

SENATE BILL NO. 226

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Introduced: 1/16/08

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to litigation brought by a vexatious litigant; amending Rules 3, 4, 12,**
2 **and 41, Alaska Rules of Civil Procedure; and providing for an effective date."**

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

4 *** Section 1.** AS 09.55 is amended by adding a new section to read:

5 **Article 10. Procedures Relating to Civil Actions Filed by a Vexatious Litigant.**

6 **Sec. 09.55.700. Management of litigation brought by a vexatious litigant.**

7 (a) In addition to other actions authorized by law or court rule, the court may take
8 actions in this section to manage litigation brought by a vexatious litigant.

9 (b) The court may order the plaintiff to provide security if the court
10 determines that the plaintiff is a vexatious litigant and that it is not reasonably
11 probable that the plaintiff will prevail in the litigation against the defendant. The court
12 shall decide the amount of security required.

13 (c) If the court orders a vexatious litigant to provide security under (b) of this
14 section, the court shall prohibit the commencement of a civil action by a vexatious

1 litigant, or, if a litigation has been commenced, shall stay the litigation until the
2 security is provided. If the litigation is stayed on or before the date a party is required
3 to file a responsive pleading, the party need not file the responsive pleading until 10
4 days after the motion requesting that the plaintiff provide security is denied or, if the
5 motion is granted, until 10 days after the court gives the parties written notice that the
6 plaintiff has complied with the court order or at another time ordered by the court.

7 (d) In addition to any other relief provided in this section, the court may, on its
8 own motion or on the motion of a party, enter a prefiling order that prohibits a
9 vexatious litigant from commencing litigation without first obtaining leave of the
10 presiding judge of the judicial district in which the litigation is proposed to be
11 commenced. A vexatious litigant who fails to comply with a prefiling order may be
12 subject to contempt proceedings.

13 (e) The presiding judge shall permit a vexatious litigant who is subject to a
14 prefiling order to commence litigation only if the presiding judge of the district where
15 the litigation is proposed to be filed decides that the litigation has merit and is not
16 proposed for the purpose of harassment or delay. The presiding judge may condition
17 the commencement of litigation by a vexatious litigant on the furnishing of security.

18 (f) The clerk of the court may not accept a complaint for filing by a vexatious
19 litigant who is subject to a prefiling order unless the vexatious litigant first obtains an
20 order from the presiding judge permitting the filing. If the clerk mistakenly files the
21 litigation without an order from the presiding judge, any party may file with the clerk
22 and serve on the parties a notice stating that the plaintiff is a vexatious litigant subject
23 to a prefiling order under (d) of this section. The filing of the notice stays the
24 litigation, the complaint is considered invalid, and the clerk of court shall dismiss the
25 action unless the plaintiff, within 10 days after the filing of the notice, obtains an order
26 from the presiding judge permitting the filing of the litigation as provided in (e) of this
27 section. If the presiding judge issues an order permitting the filing, a party need not
28 file an answer or other responsive pleading until 10 days after the party is served with
29 a copy of the order or at another time ordered by the court.

30 (g) The Alaska Court System shall establish a system to maintain a record of
31 vexatious litigants subject to a prefiling order and shall make the record of vexatious

1 litigants available to the clerks of the courts of the state.

2 (h) This section does not apply to proceedings or litigation under AS 12.72,
3 AS 12.75, AS 18.65, AS 18.66, AS 25.24, AS 47.10, or AS 47.17.

4 (i) In this section,

5 (1) "litigation" means a civil action or proceeding for legal or equitable
6 relief commenced, maintained, or pending, but does not include an appeal or petition
7 filed under the Alaska Rules of Appellate Procedure;

8 (2) "security" means an undertaking to ensure payment of a prevailing
9 party's reasonable expenses, including attorney fees and taxable costs, incurred in
10 connection with litigation instituted, commenced, or maintained, or caused to be
11 commenced or maintained by a vexatious litigant;

12 (3) "vexatious litigant" means a person acting without the assistance of
13 an attorney, who

14 (A) commenced, prosecuted, or maintained as the plaintiff at
15 least five litigations in state or federal court, other than small claims actions,
16 during the preceding seven years, that were

17 (i) finally decided adversely to the person; or

18 (ii) remained pending, without good cause, for more
19 than one year without any proceedings having been taken, or remained
20 pending for more than one year without a trial or mandatory pretrial
21 scheduling conference having been held;

22 (B) repeatedly litigated or attempted to litigate, in state or
23 federal court, against parties to a previous litigation

24 (i) the validity of a previous adverse decision; or

25 (ii) a previously decided issue of fact or law;

26 (C) repeatedly filed motions, pleadings, or other papers that the
27 court determined were frivolous or in bad faith, repeatedly conducted
28 unnecessary or frivolous discovery, or repeatedly engaged in other tactics that
29 were frivolous or solely intended to cause unnecessary delay; or

30 (D) was previously declared to be a vexatious litigant by the
31 court under (b) of this section or by a federal court of record.

1 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 INDIRECT COURT RULE AMENDMENT. AS 09.55.700, enacted by sec. 1 of this
4 Act, has the effect of changing the following Alaska Rules of Civil Procedure in the manner
5 specified:

6 (1) Rule 3, Alaska Rules of Civil Procedure, by prohibiting, under certain
7 circumstances, the commencement of an action by a vexatious litigant who is subject to a
8 prefiling order or who fails to provide court ordered security;

9 (2) Rule 4, Alaska Rules of Civil Procedure, by prohibiting the issuance of a
10 summons upon the filing of a complaint if the complaint is filed by a vexatious litigant or if a
11 complaint has been mistakenly filed and is considered invalid;

12 (3) Rule 12, Alaska Rules of Civil Procedure, by establishing that a party to an
13 action mistakenly accepted for filing by the clerk of court need not file an answer or other
14 responsive pleading under certain circumstances;

15 (4) Rule 41, Alaska Rules of Civil Procedure, by permitting the clerk of court
16 to dismiss a mistakenly filed case.

17 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. This Act applies to litigation filed on or after the effective date of
20 this Act. However, the court may consider conduct occurring before, on, or after the effective
21 date of this Act in making its determination as to whether a person is a vexatious litigant
22 under AS 09.55.700, as enacted by sec. 1 of this Act.

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

25 CONDITIONAL EFFECT OF ACT. This Act takes effect only if sec. 2 of this Act
26 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
27 of the State of Alaska.

28 * **Sec. 5.** If this Act takes effect under sec. 4 of this Act, it takes effect immediately under
29 AS 01.10.070(c).