

HB

316

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: February 21, 1996

FURTHER REFERRALS:

Date of Committee Action: 3/8/96

The FINANCE Committee considered:

HB 316

HOUSE BILL NO. 316

CIVIL LIABILITY FOR IMPROPER LAWSUIT

"An Act relating to civil liability for false claims and improper allegations or defenses in civil practice; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 316 (Fin) [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

X fiscal note(s) Court

[] fiscal note(s)

[] zero fiscal note(s)

[] zero fiscal note(s)

Table with columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include names like Richard D. Josey, Foster, Mulder, Martin, Parnell, Kohring, Grussendorf, Brown, Therriault, NAVARE.

CO- CHAIR'S SIGNATURE

Richard D. Josey

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 316 (FIN)

Revision Date: 03/08/96
Title: Civil action for frivolous litigation
Sponsor: Rep. Mulder
Requestor: House Finance

Dept. Affected: Alaska Court System
SFU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 758

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	
PERSONAL SERVICES	25.0	25.0	25.0	25.0	25.0	25.0	
TRAVEL							
CONTRACTUAL	12.5	12.5	12.5	12.5	12.5	12.5	
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS & CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	37.5	37.5	37.5	37.5	37.5	37.5	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

Fund Source		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF	37.5	37.5	37.5	37.5	37.5	37.5	
1005 GF/Program Receipts							
1007 GF/Mental Health							
Other							
TOTAL	37.5	37.5	37.5	37.5	37.5	37.5	

Estimate of any current year (FY 96) cost \$ None

Positions	
Full-Time	
Part-Time	
Temporary	

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Phone: 264-8228
Date: 03/08/96

Date: 03/08/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSHB 316 (FIN)

CSHB 316 (FIN) creates civil liability for actions which it describes as false claims and improper practice in civil cases. It does this by adding AS 09.65.190(a) - (f) to the Code of Civil Procedure.

Proposed AS 09.65.190(a), (b), (c), and (e) essentially codify Civil Rule 11, with two primary differences. First, CR 11 gives a judge the discretion to impose monetary or non-monetary sanctions for improper practice on motion by the aggrieved party. CSHB 316 (FIN), on the other hand, allows an aggrieved party to file an action for compensatory damages. The action must be part of the same action in which the injury arose if the action is the result of an act or omission by a party. However, the action must be asserted as a separate action if the injury is the result of an act or omission by a nonparty (such as an attorney). Handling the issue of frivolous practice as a separate claim in a civil suit, or as a separate civil suit entirely, is more time consuming (and thus more expensive) than handling it as a motion.

Second, by allowing a civil action for improper practice, CSHB 316 (FIN) essentially makes financial sanctions (in the form of compensatory and punitive damages) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Proposed AS 09.65.190(d) and (f) codify the common law cause of action for malicious prosecution. It modifies the common law by allowing the civil action if the defendant acted without probable cause on a claim or defense, or acted primarily for an improper purpose. Under the current standard, the defendant must have acted without probable cause on a claim or defense, and acted primarily for an improper purpose. By making it easier to prove malicious prosecution, more prevailing litigants can be expected to file such claims.

Those proposing these changes believe that they will reduce frivolous litigation, and they may be correct. However, the legal standard for proving frivolous conduct is very high, and thus the actual percentage of claims which are frivolous as a matter of law is very small, notwithstanding the average defendant's view to the contrary. Most commonly such cases are filed by prisoners or other pro se litigants. Those

Alaska Court System
Fiscal Analysis
CSHB 316 (FIN)

categories of plaintiff are generally unaware of the details of the Code of Civil Procedure, and are judgment-proof if they do violate its provisions.

While potentially beneficial for certain litigants in specific cases, we believe that this legislation will result in a net increase in the number of cases before the court system, as well as a lengthening of some existing cases. At the present time, approximately 95 percent of civil cases settle without trial, and the discovery phase of a lawsuit is spent attempting to convince the opposing party that it would be more financially advantageous to settle than to continue. Accordingly, litigants can be expected to use CSHB 316 (FIN) as a new tool to pressure the opposing party into settling a case. In FY 95, there were 16,306 civil cases filed in superior court, and 3,005 civil cases (not counting small claims) filed in district court. If only one percent of those cases resulted in a civil action for frivolous practice (either by the defendant alleging frivolous prosecution, or the plaintiff alleging frivolous defense, or both), there would be 243 new cases or new claims in existing cases. This fiscal note assumes additional judicial time, clerical costs and jury fees.

SPONSOR STATEMENT

CS for HB 316

House Bill 316 requires parties to law suits to be truthful and responsible in their pleadings. This bill discourages false statements in litigation and encourage responsibility by all parties and their attorneys. It requires more careful and focused preparation and presentation of pleadings.

This bill creates an obligation for litigants and attorneys to make reasonable efforts to insure that claims have a probability of succeeding. If the claim is knowingly or recklessly false, both the attorney and the party can be assessed damages.

HB 316 requires attorneys and their clients to research their claims to assure they are factually supported before filing a suit. This bill will help eliminate "boiler plate" pleadings in law suits and encourage responsible and focused pleadings. "Boiler plate" pleadings include everything anyone could ever imagine could have happened rather than focusing on those specific issues that actually happened. These extraneous pleadings are expensive to work through and are most often thrown out. They simply cause one party to expend significant dollars to pare the filing down to the real issues.

Many suits are often times cheaper to settle than litigate, regardless of their merit. This bill does not affect suits filed in good faith. It will, however, have a significant deterrent effect on those without merit. A system that allows deceit to be rewarded must be changed.

This bill assigns financial responsibility to those who file suits without probable cause, those who provide false information, those who want to use claims and cross claims to cloud the issues and those who want to go on unsuccessful fishing trips. This is not why we have and support a judicial system.

A jury will make the determination whether the information presented was intentional and material. If honest errors are made, there will be no problem. I believe that the jury can make these decisions and that the deterrent effect of this bill will apply to those cases that are inappropriate without inhibiting the filings of cases believed to have merit.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 316 (JUD)

Revision Date: 03/07/96
Title: Civil action for frivolous litigation
Sponsor: Rep. Mulder
Requestor: House Judiciary

Dept. Affected: Alaska Court System
BRU: Trial Courts
Component: _____
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	20.0	20.0	20.0	20.0	20.0	20.0
TRAVEL						
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	30.0	30.0	30.0	30.0	30.0	30.0

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	30.0	30.0	30.0	30.0	30.0	30.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	30.0	30.0	30.0	30.0	30.0	30.0

Estimate of any current year (FY 96) cost: \$ None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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Prepared by: C. S. Christensen III, Staff Counsel
Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director
Agency: Alaska Court System

Phone: 254-8228
Date: 03/07/96

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CSHB 316 (JUD)

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Fiscal Analysis
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Adopted
Am -
pp 2 + 3

CS FOR HOUSE BILL NO. 316(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for false claims and improper allegations or
2 defenses in civil practice; amending Rules 13(e) and 82(b), Alaska Rules of Civil
3 Procedure; and providing for an effective date."

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

5 * Section 1. AS 09.65 is amended by adding a new section to read:

6 Sec. 09.65.190. CIVIL LIABILITY FOR FALSE CLAIMS AND IMPROPER
7 PRACTICE. (a) A person may not

8 (1) knowingly or recklessly file, or cause to be filed, a civil complaint,
9 answer, or other civil pleading that contains false allegations or material misstatements
10 of fact;

11 (2) sign a civil pleading before making reasonable inquiry and
12 determining that, to the best of the signer's knowledge, information, and belief, each
13 claim, defense, and allegation contained in the pleading is well grounded in fact and
14 is warranted by existing law or a good faith argument for the extension, modification,

1 or reversal of existing law; or

2 (3) interpose, in a civil action, a claim, defense, or allegation for an
3 improper purpose, including to harass or to cause unnecessary delay or needless
4 increase in the cost of litigation.

5 (b) If the trier of fact determines that a party to a civil action has intentionally
6 made a false statement of a material fact in connection with the prosecution or defense
7 of a civil action, the court shall enter judgment against the party making the false
8 statement on the issue to which the false statement relates. If the civil action involves
9 multiple claims and the false statement does not apply to all claims, the judgment
10 required under this section shall apply only to those claims to which the false
11 statement relates.

12 (c) A person who is injured by a violation of (a) of this section may bring an
13 action for compensatory ^{And Punitive} damages. However, if the injury is the result of an act or
14 omission of a

15 (1) party, then the action shall be asserted in the same action in which
16 the injury arose; and

17 (2) nonparty, then the action shall be asserted in a separate action
18 commenced after entry of final judgment in the action in which the injury arose.

19 (d) A person who, on the person's own behalf or as a representative of a party,
20 takes part in the initiation, defense, continuation, or procurement of a civil action
21 against another is subject to civil liability for compensatory and punitive damages if
22 the person acts

23 (1) without probable cause on a claim or defense; or

24 (2) primarily for a purpose other than that of securing the proper
25 adjudication of a claim or defense involved in the civil action.

26 (e) In an action to recover damages under (c) of this section, a person is not
27 required to be the prevailing party in the civil action in which the violation of (a) of
28 this section occurred.

29 (f) A person may not bring a civil action to recover damages under (d) of this
30 section unless final judgment has been entered in the civil action described in (d) of
31 this section. For purposes of this subsection, a person is not required to be the

1 prevailing party in the civil action in which the violation of (d) of this section
 2 occurred.

3 (g) If a person ~~brings a judgment for the recovery of damages allowed~~ under
 4 (c) or (d) of this section, the court shall ~~also~~ award actual reasonable attorney fees to
 5 the prevailing party, *Regardless of whether the prevailing*
 6 *party is the plaintiff or defendant.*

7 * Sec. 2. AS 09.65.190(c)(1), as enacted by sec. 1 of this Act, has the effect of amending
 8 Rule 13(e), Alaska Rules of Civil Procedure, by requiring a claim under AS 09.65.190(a) that
 9 is acquired after service of a pleading to be asserted in the same action.

10 * Sec. 3. AS 09.65.190(g), enacted in sec. 1 of this Act, has the effect of amending Rule
 11 82(b), Alaska Rules of Civil Procedure, by allowing the award of actual reasonable attorney
 12 fees in a civil action for false claims or improper civil practice.

13 * Sec. 4. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
 14 application of a provision of this Act to any person or circumstance is held invalid, the
 15 remainder of this Act and the application to other persons shall not be affected.

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