

FISCAL NOTE

Bill Version: CSSSHB 42 (FIN)
 (H) Publish Date: 3/22/00

**STATE OF ALASKA
 2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Law
 Title "...relating to civil liability...amending Rules 79
and 82(b), Alaska Rules of Civil Procedure..." BRU Criminal Division; Civil Division
 Sponsor Representative Mulder Component Criminal Justice Litigation;
Special Litigation
 Requester House Finance Committee Component Serial No. 2202;2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	95.0	95.0	95.0	95.0	95.0	95.0
Travel	3.4	3.4	3.4	3.4	3.4	3.4
Contractual	43.3	43.3	43.3	43.3	43.3	43.3
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	149.7	143.2	143.2	143.2	143.2	143.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	75.7	72.7	72.7	72.7	72.7	72.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	74.1	70.6	70.6	70.6	70.6	70.6
TOTAL	149.7	143.2	143.2	143.2	143.2	143.2

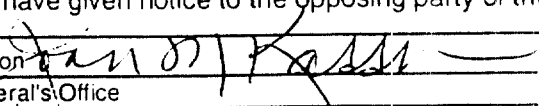
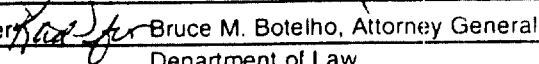
Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill creates several new causes of action similar to but broader than common law abuse of process. A party to a civil suit could bring a separate civil action against persons who signed pleadings in the original suit, under certain circumstances, or against persons who participated in the continuation of a claim or defense after the person discovers that the claim or defense is not "supported by a reasonable basis in fact" or "valid under applicable law." Potential defendants in the separate action are not limited to people who were parties to the original case, but include witnesses who sign affidavits, attorneys, and others who participate as representatives of parties in the litigation of the original case. A civil suit under this bill could not be brought until after a final judgment was entered in the original case. In addition, other preconditions to a separate lawsuit are that the party bringing an action under this bill must have given notice to the opposing party of the allegedly improper conduct

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 Agency Department of Law

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ANALYSIS CONTINUATION

in the original case and that party must not have corrected the challenged conduct within 21 days of the notice. The bill does not require notice and opportunity to correct be given to non-parties, such as witnesses or representatives of parties, even though they could be sued separately under this bill. The party bringing the action under this bill must have prevailed on the claim or defense that was the basis for the notice given to the opposing party.

As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state or state employees that would have merit, but rather by encouraging a large number of unfounded claims that would increase litigation costs. The department handles a disproportionate volume of pro se litigation (where the opposing party is unrepresented by legal counsel) in a variety of legal subject areas. Although the bill does not apply to an action "brought by a person incarcerated by the state," or involving divorce, dissolution, or child adoption, custody, support or visitation, it may not foreclose litigation under the bill by former prison inmates or parties to Child In Need of Aid proceedings.

We anticipate that many pro se litigants would assert that state filings and defenses violated the prohibitions of this bill, and would file separate lawsuits against state employees, officials, and attorneys who were involved in civil litigation with which the pro se litigants were unhappy. In addition, even where a party is represented by counsel and prevails but does not recover the full costs of litigation, this bill would provide a second chance at getting additional compensation, by litigating whether the losing opponent and its attorneys had "a reasonable basis in fact" or valid applicable law behind their claims or defenses. Because the defendants could have varying degrees of responsibility for the underlying litigation, and could likely have divergent defenses, the potential for conflicts among defendants is significant and would likely result in the need to retain separate counsel. Lawyers and their clients could each need their own counsel to defend their conduct in litigating the original case, and expert witnesses would be called upon to establish the reasonableness of their position. While the state could counterclaim on its own behalf under the provisions of this bill, or could be awarded attorney's fees if it prevails on litigation brought under this bill, the state would not likely recover much, as many pro se litigants are judgment proof.

If it can be demonstrated that the plaintiff in an action brought under this bill had failed to give the required notice of improper conduct to the opposing party in the original case or did not prevail on the claim or defense that was the subject of the notice, the action could be dismissed on motion practice, without a trial. However, in situations where notice was given and the challenged issue was not corrected (as, for example, where it goes to the heart of the dispute between the parties), the action brought under this bill would likely present triable issues that could not be resolved by motion. So too will there likely be disputes about whether a party prevailed in the original case on the claim or defense that was the subject of a notice, and whether they can pursue relief under this bill.

Overall, the department estimates that CSSH 42 (JUD) would increase the cost of litigation by about 1 percent in each division. Based on the number of equivalent positions handling civil litigation, this will result in an increase of three-quarters of a full-time equivalent attorney position in the civil division, and an estimated 120 hours of attorney time in the criminal division.

The department's FY01 weighted cost for an attorney position is \$134,712 per year, and \$93.42 per hour. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel, or one time new equipment purchases. The projected in-house

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staff cost would be \$101,025 for the civil division, plus \$6,500 in FY01 only for new equipment, (46.14% GF and 56.86% IAR) and \$11,200 in general funds for the criminal division. \$5,000 will be needed by the civil division for direct case costs (46.14% GF and 56.86% IAR), and \$1,000 for the criminal division. Additionally, due to conflicts, \$25,000 in outside counsel costs will probably be incurred by the civil division (46.14% GF and 56.86% IAR). No outside counsel costs are anticipated for the criminal division.