

CS FOR HOUSE BILL NO. 145(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/13/03

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act prohibiting discrimination in the awarding of attorney fees and costs in civil**
2 **actions or appeals to or against, or in the posting of bonds or other security by, public**
3 **interest litigants; and relating to awards of attorney fees and costs in cases involving**
4 **enforcement of constitutional rights; and providing for an effective date."**

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

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.

1 (b) The purpose of sec. 2 of this Act to provide for a more equal footing for parties in
 2 civil action and appeals by abrogating the special status given to public interest litigants with
 3 respect to the award of attorney fees and costs. It is the intent of the legislature to expressly
 4 overrule the decisions of the Alaska Supreme Court in *Dansereau v. Ulmer*, 955 P.2d 916
 5 (Alaska 1998); *Southeast Alaska Conservation Council, Inc. v. State*, 665 P.2d 544 (Alaska
 6 1983); *Thomas v. Bailey*, 611 P.2d 536 (Alaska 1980); *Anchorage v. McCabe*, 568 P.2d 986
 7 (Alaska 1977); *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), and their progeny, insofar as
 8 they relate to the award of attorney fees and costs to or against public interest litigants in
 9 future civil actions and appeals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).