

**HB**

**316**

9-LS1013K -  
Ford  
2/16/96

*Rep. Porter*

**CS FOR HOUSE BILL NO. 316(JUD)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY 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 37, 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 or misleading allegations or material  
10 misstatements 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 court determines that a party to a civil action has intentionally made  
6 a false statement of a material fact in connection with the prosecution or defense of  
7 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 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) An action to recover damages under (c) of this section may be pled by a  
27 party to a civil action but may not be considered by the jury unless the person bringing  
28 the action or defense is the prevailing party on the claim in question.

29 (f) A person may not bring a civil action to recover damages under (d) of this  
30 section unless the person is the prevailing party and final judgment has been entered  
31 in the civil action described in (d) of this section.

1 \* Sec. 2. AS 09.65.190(a), as enacted by sec. 1 of this Act, has the effect of amending  
2 Rule 13(e), Alaska Rules of Civil Procedure, by giving a person injured by a violation of  
3 AS 09.65.190(a) the right to file a claim for compensatory damages after serving a pleading.

4 \* Sec. 3. AS 09.65.190(b), added by sec. 1 of this Act, has the effect of amending Rule  
5 37, Alaska Rules of Civil Procedure, by requiring the court to enter judgment against a party  
6 making an intentional material false statement.

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

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

9-LS1013\G

Ford

2/9/96

## CS FOR HOUSE BILL NO. 316(JUD)

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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 Rule 37, Alaska Rules of Civil Procedure; and  
3 providing for an effective date."

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

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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 or misleading allegations or material  
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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) A person who is injured by a violation of (a) of this section may bring an  
6 action for compensatory and punitive damages. However, if the injury is the result of  
7 an act or omission of a

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

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

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

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

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

19 (d) A person may not bring a civil action to recover damages under (c) of this  
20 section unless the person is the prevailing party and final judgment has been entered  
21 in the civil action described in (c) of this section.

22 (e) A party to a civil action who intentionally makes a material, false statement  
23 of fact in connection with the prosecution or defense of a civil action shall have  
24 liability entered against them on the claim in which the statement was made.

25 (f) A party to a civil action who knowingly or recklessly files a civil  
26 complaint, answer, or other civil pleading that contains false or misleading allegations  
27 or material misstatements of fact or interposes a claim, defense, or allegation for an  
28 improper purpose, including to harass or to cause unnecessary delay or needless  
29 increase in the cost of litigation, is subject to civil liability for compensatory damages.

30 (g) An action to recover damages under (b) and (c) of this section may be pled  
31 by a party to a civil action but may not be considered by the jury unless the person

1 bringing the action or defense is the prevailing party on the claim in question.

2 \* Sec. 2. AS 09.65.190(e), added by sec. 1 of this Act, has the effect of amending Rule  
3 37, Alaska Rules of Civil Procedure, by requiring the court to enter judgment against a party  
4 making an intentional material false statement.

5 \* Sec. 3. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the  
6 application of a provision of this Act to any person or circumstance is held invalid, the  
7 remainder of this Act and the application to other persons shall not be affected.

8 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES



CHAIR,  
LEGISLATIVE COUNCIL

CO-CHAIR,  
HOUSE SPECIAL COMMITTEE  
ON MILITARY AND  
VETERANS AFFAIRS

CHAIR,  
MILITARY AFFAIRS FOR  
ANCHORAGE CAUCUS

**REPRESENTATIVE ELDON MULDER**  
DISTRICT 23 MULDOON-Ft. RICHARDSON

## 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.

ALASKA ACADEMY OF TRIAL LAWYERS

Analysis of HB 316/SB 184  
Civil Liability for False Claims and Improper Practice

HB 316/SB 184 presumably seeks to discourage frivolous or malicious litigation. The goal is salutary, but the bill is overly broad and will, itself, have the effect of fostering unnecessary litigation. The court already has a mechanism (Rule 11) to impose sanctions on litigants and attorneys who file pleadings that are not both (1) well grounded in fact, and (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Section (a)(2) of the bill mirrors the existing language in Rule 11, and does not appear to add anything.

There are several problems with the remainder of the bill. First, Section (a)(1) prohibits a person from "knowingly or recklessly" filing a pleading with false or misleading allegations. The words "knowingly and recklessly" are misplaced. Everyone knowingly "files" pleadings. It is hard to imagine how someone could accidentally file a pleading. Presumably, the legislation's intent is to prohibit filing a pleading which "knowingly or recklessly" makes false or misleading allegations. As written, the section makes no sense.

Even if the language in Section (a)(2) were corrected, it is unworkably overbroad. In any lawsuit, either the plaintiff's or defendant's pleadings contain allegations or defenses which, ultimately, are proved to be untrue. Only one side wins a case. This bill will simply invite "follow-up" litigation, every time a case has been concluded, in which the successful party will allege that the unsuccessful party knowingly or recklessly asserted their position. Taken to its logical conclusion, we could then have a second follow-up case in which the prevailing party in the first follow-up case sues the loser, alleging that he or she knowingly or recklessly filed false pleadings in that action. And, on and on.

Section (c) attempts to rewrite the law on the civil tort of malicious prosecution. Currently a litigant in a malicious prosecution claims has to prove: (1) that the claim was asserted without probable case; and (2) that it was asserted for an improper purpose. The legislation seeks to break these two elements into the disjunctive, rather than the conjunctive, and permit a civil claim for wrongful prosecution on the basis of either (1) or (2), but does not require both. Why? Easing the requirements for a malicious prosecution claim presumably is intended to deter and scare off potential litigants. A lot of good claims likely will be deterred along with some bad ones, however.

The legislature should be careful about enacting legislation that closes the courthouse doors to litigants. To be sure, most defendants believe that they are wrongfully sued and, indeed, many are. The system already has at least three mechanisms in place to deter wrongful litigation: (1) the awarding of attorney's fees to the prevailing party; (2) the sanction provisions of the existing Rule 11; and (3) the existing civil cause of action for malicious prosecution. It is very doubtful that these existing tools are insufficient. The effect of this bill is to hold a gun to the head of litigants and their counsel; if they fail to prevail they face the likelihood of being sued in a second action for having sought relief in the first. There is questionable wisdom in fostering "follow-up" litigation in which the only dispute is how well someone behaved in another lawsuit. We should be trying to reduce, not increase, the workload of the courts.

HOUSE COMMITTEE REPORT

Referred: April 21, 1995

FURTHER REFERRALS:

Committee Action: 2/19/96

LEGISLATIVE Committee considered:

HB 316

BILL NO. 316

CIVIL LIABILITY FOR IMPROPER LAWSUIT

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

ends it be replaced

following committee substitute

CSHB 316 (JUD)

the same title

a new title

Additional referral to \_\_\_\_\_ Committee

Requested amendment(s)

Comments: \_\_\_\_\_ Letter of Intent

APPROVES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

\_\_\_\_\_ fiscal note(s)

fiscal note(s) \_\_\_\_\_

fiscal note(s) Courts

zero fiscal note(s) \_\_\_\_\_

OPINIONS WITH RECOMMENDATIONS

	DP	DNP	NR	AM
<u>James Roster</u>	<input checked="" type="checkbox"/>			
<u>[Signature]</u>	<input checked="" type="checkbox"/>			
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<u>[Signature]</u>	<input checked="" type="checkbox"/>			

[Signature]

*Robert A. Mintz*

**CARR  
GOTTSTEIN  
PROPERTIES**

*550 W. 7th Avenue, Suite 1540 Anchorage, AK 99501*  
*telephone (907) 278-2277 facsimile (907) 272-3695*



Official Business

# Alaska State Legislature

## HOUSE OF REPRESENTATIVES

State Capitol  
Juneau, AK 99801-1182

To: Legislative Legal

From: Rep. Porten, CHAIR  
House Jud. Committee

Date: January 6, 1996

Please incorporate the attached two (2)  
page memo to HB 316. Once incorporated,  
please refer HB 316 as CS HB 316 (JUD).

Thank you

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To: Tom

copy of bills Jana  
you Dani

S 184 (L&C)  
(L&C)  
(Jud)

9-LS1013C

expands to other party

**HOUSE BILL NO. 316**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVE MULDER**

Introduced: 4/21/95

Referred: Judiciary

**A BILL**

**FOR AN ACT ENTITLED**

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2 defenses in civil practice; and providing for an effective date."

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

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

5 Sec. 09.65.190. **CIVIL LIABILITY FOR FALSE CLAIMS AND IMPROPER**

6 **PRACTICE.** (a) A person may not

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

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

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

4 (b) A person who is injured by a violation of (a) of this section may bring an  
5 action for compensatory and punitive damages.

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

10 (1) without probable cause, on a claim or defense, or and (e.l.)

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

13 (d) A person may not bring a civil action to recover damages under (c) of this  
14 section unless the person is the prevailing party and final judgment has been entered  
15 in the civil action described in (c) of this section.

16 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

MEMO

**HOUSE BILL NO. 316**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - FIRST SESSION**

**A BILL**

**FOR AN ACT ENTITLED**

RAM  
11/8/96  
revised

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

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

(b) A person who is injured by a violation of (a) of this section may bring an action for compensatory and punitive damages:

(1) if the injury is perpetrated by a party, then the claim for redress shall be asserted in the same action in which the injury arose, and

(2) if the injury is perpetrated by a non-party, then the claim for redress shall be asserted in a separate action commenced after entry of final judgment in the action in which the injury arose.

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

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

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

(d) A person may not bring a civil action to recover damages under (c) of this section unless the person is the prevailing party and final judgment has been entered in the civil action described in (c) of this section

(e) "any party to a civil action who intentionally makes a material, false statement of fact in connection with the prosecution or defense of a civil action shall have liability entered against them on the claim in which the statement was made."

(f) "any party to a civil action who knowingly or recklessly files a civil complaint, answer, or other civil pleading that contains false or misleading allegations or material misstatements of fact or interposes a claim, defense, or allegation for an improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation is subject to civil liability for compensatory damages.

(g) "the action to recover damages under sections (e) and (b) may be pled by any party to a civil action but shall not be considered by the jury unless the person bringing the action or defense is the prevailing party on the claim in question."

\* Section 2. This Act takes effect immediately under AS 01.10.070(c).

\* Section 3. The provisions of this Act are severable and the invalidity of any one section or sub-section or portion thereof shall not affect the validity of the remainder.

9-LS1013G  
Ford  
2/9/96

*Tom -  
your copy  
Thanks  
Danni*

*Rep. Porter  
w/memo*

**CS FOR HOUSE BILL NO. 316(JUD)**

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NINETEENTH LEGISLATURE - SECOND SESSION**

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20 section unless the person is the prevailing party and final judgment has been entered  
21 in the civil action described in (c) of this section.

22 (e) A party to a civil action who intentionally makes a material, false statement  
23 of fact in connection with the prosecution or defense of a civil action shall have  
24 liability entered against them on the claim in which the statement was made.

25 (f) A party to a civil action who knowingly or recklessly files a civil  
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31 by a party to a civil action but may not be considered by the jury unless the person

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- 3 37, Alaska Rules of Civil Procedure, by requiring the court to enter judgment against a party
- 4 making an intentional material false statement.
- 5 \* Sec. 3. SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the
- 6 application of a provision of this Act to any person or circumstance is held invalid, the
- 7 remainder of this Act and the application to other persons shall not be affected.
- 8 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).