

HB

385

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 385(JUD)
(H) Publish Date: 4/8/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act relating to the attorney fees and costs
awarded in certain court actions relating to unfair trade . . ." BRU: Civil Division
Sponsor: Representative Croft Component: Fair Business Practices
Requester: House Judiciary Committee Component No.: 2206

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
HB 385 prohibits a prevailing defendant in a consumer protection case brought by a private person from being awarded attorney fees and costs unless the action is found to be frivolous by the court. The bill further allows the state to recover full attorney fees and costs when it prevails in cases that it brings. Under current law, only private counsel can recover full fees and costs.

Section 1 of the bill affects only cases brought by private persons, and will have no impact on the Department of Law. We are uncertain what impact section 2, concerning actions brought by the attorney general, will have on potential revenues. These cases are usually settled, and while the threat of full fees and costs will certainly be useful in negotiations, we have no experience to estimate how much additional revenue might result.

Prepared by: Joan M. Kasson Phone: (907) 465-5370
Division: Attorney General's Office Date/Time: 3/7/02 4:26 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date: 3/7/2002
Agency: Department of Law

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CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****
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Representative Eric Croft

Subject: Sectional Summary of House Bill 385, related to Attorney Fees and Costs Awarded in Certain Court Actions Relating to Unfair Trade Practices (Work Order No. 22-LS1224\A)

This bill addresses the payment of attorney fees and costs in non-frivolous consumer complaint lawsuits.

Section 1. Amends AS 45.50.537(b) by limiting the circumstances under which a prevailing defendant may be awarded attorney fees and costs to actions found to be frivolous.

Section 2. Amends AS.50.537 by adding language to award full attorney fees and costs to the State for cases in which the attorney general prevails.

Section 3. Amends the uncodified law to reflect the amendments in sections 1 and 2.

Section 4. Clarifies that the new rule applies only to action brought on or after the effective date of this legislation.

Section 5. Refers to vote requirements for section 3 and conditional effect on sections 1 and 2.



Honorable Norman Rokeberg, Chair
House Judiciary Committee
Alaska Capitol Room 118
Juneau, AK 99801-1182

March 21, 2002

RE: HB 385 (Croft) – Support

Dear Chair Rokeberg:

On behalf of the 112,000 members of AARP in Alaska, we urge you and your colleagues on the House Judiciary Committee to support HB 385, authored by Representative Eric Croft.

Building on existing statutes that provide consumer protections to Alaskans, HB 385 will allow the State to seek reimbursement for costs incurred when filing a lawsuit on behalf of Alaska citizens.

Older citizens are most often the victims of scams. Should a victim file a legitimate lawsuit and lose, they must pay part of the legal fees of the other party. If the lawsuit was frivolous, that is appropriate. However, if there were legitimate grounds for a suit but the individual loses, they should not be financially punished for trying to seek what they perceived as legitimate redress. This will be particularly helpful with small claims. AARP believes that all citizens should have the right to the courts and to make their argument before a jury of their peers. HB 385 will help our citizens maintain that right without fearing inappropriate financial penalties.

AARP urges an "AYE" vote on HB 385.

Should you have any questions about our position, please feel free to contact Marie Darlin (586-3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby (907-762-3314), AARP Legislative Representative; or me (907-245-5259).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marguerite Stetson".

Marguerite Stetson
Executive Council Member for Advocacy

cc: Representative Ogan, Vice Chair
Representative Coghill
Representative James
Representative Meyer
Representative Berkowitz
Representative Kookesh
Representative Croft
Marie Darlin, AARP Capital City Task Force
Pat Luby, AARP Legislative Representative

Anchorage Daily News
4.19.02

Bills would protect consumers

■ **HOUSE:** Croft offers measures to toughen Alaska's laws.

By SARANA SCHELL
Anchorage Daily News

Two bills to give the state's consumer protection program more teeth and bring the state more money are moving through the state House.

Alaska lost almost \$1 million in revenue last year because it can't sue on behalf of residents who are a few financial transactions downstream from an economic wrongdoing, said state consumer protection attorney Ed Sniffen.

Here's an example: A drug manufacturer colludes with a generic drug company to keep drug prices artificially high. That overcharge gets passed through distributors and retailers to the consumer. States can sue the manufacturer on behalf of state agencies that are direct customers of the manufacturer. But individuals typically buy from retailers, not manufacturers. The U.S. Supreme Court said states cannot also sue the manufacturer on behalf of the retail customers unless state law specifically allows that.

Sniffen said Alaska is involved in three such lawsuits now.

Roughly half the states allow themselves to protest on behalf of "indirect consumers" and most of the rest are thinking about it, Sniffen said. Alaska falls into the "thinking about it" category.

"We've proposed this for years, but we couldn't get it heard," Sniffen said. "I don't know why. It will do nothing but help Alaska."

The latest version, House Bill 460, introduced by Rep. Eric Croft, D-Anchorage, moved from the House Labor and Commerce Committee to Judiciary on Thursday.

Another Croft bill, HB 385, would let the state recover its legal costs in successful consumer protection suits. The bill moved from the House Ju-

CONSUMERS: Bills would give laws some teeth

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diciary Committee last week, and the Finance Committee has a hearing scheduled for Monday.

The Judiciary panel deleted from Croft's bill a section designed to help consumers help themselves.

The trimmed portion would let consumers who brought small claims in good faith but still lost, not pay the other side's legal fees. Supporters said it would en-

courage consumers to fight small-scale unfair business practices, while the state puts its limited resources toward large-scale violations. The Alaska State Chamber of Commerce said it is unfair to stick small businesses that win with defense costs.

Sniffen said that he didn't think the part of HB 385 that has moved on would rake in cash the way the indirect consumer bill would but that it would still be

a useful bargaining tool for negotiating a favorable settlement.

Besides, it's the principle of the thing. "These are laws designed to protect the public from consumer fraud and deception," Sniffen said. "We shouldn't have to pay to make somebody comply with the law."

■ Reporter Sarana Schell can be reached at sschell@adn.com.