

HB

42

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 42
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MULDER, Rokeberg

Introduced: 2/16/00
Referred: Judiciary, Finance

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 Rule 82(b), Alaska Rules of Civil 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 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 that are false; or

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, ^{denial} 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,

*compare
Rule 11
why not
have
formed
after
reasonable
inquiry*

1 or reversal of existing law.

Why not put in "improper purpose / times etc Law?"

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

9 * (c) A person may not, on the person's own behalf or as a representative of a
10 party, take part in the initiation, defense, continuation, or procurement of a civil action
11 against another person if the person acts

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

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

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

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

18 (2) paragraph (a)(2) of this section may bring an action for recovery
19 of compensatory damages against the person who signed the pleading; compensatory
20 damages awarded under this paragraph may not exceed the actual reasonable costs and
21 attorney fees that were incurred by the party who was injured, but were not awarded
22 to that party in the action in which the violation of (a)(2) of this section occurred; and

23 o (3) subsection (c) of this section may bring an action for compensatory
24 and punitive damages against the person who took part in the initiation, continuation,
25 defense, or procurement of the civil action.

26 (e) If a party brings an action under (d) of this section, the court shall award
27 actual reasonable attorney fees to the prevailing party regardless of whether the
28 prevailing party is the plaintiff or defendant.

29 (f) A person may not bring a civil action to recover damages under

30 (1) subsections (c) or (d) of this section unless final judgment has been
31 entered in the civil action described in (a) or (c) of this section; and

1 (2) subsection (c) of this section unless

2 (A) in the civil action described in (a) or (c) of this section, a
3 notice of the specific conduct alleged to violate (a) or (c) of this section is
4 served on the opposing party as required under the Alaska Rules of Civil
5 Procedure, but not filed with the court; and

6 (B) the challenged conduct is not appropriately corrected within
7 21 days after notice is served.

8 (g) This section does not apply to an action

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

10 (2) involving divorce or dissolution; or

11 (3) involving adoption, custody, support, or visitation of a child.

12 (h) In this section, "civil pleading" includes motions and affidavits.

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

15 **INDIRECT COURT RULE AMENDMENT.** AS 09.65.190(e), enacted in sec. 1 of this
16 Act, has the effect of amending Rule 82(b), Alaska Rules of Civil Procedure, by allowing the
17 award of actual reasonable attorney fees in certain civil actions.

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

20 **APPLICABILITY.** This Act applies to an action that accrues on or after the effective
21 date of this Act.

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

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

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



NORTHERN ALASKA TOUR COMPANY
PO Box 82991 Fairbanks, Alaska 99708

17 March 2000

TO: Representative Pete Kott, Chair, House Judiciary

FROM: Matt Atkinson

CC: Representative Joe Green
Sam Kito
Alaska Visitors Association
Representative Jeannette James
Representative Norman Rokeberg

Representative Beth Kerttula
Linda Anderson
Eldon Mulder
Representative Lisa Murkowski
Representative Eric Croft

Dear Representative Pete Kott:

I am contacting you as an Alaskan who works in the visitor industry with a small tour business. Your support of HB 42 would be very much appreciated by small (and presumably large) tourism enterprises throughout our state.

This Bill appears to introduce a common sense element to the litigation process. Those who would bring forth suit need to investigate the facts to make sure they are true; if a party lies to further their claim, they lose. In no way are those that have legitimate, truthful claims impacted. The Bill brings forth a measure of equity in a litigious business environment. I feel that this can only help to provide a bit of assurance to new and/or growing enterprises, particularly tourism enterprises, throughout the state.

In closing, I respectfully request your support of HB42 and appreciate all of your efforts in Juneau on behalf of the citizens of Alaska.

Best Regards

Matthew S. Atkinson

Phone 907.474.8600 Fax 907.474.4767

e-mail adventure@northernalaska.com www.northernalaska.com



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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Seattle, Washington

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Alaska Airlines

Tina Lindgren

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

SILVER BOW CONSTRUCTION

5331 Shaune 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

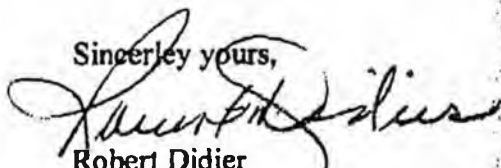
Dear committee Members,

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 Thyes Shaub, fax. 463-5128

INTERIOR Medical Supply

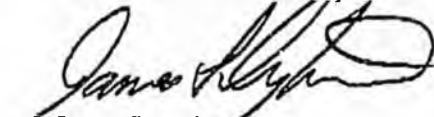
2040 South Cushman, Fairbanks, Alaska 99701, Phone (907) 477-8486, Fax (907) 457-8488

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

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.** *EA*

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, House Bill 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

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 destinations, 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



Erika Weld
Dalton Highway Adventures

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



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

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

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.

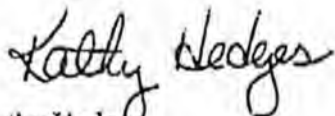
Many visitor industry businesses I have worked for from Juneau to Fairbanks provide an opportunity for guests to enjoy Alaska. These include hot springs resorts, snow machine tours, dog sled rides, motorcoach companies and art galleries. All of these businesses - large and small - have trained staff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

Kathy Hedges * PO Box 72218 * Fairbanks AK 99707 * 907-474-2035

AURORA DRILLING

A DIVISION OF AMERICAN ARCTIC COMPANY
P.O. BOX 61618 • FAIRBANKS, ALASKA 99708 • PHONE (907) 456-6712 • FAX (907) 451-4358

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



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 Morgan *Tiffany Hinkshaw*
Stephen J. Leung
[Signature]
Bob Scott
[Signature]
Deborah [Signature]
[Signature]
BW Luffich
Sylvia K. [Signature]

SECTION BY SECTION ANALYSIS OF CSSH42

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).

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE CROFT

TO: SSHB 42

1 Page 1, line 9, following "allegations":

2 Insert "or denials"

3 Page 1, line 10, following "allegations":

4 Insert "or denials"

5 Page 1, line 13:

6 Delete "and allegation"

7 Insert "allegation, and denial"

8 Page 2, line 4, following "action":

9 Insert "or has denied a material fact that the party knows or should have known was
10 true"

11 Page 2, line 5:

12 Delete "on the issue to which the false statement"

13 Insert "or denial on the issue to which the false statement or denial"

14 Page 2, line 6, following "statement":

15 Insert "or denial"

16 Page 2, line 8, following "statement":

17 Insert "or denial"

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.

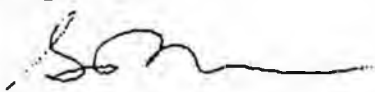
On behalf of my company Alaska Travel Adventures, I appreciate your and Representative Rokeberg's sponsorship of this legislation and ongoing support of Alaska's small business community.

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



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, prejudgement 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 HOSPITALITY ALLIANCE

Representing Alaska's Finest
Accommodations • Restaurants • Beverage Operations & Hospitality Suppliers



Alaska Restaurant & Beverage Association

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,

Karen Rogina
Executive Vice President.

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

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

nit

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

**Alaska Support Industry
ALLIANCE**

4220 'B' Street, Suite 200
Anchorage, AK 99503
Phone 907.563.2226
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Karen Cowart



THE ALLIANCE

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



**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

Anne Adasiak-Andrew

From: Anne Adasiak-Andrew
Sent: Monday, February 28, 2000 10:53 AM
To: 'Representative Eldon Mulder@legis.state.ak.us'
Subject: Support of HB42 (Frivolous Lawsuits)

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

Subject: HB42

Date: Mon, 28 Feb 2000 14:39:02 EST

From: Flywma@aol.com

To: Representative_Eldon_Mulder@legis.state.ak.us,
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

Dear Representatives:

I urge you to pass this legislation regarding frivolous lawsuits. Put some teeth in it while you are at it. It is long overdue.

Kelly Bay, President
Wrangell Mountain Air, Inc
McCarthy, Alaska 99588
907-554-4411



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-FT. RICHARDSON



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

Sponsor Statement

House Bill 42

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 and presentation 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. They also increase 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 happen. 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.

Sponsor Statement

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, have a significant deterrent effect on 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 is not why we have and support a judicial system.

This bill assigns financial liability to those who:

- * File suits without sufficient probable cause,
- * Provide false information,
- * Use claims and cross claims to cloud the issues and
- * File unsuccessful claims on the hope of finding someone, somewhere willing to settle rather than spend the dollars to litigate the suit.

The trier of fact, usually a jury, will make the determination whether the untrue information presented was intentional and material. If honest errors are made, there will be no sanctions.

A jury can make these decisions and the deterrent effect of this bill will reduce those cases that are inappropriate without inhibiting the filing of cases believed to have merit.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 18, 1999

SUBJECT: Sectional Summary of HB 42

TO: Representative Eldon Mulder
Attn: David

FROM: Michael F. Ford *M. F.*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Prohibits a person from making a false allegation in a civil pleading or from signing a civil pleading before making certain inquiries regarding the basis of the allegation. Prohibits a person from taking part in a civil action if the person acts without probable cause or acts primarily for an improper purpose. Specifies the damages that may be recovered when this section is violated, including recovery of actual reasonable attorney fees. Imposes limitations on bringing a civil action to recover damages for a violation of this section. Provides that certain types of civil actions are excluded from the provisions of this section.

Section 2. Provides for amendment of Civil Rule 82(b).

Section 3. Applicability section.

Section 4. Severability section.

Section 5. Effective date.

MFF:glc
99-011.glc



NFIB Alaska

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

217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5118 • Fax 907-463-5128



Support

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

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

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

| | |
|---|---|
|  cycleak.vcf | Name: cycleak.vcf Type: VCard (text/x-vcard) Encoding: 7bit Description: Card for Thomas Ely |
|---|---|

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