

**HB**

**42**

**HFIN**

**FILE**

(11)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: March 20, 2000

FURTHER REFERRALS:

Date of Committee Action: 3/21/00

The FINANCE Committee considered:

SSHB 42

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 42

CIVIL LIABILITY FOR IMPROPER LITIGATION

"An Act relating to civil liability for certain false or improper allegations in a civil pleading or for certain improper acts relating to a civil action; amending Rule 82(b), Alaska Rules of Civil Procedure; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 42 (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) \_\_\_\_\_

fiscal note(s) LAW  fiscal note(s) \_\_\_\_\_  
Alaska Court System

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

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Mulder	<input checked="" type="checkbox"/>			
	Williams			<input checked="" type="checkbox"/>	
	Bunde	<input checked="" type="checkbox"/>			
	Ausherman			<input checked="" type="checkbox"/>	
	J. Davis			<input checked="" type="checkbox"/>	
	Grossendort			<input checked="" type="checkbox"/>	
	Moses			<input checked="" type="checkbox"/>	
	G. Davis			<input checked="" type="checkbox"/>	
	Foster	<input checked="" type="checkbox"/>			
	Phillipps	<input checked="" type="checkbox"/>			

(4)

(6)

CO CHAIR'S SIGNATURE

Mulder

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (FIN)

3-20-00 work draft

Revision Date/Time (Note if correction) 3/20/00 Work Draft Dept. Affected Alaska Court System  
 Title False Claims & Improper Practice in Civil BRU 769  
Cases Component Trial Courts  
 Sponsor Rep. Mulder  
 Requester House Finance Component No. \_\_\_\_\_

**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	47.0	47.0	47.0	47.0	47.0	47.0
Travel						
Contractual	17.7	17.7	17.7	17.7	17.7	17.7
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>

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	64.7	64.7	64.7	64.7	64.7	64.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>	<b>64.7</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time	2	2	2	2	2	2
Temporary	2	2	2	2	2	2

**ANALYSIS:** (Attach a separate page if necessary)

See attached analysis

Prepared by: Doug Wooliver  
 Division: Alaska Court System  
 Approved by: Stephanie Cole, Administrative Director  
 Agency: Alaska Court System

Phone: 463-4756  
 Date/Time: 3/20/00 5:00 PM  
 Date: 3/20/00

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Alaska Court System  
Fiscal Analysis  
CSSSHB 42 (3/20/00 Work Draft)

Draft CSSSHB 42 creates civil liability for actions that it describes as false claims and improper practice in civil cases. Section 1 of the bill essentially codifies Civil Rule 11, with three primary differences. First, CR 11 allows a judge to impose sanctions in a case in which improper practice took place, whereas CSSSHB 42 would authorize the aggrieved party to file a separate case before a separate judge, to be heard subsequent to the initial case. Any claim that the second case involved improper practice would result in a third case, and so on.

Second, by allowing a civil action for improper practice, CSSSHB 42 essentially makes financial sanctions (in the form of compensatory and/or punitive damage) 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.

Third, if a party makes a false statement of a material fact the trier of fact must enter judgment against that party on the issue to which the false statement relates. This differs from CR 11, which gives the judge discretion to dismiss a case or impose lesser sanctions if appropriate under the circumstances. As noted above, the federal experience suggests that mandatory sanctions actually increase caseloads.

While potentially beneficial for certain litigants, we believe that this legislation will result in a net increase in the number of cases before the courts. Had CSSSHB 42 been in effect in FY 99 it would have applied to over 8,000 civil cases in superior court, and roughly 15,000 civil cases in district court. If only 2.5 percent of those cases had resulted in a civil action for frivolous practice (either by the defendant or the plaintiff), there would have been roughly 575 new cases filed. If only 2.5 percent of those had resulted in a trial, there would have been 15 new trials. This note provides for the judicial time, clerical costs, and jury fees necessary to cover those additional trials.

This fiscal note does not take into account the additional motion practice that will occur in those new cases that are filed but settle prior to trial. It also does not reflect the additional time required to deal with motions filed in the underlying case that relate to having the trier of fact find that one party has made a false statement of material fact. Attorneys can be expected to be aggressive in their use of CSSSHB 42 as a new tool to pressure the opposing party into settling a case on their terms. More filings and more motion practice in existing cases will result in additional judicial time, as well as increased clerical costs.

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (JUD)

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

**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						
<b>TOTAL OPERATING</b>	<b>149.7</b>	<b>143.2</b>	<b>143.2</b>	<b>143.2</b>	<b>143.2</b>	<b>143.2</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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
<b>TOTAL</b>	<b>149.7</b>	<b>143.2</b>	<b>143.2</b>	<b>143.2</b>	<b>143.2</b>	<b>143.2</b>

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

Prepared by: <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>3/20/00, 5:07 PM</u>
Approved by <u>Commissioner</u> <u>Bruce M. Bolelho, Attorney General</u>	Date <u>3/20/00</u>
Agency <u>Department of Law</u>	

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## FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (JUD)

### 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 CSSSHB 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

FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (JUD)

ANALYSIS CONTINUATION

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.

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**THE ALLIANCE**

... for responsible development of Alaska's Oil, Gas & Mineral Resources

**Alaska Support Industry Alliance  
Support Testimony to House Finance Committee  
House Bill 42 – Frivolous Lawsuit Prevention Act**

March 21, 2000

By Karen Cowart, General Manager

My name is Karen Cowart, general manager of the Alaska Support Industry Alliance. I appreciate the opportunity to provide testimony before this committee in support of House Bill 42.

For two decades, The Alaska Support Industry Alliance (The Alliance) has served as the statewide non-profit trade organization for businesses which provide products and services to the oil and gas industry. Our 350-plus members employ over 29,000 people in Alaska.....25,000 are permanent residents of the state.

The Alaska Support Industry Alliance appreciates legislative efforts to address the escalating misuse of legal actions against responsible development in Alaska. If Alaska is to continue encouraging resource development, then the state must have an environment that is at least equitable and fair to investors, and certainly within our courts of law. We understand that House Bill 42 would require litigating parties to research their claims to assure accuracy, or pay the consequence of suing without just cause. The Alliance supports such measures.

Alaska has suffered significant economic losses as a few individuals successfully circumvent public processes through litigation. It seems that nearly every proposal or plan to develop the state's natural resources or to enhance its

infrastructure is met with a lawsuit, regardless of whether there are reasonable grounds to sue. We believe many such legal actions only serve to delay developments that are important to Alaskans' quality of life and our state's economic well being.

House Bill 42 creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to ensure their claims have a factual bearing before filing a lawsuit. The bill would also make those that filed a frivolous suit responsible for assessed damages. Further, the bill would assign financial liability to those who tried to cloud the issue with false or misleading claims, in hopes of finding a party willing to settle rather than spend dollars to litigate.

We believe each party in a lawsuit has a responsibility to present factual and legitimate information. A system that allows deceit to be awarded is just not right and needs to be changed.

Thank you for the opportunity to provide the support industry's view on this issue.

*adopted as amended  
2 amended pg 2*

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 42(FIN)**

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

**TWENTY-FIRST LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MULDER, Rokeberg**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to civil liability for certain false or improper allegations in a  
2 civil pleading or for certain improper acts relating to a civil action; amending  
3 Rules 79 and 82(b), Alaska Rules of Civil Procedure."

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 practice. (a)**

7 A person may not

8 (1) sign a civil complaint, answer, or other civil pleading that contains  
9 false allegations that are material to the claims asserted in the civil action with the  
10 intention of asserting allegations, claims, or defenses that are false;

11 (2) initiate or sign a civil pleading before making reasonable inquiry  
12 and forming a reasonable belief

13 (A) in the existence of the facts upon which the claim or  
14 defense is based; and

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(B) that, under the facts described in (A) of this paragraph, the claim or defense is valid under the applicable law; or

(3) participate as a party or as a representative of a party in the continuation of a claim or defense after the person discovers that the claim or defense is not

(A) supported by a reasonable basis in fact; or

(B) valid under applicable law.

(b) If the trier of fact determines that a party to a civil action intentionally made a false statement of a material fact in connection with the prosecution or defense of a civil action, the court shall dismiss the claim or defense to which the false statement relates. If the civil action involves multiple claims or defenses and the false statement does not apply to all claims or defenses, the dismissal required under this subsection shall apply only to those claims or defenses to which the false statement directly relates.

(c) The dismissal required by (b) of this section does not apply to a civil action in which the court determines that dismissal would be unfair to the interests of another party not involved in the wrongdoing. If the court determines that dismissal as to a claim or defense would be unfair to another party not involved in the wrongdoing, the court shall enter an order awarding monetary damages against the party making the false statement in an amount sufficient to fairly compensate the injured party for damages incurred and to deter others from similar conduct.

(d) A party who is injured by a violation of

(1) paragraph (a)(1) of this section may bring an action for compensatory and punitive damages against the person who signed the civil pleading;

(2) paragraph (a)(2) of this section may bring an action for recovery of compensatory damages against the person who wrongfully initiated or signed the pleading;

(3) paragraph (a)(3) of this section may bring an action for compensatory damages against the person who wrongfully participates in the continuation of a claim or defense.

(e) If a party brings an action under (d) of this section, the court shall award

1 actual reasonable attorney fees and actual reasonable costs to the prevailing party.

2 (f) A person may not bring a civil action to recover damages under (d) of this  
3 section unless

4 (1) a notice of the specific conduct alleged to violate (a) of this section,  
5 with any supporting evidence, was served on the opposing party as required under the  
6 Alaska Rules of Civil Procedure, but not filed with the court;

7 (2) the challenged conduct was not appropriately corrected within 21  
8 days after the notice described in (1) of this subsection was served;

9 (3) the person prevailed on the claim or defense that was the basis for  
10 the notice described under (1) of this subsection; and

11 (4) final judgment has been entered in the civil action described in (a)  
12 of this section.

13 (g) Nothing contained in this section shall be construed to prohibit a good faith  
14 argument for the extension, modification, or reversal of existing law.

15 (h) This section does not apply to an action

16 (1) brought by a person incarcerated by the state;

17 (2) involving divorce or dissolution;

18 (3) involving adoption, custody, support, or visitation of a child;

19 (4) filed as a small claims action; or

20 (5) involving children in need of aid under AS 47.10.

21 (i) In this section, "civil pleading" includes motions and affidavits by a party  
22 to the civil action.

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

25 **INDIRECT COURT RULE AMENDMENT.** AS 09.65.190(e), enacted in sec. 1 of this  
26 Act, has the effect of amending Rule 79, Alaska Rules of Civil Procedure, by allowing the  
27 award of actual reasonable costs in certain civil actions.

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

30 **INDIRECT COURT RULE AMENDMENT.** AS 09.65.190(e), enacted in sec. 1 of this  
31 Act, has the effect of amending Rule 82(b), Alaska Rules of Civil Procedure, by allowing the

1 award of actual reasonable attorney fees in certain civil actions.

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

4 APPLICABILITY. This Act applies to an act or omission described under  
5 AS 09.65.190, added by sec. 1 of this Act, that occurs on or after the effective date of this  
6 Act.

7 \* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section  
8 to read:

9 SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application  
10 of a provision of this Act to any person or circumstance is held invalid, the remainder of this  
11 Act and the application to other persons shall not be affected.

## Supporters of HB42... Frivolous Lawsuit Bill

### Associations

AK Support Industry Alliance  
National Federation of Independent Business  
Nat Assoc of Independent Insurers  
Alaska Restaurant & Beverage Association  
Alaska State Chamber of Commerce  
Alaska Visitors Association  
Alaska Hospitality Alliance  
Southeast Conference  
Alaska Hotel & Motel Association  
Alaska School Activities Association

### Individuals

Robert Mintz	
Frank Rose	Alaska Lodging Mgt.
Justin Ripley	Alaska Travel Network
Thomas Ely	Sockeye Cycle
Kirk Hoessle	Alaska Wildland Adventures
Kelly Bay	Wrangell Mountain Air
Robert Dindinger	Alaska Travel Adventures
Bob Didier	Silverbow Construction
James Ingraham	Interior Medical Supply
Ronald Aksamit	M&A Consulting Engineers
Heidi Atkinson	
Erika Weld	Dalton Highway Adventures
Alice Orlich	Wiseman Museum
Lee Kenaston	Arctic Circle Trading Post
Kathy Hedges	
Gregg MacDonald	Aurora Drilling
10 Signatures	Jan's Distributing
Esther Alsworth	Alaskan Aircraft Engines



**NFIB Alaska**

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**National Federation of Independent Business**

**Statement of Support**

**of HB 42**

**The Frivolous Lawsuit Protection Act**

**February 18, 2000**

The Alaska Chapter of the National Federation of Independent Business has 3,000 members, making it the largest small-business advocacy group in the state.

The legislative agenda of NFIB is determined by ballot. The ballot is our poll of members on a series of state legislative and regulatory issues.

NFIB/Alaska ballot results have shown very strong support for the passage of legislation requiring parties to a lawsuit and their attorneys to be truthful and responsible in their pleadings. Following are the ballot results on this issue:

**Should the Alaska Legislature enact legislation to allow attorneys, as well as their clients, to be assessed damages for knowingly or recklessly filing false claims?**

**96 % YES**

**2 % NO**

**2 % Undecided**

Businesses continue to be concerned about the cost of liability insurance, being sued and defending themselves in court, and the fairness of the civil justice system. NFIB members believe that if a person is found to have intentionally made a false statement of a material fact, then the injured party should be able to bring an action for damages. If honest errors are made, there should be no sanctions.

NFIB/Alaska urges support for HB 42.

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

---

**National Federation of Independent Business**

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**Small Business Works**  
FOR ALASKA  
...and NFIB works for small business.

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*Lynden Logistics*  
**Howard** Thies  
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*Charter College*  
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*Lynden, Inc.*  
**Lowell** Humphrey  
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**Jim** Vahlhoven  
*Vahlhoven Oilfield System Services*  
**Bill** Webb  
*Business Consultant*

**GENERAL MANAGER**

Karen Cowart

**THE ALLIANCE**

... for responsible development of Alaska's Oil, Gas &amp; Mineral Resources

February 28, 2000

**Representative Eldon Mulder**  
Alaska State Legislature  
Juneau, AK 99801-1182

**RE: Support for Frivolous Lawsuit Prevention Act – House Bill 42**

Dear Representative Mulder:

The Alaska Support Industry Alliance appreciates legislative efforts to address the escalating misuse of legal actions against responsible development in Alaska. If Alaska is to continue encouraging resource development, then the state must have an environment that is at least equitable and fair to investors, and certainly within our courts of law. We understand that House Bill 42 would require litigating parties to research their claims to assure accuracy, or pay the consequence of swing without just cause. The Alliance supports such measures.

Alaska has suffered significant economic losses as a few individuals successfully circumvent public processes through litigation. It seems that nearly every proposal or plan to develop the state's natural resources or to enhance its infrastructure is met with a lawsuit, regardless of whether there are reasonable grounds to sue. We believe many such legal actions only to serve to delay developments that are important to Alaskans' quality of life and our state's economic well being.

For two decades, The Alaska Support Industry Alliance (The Alliance) has served as the statewide non-profit trade organizations for businesses which provide products and services to the oil and gas industry. Our 350-plus members employ over 29,000 people in Alaska.....25,000 are permanent residents of the state.

Thank you for the opportunity to provide the support industry's view on this issue.

Sincerely,

**Karen Cowart**  
General Manager



# ALASKA VISITORS ASSOCIATION

2525 C Street, Suite 400 • Anchorage, Alaska 99503

Phone: (907) 561-5733 • Fax: (907) 561-5727

E-mail: avanet.org • www.visitalaska.org

1999-2000

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Executive Director

March 2, 2000

Representative Eldon Mulder  
House Finance Committee Co-Chair  
State Capitol Room 507  
Juneau, AK 99801

Dear Representative Mulder,

I am writing to express the Alaska Visitors Association's support for two bills in the Legislature.

AVA recently voted to support HB 339, which would expand the abilities of the Commercial Fishing and Agriculture Bank to allow loans to small tourism businesses. This new loan option would greatly benefit small tourism businesses and start-up enterprises that might otherwise have difficulty obtaining a regular commercial loan.

AVA also supports House Bill 42, which would discourage frivolous lawsuits by assigning financial penalties for false suits. Many small Alaskan tourism businesses cannot afford the legal fees incurred in such lawsuits, and in some cases the expense of fighting unmerited claims can put an operator out of business. Tourism is the fastest growing industry in the state and the second largest private-sector employer with more and more small Alaskan businesses starting up each year. In order to continue this small business growth, owners need a fighting chance to get their businesses off the ground without the hassle of frivolous litigation.

AVA is a private, non-profit statewide trade association representing all facets of the tourism industry. With more than 500 member businesses, AVA is the largest, statewide visitor industry association representing the full spectrum of visitor industry business interests from small localized rafting operators and wilderness guides to large air and cruise lines. Since 90% of our members are small businesses with fewer than 10 employees, we see that a majority of them would benefit from protection against frivolous lawsuits and increased access to small business loans.

Sincerely,

Anne Adasiak-Andrew  
Acting Executive Director

cc: Representative Hudson  
Representative Austerman  
Representative Rokeberg



March 13, 2000

The Honorable Eldon Mulder  
State Capital  
Juneau, Alaska 99801

Dear Representative Mulder:

On behalf of the Alaska's Hospitality Industry, we would like to convey our support of House Bill No.42, Civil liability for improper litigation. As an industry trade association our goal is to develop and sustain a business environment in the state which allows the hospitality industry business the best opportunity to flourish. This type of legislation will allow the hospitality industry members protection against false or improper allegations by requiring the parties and their attorneys to be truthful and responsible in their pleadings.

We are pleased that you have taken the initiative to progress this legislation and will be happy to mobilize our membership in support of it. Please let us know what we can do.

Best regards,

A handwritten signature in cursive script that reads "Karen Rogina".

Karen Rogina  
Executive Vice President.

*UNITED IN A COMMON GOAL TO MAKE ALASKA THE MOST HOSPITABLE PLACE ON EARTH!*

R



**National Association  
of Independent Insurers**

P. O. Box 24358, Federal Way, WA 98093-1358

MELVIN N. SORENSEN  
ASSISTANT VICE PRESIDENT,  
NORTHWEST REGIONAL OFFICE

February 24, 2000

The Honorable Eldon Mulder, Member  
Alaska House of Representatives  
Legislative Building  
Juneau, AK 98011

RE: HB 42

Dear Rep. Mulder:

The National Association of Independent Insurers is a trade association of over 650 insurers who write property and casualty insurance coverage throughout the United States. Many NAII member companies are authorized to do business in the state of Oregon, and are active in the state. On behalf of the NAII and its member companies, I would like to take this opportunity to express our support for HB 42.

It should go without saying that lawyers who appear before the courts should be counted on to tell the truth. As officers of the court, lawyers take an oath that directly bears on truthfulness and the administration of justice. Lawyers who intentionally mislead the court should bear significant consequences. We believe that HB 42 goes to that proposition, and we support it for that reason.

Sincerely,

  
Melvin N. Sorensen

MNS

# SOUTHEAST CONFERENCE

*Working for strong economies, healthy communities, and a quality environment in Southeast Alaska*

February 20, 2000

Representative Eldon Mulder  
Room 507  
State Capitol Bldg  
Juneau, AK 99801-1182

Dear Representative Mulder:

The Southeast Conference appreciates your efforts to reduce the financial and emotional impact of defending frivolous legal claims. The Southeast Conference supports the direction and intent of SSHB 42 "An Act relating to civil liability for certain false or improper allegations in a civil pleading or for certain improper acts relating to a civil action; amending Rule 82(b), Alaska Rules of Civil Procedure; and providing for and effective date."

Reduction of these kinds of claims is a step in the right direction and provides additional security for the citizens and businesses of Alaska. Whenever any element of fraud is involved it cost all citizens.


Thank you for introducing HB 42.

Sincerely,



Frank Homan  
Executive Director



TO: Members of Alaska Legislature  
FROM: Gary Matthews   
DATE: January 25, 1999  
RE: Letter from Paul R. Anderson

You may have recently received a letter from Paul Anderson in reference to a suit brought against ASAA by seven students from Service High School in Anchorage. Mr. Anderson has chosen to solicit your support in the resolution of this litigation.

ASAA has a long standing rule that limits the number of participants on each school's roster at state "team" championships in football, basketball, hockey, volleyball and softball. The purpose is to help maintain a level playing field. For football, the roster is limited to forty players.

I have no idea why the football coaches at Service High School in Anchorage did not notify the players of this rule at the beginning of the season. Parents and students assumed that there was no player limit for the championships. When I reminded the school and the coaches of the rule, a group of seven students filed suit against ASAA (naming each individual board member and the student representative), "seeking injunctive relief, compensatory damages, including emotion distress, prejudice and post-judgment interest, costs and attorney's fees, and such other and further relief as the court deems just and proper." The judge denied the temporary restraining order and injunction, stating that the coaches should have told the students of the rule at the beginning of the season.

So far, ASAA's attorney fees have exceeded \$4000. Because ASAA depends on dues from member schools and corporate donations, we try to minimize our expenses. As is a common practice in litigation, we asked our counsel to attempt to recover costs after a final judgment is reached. As predicted, this has met with stiff resistance from the plaintiffs.

Please be assured that ASAA is not out to punish students, nor are we using our financial resources in a frivolous manner. It was simply a matter of either enforcing our rule and therefore accepting the possibility of litigation, or of letting the team unfairly exceed the roster limit. Never once did Service High School request that ASAA increase the football roster limit.

We consistently strive to be sensitive to the needs of Alaska's high school students while continuing to promote and regulate interscholastic activities in a way that provides a level playing field for all 191 member schools throughout the state.

Please feel free to call me at your convenience if I may provide a further explanation of this unfortunate matter.

Respectfully yours.

**Alaska Support Industry  
ALLIANCE**

4220 'B' Street, Suite 200  
Anchorage, AK 99503  
Phone 907.563.2226  
Fax 907.561.8870  
www.akalliance.org

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**GENERAL MANAGER**

**Karen Cowart**



**THE ALLIANCE**

... for responsible development of Alaska's Oil, Gas & Mineral Resources

**Alaska Support Industry Alliance  
Support Testimony for House Bill 42 – Frivolous Lawsuit  
Prevention Act**

March 17, 2000

By Karen Cowart, General Manager

My name is Karen Cowart, general manager of the Alaska Support Industry Alliance. I appreciate the opportunity to testify before this committee and support House Bill 42.

The Alaska Support Industry Alliance appreciates legislative efforts to address the escalating misuse of legal actions against responsible development in Alaska. If Alaska is to continue encouraging resource development, then the state must have an environment that is at least equitable and fair to investors, and certainly within our courts of law. We understand that House Bill 42 would require litigating parties to research their claims to assure accuracy, or pay the consequence of suing without just cause. The Alliance supports such measures.

Alaska has suffered significant economic losses as a few individuals successfully circumvent public processes through litigation. It seems that nearly every proposal or plan to develop the state's natural resources or to enhance its infrastructure is met with a lawsuit, regardless of whether there are reasonable grounds to sue. We believe many such legal actions only to serve to delay developments that are important to Alaskans' quality of life and our state's economic well being.

House Bill 42 creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to ensure their claims have a factual bearing before

filing a lawsuit. The bill would also make those that filed a frivolous suit responsible for assessed damages. Further, the bill would assign financial liability to those who tried to cloud the issue with false or misleading claims, in hopes of finding a party willing to settle rather than spend dollars to litigate.

We believe each party in a lawsuit has a responsibility to present factual and legitimate information. A system that allows deceit to be awarded is just not right and needs to be changed.

For two decades, The Alaska Support Industry Alliance (The Alliance) has served as the statewide non-profit trade organizations for businesses which provide products and services to the oil and gas industry. Our 350-plus members employ over 29,000 people in Alaska....25,000 are permanent residents of the state.

Thank you for the opportunity to provide the support industry's view on this issue.

# SILVER BOW CONSTRUCTION

5331 Shaunc Drive  
Juneau, AK 99801  
(907) 780-4157 ♦ (907) 780-5127 Fax

TO: HOUSE JUDICIARY COMMITTEE MEMBERS  
ATTN. REP. ELDON MULDER  
fax. 465-3518  
JUNEAU, ALASKA  
99801

FROM: BOB DIDIER

DATE: MARCH 15, 2000

SUBJECT: HOUSE BILL 42

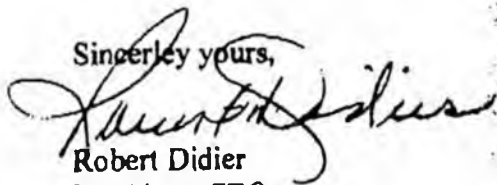
Dear committee Members,

As a private businessmen in Alaska for over thirty years and a NFIB member I have watched with growing alarm the threat and actual use of frevlious law suites.

I feel House Bill 42 as introduced by Representative Moulder is a step in the right direction in bring some sanity back into our courts.

Please consider my wholehearted support for this type of legislation.

Sincerley yours,



Robert Didier  
President, CEO

CC Thyse Shaub, fax. 463-5128

2

# INTERIOR Medical Supply

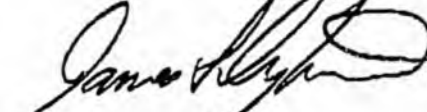
2040 South Cushman, Fairbanks, Alaska 99701, Phone (907) 457-8486, Fax (907) 457-8488

Wednesday, March 15, 2000

To whom it may concern;

We support HB 42 with Eldon Mulder's support of this bill. We believe in the ideas behind requiring parties to be honest and responsible in their pleadings to Alaska's courts.

We are a NFIB member, # 035016129 531 AK 01



James Ingraham

February 27, 2000

Representative Eldon Mulder  
Alaska State Capital Bldg.  
Juneau, Alaska 99811

Dear Representative Mulder:

After careful review of House Bill 42, I am excited to lend my support. For years, many of us in the service industries in Alaska have asked for various types of tort reform and while HB 42 is not a substitute for the Recreation Liability Bill that has been stalled for these past several years, it is a meaningful piece of legislation addressing a separate but related issue. That being the numerous frivolous and disingenuous lawsuits filed each year that cost small and mid size businesses in Alaska tens of thousands of dollars.

These lawsuits are often groundless, but paid nonetheless because the cost of fighting such nuisance suits is far more expensive than an early settlement for even a blatantly fraudulent claim.

On behalf of my company Alaska Travel Adventures, I appreciate your and Representative Rokeberg's sponsorship of this legislation and ongoing support of Alaska's small business community.

Sincerely

Robert M. Dindinger  
President  
Alaska Travel Adventures, Inc.

CC: Representative Lisa Murkowski  
Representative Pete Kott  
Representative Jeanette James  
Representative Joe Green  
Representative Beth Kertulla  
Representative Eric Croft  
Representative Norman Rokeberg  
Alaska Visitors Association  
Alaska Travel Industry Association  
Alaska State Chamber of Commerce

R

## DALTON HIGHWAY ADVENTURES

PO Box 82720 Fairbanks, Alaska 99708  
phone/fax 907-474-0030

17 March 2000

Representative Pete Kott  
House Judiciary Committee  
Juneau, Alaska 99801

Dear Representative Kott:

I am a life-long Alaskan resident who has recently entered Alaska's visitor industry with my new business, Dalton Highway Adventures. Dalton Highway Adventures is a small, Fairbanks-based company that outfits independent travelers with those things they need [auto rentals, outdoor gear, etc.] to visitors planning to independently explore one of Alaska's most exciting new visitor destination, the Dalton Highway.

In recent years I had noticed an increasing number of my friends and neighbors starting their own visitor industry businesses, and I found it exciting that the visitor industry appeared to be a growing, Alaska-based basic industry that a small business owner like myself could actually participate in. Sensing opportunity, I have decided to jump in with both feet.

The good news is that Dalton Highway Adventures should have its doors open for business when visitors begin arriving in mid-May. The bad news is that the #1 hurdle I am encountering in attempting to open my business is both the availability and cost of liability insurance for a small, adventure-oriented business like mine. According to the insurance industry, Alaska's lawyer-friendly laws make it easy for one of my customers to sue me regardless of whether their claim really has merit. Furthermore, it is small businesses like mine that tend to be the easy targets because we lack the deep pockets to defend against a frivolous lawsuit. Too often, small businesses are forced to choose between paying to settle a frivolous lawsuit out-of-court OR go out-of-business paying for the attorney costs necessary to defend against a frivolous lawsuit.

Alaska's current lawyer-friendly laws are creating a situation where only the large cruise companies have the deep pockets necessary to scare off frivolous lawsuits and afford ever more costly liability insurance premiums. PLEASE SUPPORT HB 42 and help small, Alaska-owned businesses like mine continue to participate in Alaska's growing visitor industry.

Sincerely



Erik Weld  
Dalton Highway Adventures

---

# Robert A. Mintz

550 W. 7TH AVENUE, STE. 1540  
ANCHORAGE, AK 99501  
(907) 278-2277/fax 272-3695

February 17, 2000

Representative Eldon Mulder  
State Capital Suite 507  
Juneau, AK 99801

Dear Representative Mulder:

I strongly support the proposed substitute for House Bill 42.

Currently, there is, in my opinion, no effective way of holding parties responsible for frivolous pleadings. This bill assigns financial liability to those who:

- File lawsuits without probable cause or with improper motive,
- Knowingly assert false information as the basis for a lawsuit, and
- Make claims and allegations without first making reasonable inquiry.

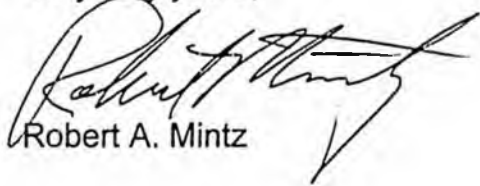
The Bill creates an enforceable obligation for litigants and attorneys to make reasonable efforts to assure that claims have a reasonable basis. Also, if a claim is knowingly or recklessly false, both the attorney and the party can be assessed damages. The trier of fact, usually a jury, will make the determination whether the untrue information presented was intentional and material.

This Bill uses the common law malicious prosecution action as a model for establishing a new standard of conduct. This statutory version is different than the common law because it applies to claims and defenses, rather than just actions, and it makes either lack of probable cause or improper motive actionable, rather than requiring both.

In addition, the Bill takes a victim-oriented approach to the cost of frivolous lawsuits by making the injured party the vehicle for redressing the injury, instead of the judicial system. I contend that allowing an injured party to seek redress for his or her damages is a superior enforcement mechanism for two reasons. First, the frustration with the judicial system will be ameliorated to the extent that injured parties are empowered to be made whole. In other words, the enthusiasm for pursuing a claim by an injured party is proportionate to the perception of injury suffered. There is no sense in having a judge impose sanctions where the injured party perceives slight offense. Likewise, it is unjust to deny an injured party the right to compensation because a judge, who deals

with attorneys on a regular basis, decides not to exercise discretionary powers. Current law only permits the award of full attorneys' fees for vexatious or bad faith conduct. This is a much different standard of conduct than the House Bill 42 which requires, not allows, the award of actual reasonable attorneys' fees and permits the recovery of compensatory damages as well.

Very truly yours,



Robert A. Mintz

## AURORA DRILLING

---

A DIVISION OF AMERICAN ARCTIC COMPANY  
P.O. BOX 61618 • FAIRBANKS, ALASKA 99708 • PHONE (907) 456-6712 • FAX (907) 451-4356

**TO:** House Judiciary Committee Member

**FROM:** Gregg C. MacDonald

**DATE:** Thursday, March 16, 2000

**RE:** HB 42 - The Frivolous Lawsuit Protection Act

I strongly support HB-42 as a means to insist that legitimate claims only be heard. Our legal system currently allows for much irresponsible use without penalty for that misuse. I urge you to pass this measure as a step in regaining sanity in the use of our judicial process.

Sincerely,

  
Gregg C. MacDonald

GCM/cm



# The Arctic Circle Trading Post

Mile 49, Elliott Highway, Alaska. PO Box 85184, Fairbanks AK 99708

17 March 00

TO: Representative . . .

FROM: Lee Kenaston, Arctic Circle Trading Post

RE: Support for House Bill 42

I am writing as a small business operator in the Alaska Visitor Industry in support of House Bill 42.

House Bill 42 would discourage frivolous lawsuits, which could otherwise easily bankrupt a small business. Small businesses in particular are more vulnerable to frivolous lawsuits, as they are the least likely to be able to defend themselves. As a small business operator, I can personally attest to the lack of time and financial resources available to fend off an unmerited claim.

I believe businesses should make every reasonable effort to provide a safe experience for visitors. However, a person participating in an activity should be responsible for the obvious inherent risks associated with that activity. Simply put, frivolous lawsuits and unmerited claims are a waste of society's time and energy. House Bill 42 addresses this issue in a manner that is fair to both parties.

Thank you for serving as an elected official and making the tough decisions that chart Alaska's future. As a proud member of Alaska's Visitor Industry, which does so much to raise the quality of life for all Alaskans, I urge you to support House Bill 42.

Best Regards

Lee Kenaston  
Arctic Circle Trading Post

MARCH 16, 2000

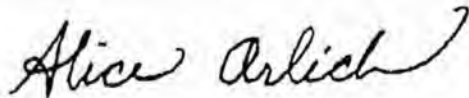
REPRESENTATIVE PETE KOTT  
HOUSE JUDICIARY COMMITTEE  
JUNEAU, ALASKA 99801

DEAR CHAIRMAN KOTT:

I AM WRITING ASKING YOUR SUPPORT OF HB 42. I AM THE OPERATOR OF A SMALL SEASONAL BUSINESS LOCATED IN WISEMAN, ALASKA (POP. 27) CALLED THE WISEMAN MUSEUM. A MAJOR EXPENSE ASSOCIATED WITH OPERATING EVEN A SMALL, ONE-CABIN MUSEUM IN A SMALL VILLAGE IN RURAL ALASKA IS THE HIGH COST OF BUSINESS LIABILITY INSURANCE. A CUSTOMER WHO PATRONIZES MY MUSEUM COULD SUE ME AND FORCE ME TO DEFEND THE SUIT UNDER CURRENT ALASKA LAW EVEN IF THE LAWSUIT IS COMPLETELY WITHOUT MERIT. THE RESULT IS EVER-INCREASING BUSINESS LIABILITY INSURANCE COSTS THAT MAKE IT DIFFICULT FOR A SMALL, RURAL-BASED OPERATOR TO KEEP HER DOORS OPEN FOR BUSINESS.

RURAL-BASED, ALASKAN SMALL BUSINESSES NEED YOUR HELP. PLEASE SUPPORT HB 42.

THANKS FOR LISTENING



ALICE ORLICH  
WISEMAN MUSEUM  
PINGEL CABIN  
WISEMAN, ALASKA

## **MBA Consulting Engineers, Inc.**

3812 Spenard Road, Suite 200 ■ Anchorage, Alaska 99517  
(907) 274-2622 ■ Fax: (907) 274-0914  
Email: mbacon@alaska.net

March 15, 2000

Representative Pete Kott  
Fax Number: (907) 465-2819

Re: HB42 The Frivolous Lawsuit Protection Act

Dear Representative Kott:

House Bill 42, which has been introduced by Representative Eldon Mulder, will help prevent frivolous lawsuits. As a small business owner and a member of the NFIB, I support this bill. I request that you and the other members of the House Judiciary Committee support this bill also. Please call if I can be of further assistance.

Very truly yours,

MBA CONSULTING ENGINEERS, INC.



Ronald E. Aksamit  
President

nl

cc: Thyges Shaub, NFIB, Fax Number: (907) 463-5128  
Representative Eldon Mulder, Fax Number: (907) 465-3518

Principals: G. Wayne Boedecker, P.E. ■ Ronald E. Aksamit  
Associates: Jon L. Morse ■ David J. Morrone, P.E., CLEP, LC ■ Alexander T. Reeve, P.E. ■ Bradley S. Sordahl, P.E.

*Specializing in Arctic, Subarctic, Northern Maritime and Remote Regions*

March 17, 2000

Representative Pete Kott, Chair  
House Judiciary Committee  
Fax: 907-465-2819

Dear Representative Kott,

I am writing to you today to express my support for House Bill 42.

As a life-long Alaskan I participate in many outdoor activities which involve taking a risk. I prepare for these risks. These activities can be anything as "simple and easy" as riding my bike on city streets and designated bike trails, a little more involved like taking my kayak out to T-Harbor and going for a day trip along the Bread Line, or putting on a backpack and hiking the Chilkoot Trail.

However, no matter how much I prepare something wrong can happen. There are inherent risks to participating in activities.

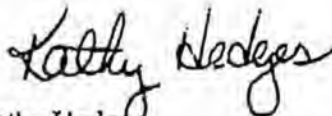
Many visitor industry businesses I have worked for from Juneau to Fairbanks provide an opportunity for guests to enjoy Alaska. These include hot springs resorts, snow machine tours, dog sled rides, motorcoach companies and art galleries. All of these businesses - large and small - have trained staff to work on the equipment and introduce guests to the activity and Alaska.

If a guest files a frivolous lawsuit it is a detriment to these businesses. There are the legal fees and the time involved. Not two things that are in abundant supply for small business owners.

HB42 does not excuse or allow poor maintenance and training. That is still required and businesses should be held liable for failing to take precautions. But, what they shouldn't be held liable for is the inherent risk involved in participating in their activity or enjoyment of their property.

Thank you for your time and consideration of passage for HB42.

Sincerely,

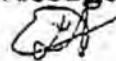


Kathy Hedges

CC: Representative Joe Green  
Representative Jeannette James  
Representative Lisa Murkowski  
Representative Norman Rokeberg  
Representative Eric Croft  
Representative Beth Korttula

Kathy Hedges \* PO Box 72818 \* Fairbanks AK 99707 \* 907-474-2035

**ALASKAN AIRCRAFT ENGINES, INC****2425 Merrill Field Drive****Anchorage, AK 99501****C.R.S. CY4R119M****Telephone (907) 272-3581 Fax (907) 272-3592****TO: NFIB/AK state office****SENDER: Esther Alsworth****DATE: March 15, 2000**

Page one of one - **Following is the message I sent to each of the representatives on your fax.** 

**RE: House Bill 42 - The Frivolous Lawsuit Protection Act****Dear Representative:**

With the prevalence of lawsuits, many of which are frivolous and some even ridiculous ones, House Bil. 42 seems like a needful law. A person should always be responsible for their testimony but because of the love of money many will perjure themselves and lie during lawsuits. This should not be and if legislation will curb this tendency, please make your vote count in passing it.

**Respectfully,****Esther Alsworth  
Secretary**

*From the Desk of Heidi Atkinson*

*2005 Tribulation Trail  
Fairbanks, Alaska 99709*

March 16, 2000

Dear Representative Pete Kott:

I am writing to you regarding House Bill 42. I am a lifelong Alaskan and am currently a student at the University of Alaska - Fairbanks. I have helped fund my education by working in the visitor industry. I hope to remain in Alaska after graduation providing that economic opportunities exist. One area of economic promise lies in the small business opportunities that the visitor industry provides.

I feel that an important way that government can work together with the private sector is to help foster an environment that encourages small business enterprise. As I understand it, passage of House Bill 42 would help towards this end by discouraging frivolous lawsuits by penalizing perpetrators of fraudulent suits. The task of starting a new business is difficult enough without the specter of potential legal fees from unwarranted lawsuits hanging over the entrepreneur.

Please make this small step in helping to improve the business environment for small Alaskan businesses by supporting passage of House Bill 42.

Sincerely,

*Heidi Atkinson*

Heidi Atkinson



# JAN'S DISTRIBUTING, INC.

1807 W. 47th Avenue  
 Anchorage, Alaska 99517  
 243-JANS  
 Fax 243-5744  
 1-800-478-9898

**TO: ALL HOUSE JUDICIARY COMMITTEE MEMBERS**

**FROM: JAN'S DISTRIBUTING**

**DATE: MARCH 15, 2000**

**RE: HB-42 - The Frivolous Lawsuit Protection Act**

Jan's Distributing Inc. is 100% in favor of passing this bill! We need this kind of protection as well as does the employers. We are members of the NFIB.

Please find signatures of our employees below in favor of this bill.

*Diap Maguire*  
*Johan H. Langer*

*Tiffany Hunsrow*

*[Signature]*

*Bob Scott*

*[Signature]*

*Deborah Jind*

*[Signature]*

*Paul Liffich*

*Sylvia K. East*



**Subject: HB42****Date:** Wed, 23 Feb 2000 10:41:37 -0900**From:** Frank Rose <aklm@ptialaska.net>**Organization:** Alaska Lodging Mgt., Inc.**To:** Representative\_Eldon\_Mulder@legis.state.ak.us,  
Representative\_Norman\_Rokeberg@legis.state.ak.us**CC:** Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_Jeannette\_James@legis.state.ak.us,  
Representative\_Pete\_Kott@legis.state.ak.us,  
Representative\_Joe\_Green@legis.state.ak.us,  
Representative\_Beth\_Kerttula@legis.state.ak.us,  
Representative\_Eric\_Croft@legis.state.ak.us, at@gci.net,  
FW Rose <aklm@ptialaska.net>

I want to speak in favor of HB42. As Alaska competes with other destinations and because operating cost in Alaska are generally higher than other destinations, it is imperative that we focus our energy on productive endeavors that deal with business operations. All too often frivolous lawsuits take up an inordinate amount of time and expense when there is no merit at all to the suit. A step in the right direction is to make sure that those who put forth false claims and allegations in law suits understand that there is liability on their part for doing so. I urge you to move this bill through committee and promote passage.

Thank you

Frank W. Rose  
Alaska Lodging Mgt  
PO Box 72478  
Fairbanks, Alaska

**Subject: Support of HB42**

**Date:** Wed, 23 Feb 2000 12:28:09 EST

**From:** KirkAWA@aol.com

**To:** Representative\_Eldon\_Mulder@legis.state.ak.us

**CC:** Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_Pete\_Kott@legis.state.ak.us, Representative\_Jeanette\_James@legis.state.ak.us,  
Representative\_Joe\_Green@legis.state.ak.us, Representative\_Beth\_Kertulla@legis.state.ak.us,  
Representative\_Eric\_Croft@legis.state.ak.us,  
Representative\_Norman\_Rokeberg@legis.state.ak.us

Dear Representative Mulder,

This letter is in support of HB42, the legislation against false claims/allegations in frivolous lawsuits. I can't argue against the importance of telling the truth.

Respectfully,

Kirk Hoessle, President  
Alaska Wildland Adventures

**Subject: Re HB 42**

**Date:** Thu, 24 Feb 2000 13:07:25 -0900

**From:** Thomas Ely <cycleak@cyclealaska.com>

**Organization:** Sockeye Cycle Co.


**To:** Representative\_Eldon\_Mulder@Legis.state.ak.us

Dear Representative Mulder,

I support HB 42 limiting frivolous civil suits. As an adventure tour operator we are susceptible to false claims by participants on our tours. Thanks for sponsoring this bill.

Sincerely,  
Thomas Ely

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 <a href="#">cycleak.vcf</a>	<b>Name:</b> cycleak.vcf <b>Type:</b> VCard (text/x-vcard) <b>Encoding:</b> 7bit <b>Description:</b> Card for Thomas Ely
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**Subject: Support of HB42 (Frivolous Lawsuits)**

**Date:** Mon, 28 Feb 2000 10:53:10 -0900

**From:** Anne Adasiak-Andrew <aadasiak@avanet.org>

**To:** "Representative\_Eldon\_Mulder@legis.state.ak.us" <Representative\_Eldon\_Mulder@legis.state.ak.us>

Dear Representative Mulder,

I understand that there will be a hearing today on HB42. Therefore I wanted you to know that the AVA Board of Directors voted in support of this legislation at their last meeting in Juneau on February 18th.

As you know, AVA is a private, nonprofit statewide trade association representing all facets of the tourism industry. With over 500 member businesses, AVA is the largest, statewide visitor industry association representing the full spectrum of visitor industry business interests from large air and cruise lines to small localized rafting operators and wilderness guides. Since 90% of our members are small businesses having less than 10 employees, we see that a number of them would benefit from protection against frivolous lawsuits.

Sincerely,

Anne Adasiak-Andrew  
Acting Executive Director  
Alaska Visitors Association  
907-531-5733ph  
aadasiak@avanet.org



# THE ALLIANCE

4220 W Street, Suite 200 • Anchorage, Alaska 99503-5971 • Phone: (907) 583-2226 • Fax: (907) 581-8870

## MEMORANDUM

TO: Representative Joe Green  
 FROM: Karen Cowart *Karen*  
 RE: Support for HB 42 – Frivolous Lawsuit Prevention Act  
 DATE: March 1, 2000  
 PAGES: 1, including cover memo

Representative Green,

The Alliance supports HB 42 - Frivolous Lawsuit Prevention Act, for a number of reasons and asks that you consider support for the bill as well.

This bill creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to ensure their claims have a factual bearing before filing a lawsuit. The bill would also make those that filed a frivolous suit responsible for assessed damages. Further, the bill would assign financial liability to those who tried to cloud the issue with false or misleading claims, in hopes of finding a party willing to settle rather than spend dollars to litigate.

We believe each party in a lawsuit has a responsibility to present factual and legitimate information. A system that allows deceit to be awarded is just not right and needs to be changed.

We ask your support for House Bill 42.

Thank you.

Post-it® Fax Note	7671	Date <i>3/2/00</i>	# of pages <i>1</i>
To <i>Rep. Anderson</i>	From <i>Karen Cowart</i>		
Co./Dept.	Co.		
Phone #	Phone #		
Fax # <i>907-465-3518</i>	Fax #		



# REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON

ALASKA STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

**"PROUD TO BE A MULDOONER"**



## SPONSOR STATEMENT

**CS for SPONSOR SUBSTITUTE FOR HOUSE BILL 42 (JUD)**

### THE FRIVOLOUS LAWSUIT PREVENTION ACT

**House Bill 42** will prevent frivolous lawsuits by requiring parties to the lawsuit and their attorneys to be truthful and responsible in their pleadings. This bill discourages false statements and claims in litigation and encourages responsibility by all parties and their attorneys. It requires more careful and focused preparation of pleadings.

This bill creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to assure those claims have a probability of succeeding. If the claim is knowingly and recklessly false, both the attorney and the party can be assessed damages. Currently, there is no *effective* way of holding parties responsible for frivolous pleadings or claims. Frivolous pleadings and claims increase the costs of litigation for all the parties involved in addition to exalating the cost of our judicial system.

House Bill 42 requires attorneys as well as their clients to research their claims to assure they are factually supported before filing a lawsuit. This bill will eliminate "boiler plate" pleadings in lawsuits and encourages 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 did occur. Those extraneous pleadings are expensive for innocent parties to litigate and work through and are most often thrown out. They simply cause one party, and the court system, to expend significant dollars to pare down to real issues.

Many suits are often less expensive to settle than to litigate, regardless of their merit. This bill does not affect suits filed in good faith. It will, however, deter those without merit. A system that allows deceit to be rewarded because it is more costly to litigate than to capitulate, must be changed.

This bill assigns financial liability to those who:

- Intentionally advance a civil pleading containing a false allegation of material fact
- Use claims or cross claims to cloud an issue
- File unsuccessful claims on the hope of finding someone willing to settle rather than spend the dollars to litigate the suit
- Sign a civil pleading before making reasonable inquiry to determine it is well grounded in fact and warranted by existing law

The basic purpose of HB42 is to give injured parties effective remedies for bad faith civil litigation. Those who are trying to tell the truth will have nothing to fear from this bill, as it would only apply if the trier of fact finds a party has made an intentional, false statement of material fact.

## **SECTION BY SECTION ANALYSIS OF CSSHB42**

### **Section 1**

**Subsection (a)(1).** Prohibits a person from signing a civil pleading that contains false allegations that are material with the intention of asserting claims or defenses that are false. This language is identical to the language contained in SSHB42.

**Subsection (a)(2).** Prohibits a person from initiating or signing a civil pleading before making a reasonable inquiry and forming a reasonable belief in both the existence of the facts upon which the claim or defense is based and that under those facts the claim or defense is valid under applicable law. This language differs from the language contained in SSHB42 by more clearly stating that there must be an objectively reasonable inquiry and belief in both the facts and law upon which the claim or defense is based.

**Subsection (a)(3).** Prohibits a person from participating 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 is not valid under applicable law. This concept was contained Section 1(d)(3) of SSHB42.

**Subsection (b).** Provides that the court shall enter judgment against a party who intentionally makes a false statement of material fact in connection with the prosecution or defense of a civil action. This language is identical to the language contained in Section 1(b) of SSHB42, except that the word "intentionally" has been substituted for the word "knowingly" in the interests of consistency and clarity.

**Subsection (c)(1).** Allows a party injured by a violation of paragraph (a)(1) to bring an action for compensatory and punitive damages against the person who signed the pleading.

**Subsection (c)(2).** Allows a party injured by paragraph (a)(2) to bring an action for compensatory damages against a person who wrongfully initiated or signed the pleading.

**Subsection (c)(3).** Allows a party injured by a violation of (a)(3) to bring an action for compensatory damages against the person who wrongfully participates in the continuation of a claim or defense.

Paragraphs (c)(2) and (c)(3) clarify that an action for violation can be brought only against the person who wrongfully initiated, signed or participated in the continuation of a claim or defense. These two paragraphs also limit the damages to compensatory damages only, whereas under SSHB42, punitive damages could be sought.

**Subsection (d).** Provides the court shall award actual reasonable attorney's fees and actual reasonable costs to the prevailing party in any action brought under (c). The only change made from SSHB42 is that actual reasonable costs was added.

**Subsection (e).** Provides that a civil action under (c) may not be brought unless:

- (1) Notice of the specific conduct with supporting evidence was served on the opposing party;
- (2) The challenged conduct was not appropriately corrected within twenty-one days of the notice;
- (3) The person prevailed on the claim or defense that was the basis for the notice; and
- (4) Final judgment has been entered.

In this Subsection, the Committee Substitute makes two changes to SSHB42. First, (e)(1) requires any supporting evidence to be served with the notice of violation. This change was made to insure that the notice of violation will be a fair, substantively based notice and that the notice will be sent with preparation and thought. The second change, which is contained in (e)(3), explicitly states that in order to file a claim, the person must have prevailed on the claim or defense that was the basis of the notice. While this was certainly implicit in SSHB42, it has now been made explicit in response to some of the testimony.

#### **Conclusion**

CSSSHB42 explicitly addresses a number of the concerns raised about SSHB42 in the testimony and discussion of the committee members. It both narrows and clarifies the conduct we seek to correct. It imposes an objectively reasonable obligation of inquiry to determine that claims or defenses are reasonably based in fact and are valid under applicable law. It further provides that claims or defenses which lack a reasonable basis in fact or are invalid under applicable law may not be continued. It makes clear that in order to file a claim, a person must have given notice and prevailed on the issue that was the basis of the notice, thus removing the concern that an unsuccessful litigant will abuse this cause of action. It also makes clear that such an action may not be filed until judgment is entered, thus removing the concern that this cause of action will create a trial within a trial. Finally, this proposed legislation is intended to be self corrective to the extent possible through the notice and opportunity to cure provisions of Subsection (e).



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