorney fees and costs in civil actions or appeals to or against, or in the posting of bonds or other security by, public interest litigants; and relating to awards of attorney fees and costs in cases involving enforcement of constitutional rights.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Prohibiting discrimination in the awarding of attorney fees and costs in civil actions or
2 appeals to or against, or in the posting of bonds or other security by, public interest litigants;
3 and relating to awards of attorney fees and costs in cases involving enforcement of
4 constitutional rights.

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6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 PURPOSE. (a) The judicially created doctrine respecting the award of attorney fees
9 and costs for or against public interest litigants has created an unbalanced set of incentives for
10 parties litigating issues that fall under the public interest litigant exception. This imbalance
11 has led to increased litigation, arguments made with little merit, difficulties in compromising
12 claims, and significant costs to the state and private citizens. More importantly, application of
13 the public interest litigant exception has resulted in unequal access to the courts and unequal
14 positions in litigation.

(b) The purpose of sec. 2 of this Act to provide for a more equal footing for parties in civil actions and appeals by abrogating the special status given to public interest litigants with respect to the award of attorney fees and costs. It is the intent of the legislature to expressly overrule the decisions of the Alaska Supreme Court in *Dansereau v. Ulmer*, 955 P.2d 916 (Alaska 1998); *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544 (Alaska 1983); *Thomas v. Bailey*, 611 P.2d 536 (Alaska 1980); *Anchorage v. McCabe*, 568 P.2d 986 (Alaska 1977); *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), and their progeny, insofar as they relate to the award of attorney fees and costs to or against public interest litigants in future civil actions and appeals.

(c) This Act does not preclude the enactment of specific statutes authorizing awards of costs or fees in particular situations, such as in AS 45.50.537.

* **Sec. 2.** AS 09.60.010 is amended by adding new subsections to read:

(b) Except as otherwise provided by statute, a court in this state may not discriminate in the award of attorney fees and costs to or against a party in a civil action or appeal based on the nature of the policy or interest advocated by the party, the number of persons affected by the outcome of the case, whether a governmental entity could be expected to bring or participate in the case, the extent of the party's economic incentive to bring the case, or any combination of these factors.

(c) In a civil action or appeal concerning the establishment, protection, or enforcement of a right under the United States Constitution or the Constitution of the State of Alaska, the court

(1) shall award, subject to (d) and (e) of this section, full reasonable attorney fees and costs to a claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or on appeal, has prevailed in asserting the right;

(2) may not order a claimant to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or appeal did not prevail in asserting the right, the action or appeal asserting the right was not frivolous, and the claimant did not have sufficient economic incentive to bring the action or appeal regardless of the constitutional claims involved.

(d) In calculating an award of attorney fees and costs under (c)(1) of this section,

(1) the court shall include in the award only that portion of the services of claimant's attorney fees and associated costs that were devoted to claims concerning rights under the United States Constitution or the Constitution of the State of Alaska upon which the claimant ultimately prevailed; and

(2) the court shall make an award only if the claimant did not have sufficient economic incentive to bring the suit, regardless of the constitutional claims involved.

(e) The court, in its discretion, may abate, in full or in part, an award of attorney fees and costs otherwise payable under (c) and (d) of this section if the court finds, based upon sworn affidavits or testimony, that the full imposition of the award would inflict a substantial and undue hardship upon the party ordered to pay the fees and costs or, if the party is a public entity, upon the taxpaying constituents of the public entity.

* **Sec. 3.** AS 09.68.040 is amended by adding a new subsection to read:

(c) A court in this state may not excuse a litigant requesting the entry of a stay or other interlocutory relief from posting a bond or other security to protect the persons who will be adversely affected if the excuse is based on the nature of the policy or interest advocated by the party, the number of persons affected by the outcome of the case, whether a governmental entity could be expected to bring or participate in the case, the extent of the party's economic incentive to bring the case, or any combination of these factors.

* **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to all civil actions and appeals filed on or after the effective date of this Act.