

HB

385

*Adopted
4.5.02*

CS FOR HOUSE BILL NO. 385(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE CROFT

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the attorney fees and costs awarded in certain court actions relating**
2 **to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil**
3 **Procedure."**

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

5 *** Section 1.** AS 45.50.537 is amended by adding a new subsection to read:

6 (e) In an action brought by the attorney general under AS 45.50.471 -
7 45.50.561, if the attorney general prevails, the state shall be awarded full attorney fees
8 and costs.

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

11 **COURT RULE CHANGES.** (a) AS 45.50.537(e), added by sec. 1 of this Act,
12 changes Rule 82, Alaska Rules of Civil Procedure, by establishing a different rule relating to
13 the award of attorney fees in actions that are brought under AS 45.50.471 - 45.50.561.

14 (b) AS 45.50.537(e), added by sec. 1 of this Act, changes Rules 54(d) and 79, Alaska

1 Rules of Civil Procedure, by establishing a different rule relating to the award of costs in
2 actions that are brought under AS 45.50.471 - 45.50.561.

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

5 **APPLICABILITY.** AS 45.50.537(e), added by sec. 1 of this Act, applies only to
6 causes of action that accrue on or after the effective date of this Act.

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

9 **CONDITIONAL EFFECT.** Section 1 of this Act takes effect only if sec. 2 of this Act
10 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution
11 of the State of Alaska.

22-LS1224C
Bannister
3/21/02

*Adopted
3.22.02*

CS FOR HOUSE BILL NO. 385()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE CROFT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the attorney fees and costs awarded in certain court actions relating
2 to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil
3 Procedure."

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

5 * Section 1. AS 45.50.537(b) is amended to read:

6 (b) Unless the action is found to be frivolous, in an action brought by a private
7 person under AS 45.50.471 - 45.50.561, a prevailing defendant may not [SHALL] be
8 awarded attorney fees and costs [AS PROVIDED BY COURT RULE]. If the action
9 is found to be frivolous, the attorney fees to be awarded to the defendant shall be full
10 reasonable attorney fees at the prevailing reasonable rate.

11 * Sec. 2. AS 45.50.537 is amended by adding new subsections to read:

12 (e) In an action brought by the attorney general under AS 45.50.471 -
13 45.50.561, if the attorney general prevails, the state shall be awarded full attorney fees
14 and costs.

1 (f) The fees and costs paid to the state under (e) of this section shall be
2 deposited in a separate account in the state treasury. The legislature may appropriate
3 money from the account to the Department of Law for the handling of consumer
4 protection cases. Nothing in this subsection creates a dedicated fund or dedicates the
5 money in the account for a specific purpose.

6 * Sec. 3. AS 37.05.146(b)(4) is amended by adding a new subparagraph to read:

7 (AAA) fees and costs paid to the state under AS 45.50.537(e);

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

10 COURT RULE CHANGES. (a) AS 45.50.537(b), as amended by sec. 1 of this Act,
11 and AS 45.50.537(e), added by sec. 2 of this Act, change Rule 82, Alaska Rules of Civil
12 Procedure, by establishing different rules relating to the award of attorney fees in actions that
13 are brought under AS 45.50.471 - 45.50.561.

14 (b) AS 45.50.537(b), as amended by sec. 1 of this Act, and AS 45.50.537(e), added by
15 sec. 2 of this Act, change Rules 54(d) and 79, Alaska Rules of Civil Procedure, by
16 establishing different rules relating to the award of costs in actions that are brought under
17 AS 45.50.471 - 45.50.561.

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

20 APPLICABILITY. AS 45.50.537(b), as amended by sec. 1 of this Act, and
21 AS 45.50.537(e), added by sec. 2 of this Act, apply only to causes of action that accrue on or
22 after the effective date of this Act.

23 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 CONDITIONAL EFFECT. Sections 1 - 3 of this Act take effect only if sec. 4 of this
26 Act receives the two-thirds majority vote of each house required by art. IV, sec. 15,
27 Constitution of the State of Alaska.

TITLE 45: TRADE AND COMMERCE

CHAPTER 50. COMPETITIVE PRACTICES AND REGULATION OF COMPETITION

Article 3. UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

Section

- 470. [Repealed.]
- 471. Unlawful acts and practices.
- 472. [Repealed.]
- 473. Disclosure of costs of certain telephone services.
- 474. Required disclosures in promotions on board cruise ships.
- 475. Unlawful, unwanted telephone advertisements and solicitations.
- 477. Use of titles relating to industrial hygiene.
- 480. [Repealed.]
- 481. Exemptions.
- 490. [Repealed.]
- 491. Regulations.
- 495. Investigative power of attorney general.
- 500. [Repealed.]
- 501. Restraining prohibited acts.
- 510. [Repealed.]
- 511. Assurances of voluntary compliance.
- 521. When information and evidence confidential and nonadmissible.
- 531. Private and class actions.
- 535. Private injunctive relief.
- 536. Mediation.
- 537. Attorney fees, costs, and damages.
- 541. Nonnegotiability of consumer paper.
- 542. Provisions not waivable.
- 545. Interpretation.
- 551. Civil penalties.
- 561. Definitions.



Representative Eric Croft

HB 385 Sponsor Statement

HB 385 protects Alaska's citizens from scam artists by adding another legal protection for individual consumer protection lawsuits, and by allowing the State to seek reimbursement of the State's legal fees when it wins a consumer protection lawsuit.

Currently, a person with a consumer complaint, who files a good faith lawsuit but loses, must pay part of the opposing party's attorney's fees. This potentially crippling penalty greatly deters consumers – especially those with small claims – from standing up for their rights. This bill would allow the award of attorney's fees against a consumer only if the consumer files a *frivolous* lawsuit, but not otherwise.

Additionally, the proposed legislation will help the State take consumer cases without hurting a limited state budget. Currently, the State's consumer protection section is understaffed (only two people), which means the State can represent only a fraction of the people who need help. To address this, HB 385 says that if the State prevails in a consumer lawsuit, the State is entitled to be compensated for its full attorney's fees by the defendant(s). This will provide the State with means to address a larger number of consumer needs.

HB 385 helps individual consumers by removing a potential obstacle to their pursuit of their rights, and by providing the State of Alaska with the resources needed to assist people in this pursuit.



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.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 385
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the attorney fees and costs BRU Civil Division
awarded in certain court actions relating to unfair trade . . ." Component Fair Business Practices
 Sponsor Representative Croft
 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						
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CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****
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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 Daughhelee for Bruce M. Botelho, Attorney General Date 3/7/2002
 Agency Department of Law