

HB

427

22-LS1349F
Ford
2/26/02

*Not addressed
in last meeting.*

CS FOR HOUSE BILL NO. 427()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to civil claims against a third party and to the award of attorney fees in**
2 **claims against a third party; amending Rules 14(c) and 82, Alaska Rules of Civil**
3 **Procedure; and providing for an effective date."**

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

5 *** Section 1.** AS 09.17.080 is amended by adding a new subsection to read:

6 (e) For purposes of apportioning damages under this section, a defendant, as a
7 third-party plaintiff, may, as allowed under Rule 14, Alaska Rules of Civil Procedure,
8 add as a third-party defendant a person whose fault may have been a cause of the
9 damages claimed by the plaintiff.

10 *** Sec. 2.** AS 09.60.010 is amended by adding a new subsection to read:

11 (b) If a plaintiff asserts a claim against a third party and complies with the
12 equitable apportionment provisions of Rule 14, Alaska Rules of Civil Procedure, the
13 court shall award attorney fees to the plaintiff, third-party plaintiff, and third-party
14 defendant as required under Rule 82, Alaska Rules of Civil Procedure.

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

3 DIRECT COURT RULE AMENDMENT. Rule 14(c), Alaska Rules of Civil
4 Procedure, is amended to read:

5 (c) **Equitable Apportionment.** For purposes of apportioning damages under
6 AS 09.17.080, a defendant, as a third-party plaintiff, may follow the procedure of
7 paragraph (a) to add as a third-party defendant any person whose fault may have been
8 a cause of the damages claimed by the plaintiff. Judgment may be entered against a
9 third-party defendant in favor of the plaintiff in accordance with the third-party
10 defendant's respective percentage of fault if, within 30 days after the third-party
11 defendant files an answer, the plaintiff files notice with the court of the plaintiff's
12 intention to have judgment in favor of the plaintiff entered against the third-
13 party defendant. If the plaintiff files notice as required by this paragraph,
14 judgment may be entered against a third-party defendant [,] regardless of whether
15 the plaintiff has asserted a direct claim against the third-party defendant, and attorney
16 fees may be awarded to the prevailing party as allowed under Civil Rule 82.

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

19 DIRECT COURT RULE AMENDMENT. Rule 82, Alaska Rules of Civil Procedure,
20 is amended by adding a new subsection to read:

21 (g) If a plaintiff asserts a direct claim against a third-party defendant and
22 complies with Civil Rule 14(c), the court shall award attorney's fees to the plaintiff,
23 third-party plaintiff, and third-party defendant as follows:

24 (1) if fault was not apportioned to the third-party defendant, the third-
25 party defendant is entitled to recover attorney's fees calculated under (b)(2) of this
26 rule, and the award of attorney's fees shall be divided equally between the plaintiff and
27 the third-party plaintiff; and

28 (2) if fault was apportioned to the third-party defendant, the plaintiff is
29 entitled to recover attorney's fees against the third-party defendant under (b)(1) of this
30 rule, and the third-party plaintiff is entitled to recover reasonable actual attorney's fees
31 or actual attorney's fees necessarily incurred in asserting the claim against the third-

1 party defendant as calculated under (b)(2) of this rule.

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

4 CONDITIONAL EFFECT. Sections 1 and 2 of this Act take effect only if secs. 3 and
5 4 of this Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,
6 Constitution of the State of Alaska.

7 * Sec. 6. This Act takes effect July 1, 2002.

PLETCHER, WEINIG & FISHER
ASSOCIATED IN THE PRACTICE OF LAW

John W. Pletcher, III
A PROFESSIONAL CORPORATION

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February 25, 2002

Laura Achee TRANSMITTED BY FACSIMILE -- (907) 465-4316
Representative Joe Green's Office
Capitol Building
Juneau, AK 99801-1182

Re: Revision to Rule 82(e) revisions

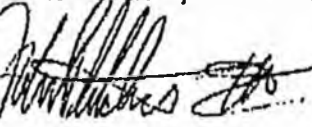
Dear Laura:

John Pletcher reviewed the text of the legislative proposal which I sent you and suggested that an amendment to Civil Rule 82(e) would also be appropriate as part of the same bill. Civil Rule 82(e) governs payment of attorney's fees at the present time. Enclosed is an amendment of Civil Rule 82(e) which compliments the amendment of Civil Rule 14(c) which I sent earlier. Both should be incorporated into the same bill. The statement of purpose behind the bill need not be changed.

A copy of Civil Rule 82, in its present form, is attached.

My best regards,

PLETCHER, WEINIG & FISHER



Richard A. Weinig

RAW/jv

enc.: Revision of Rule 82(c)
Civil Rule 82

Ahce Ltr



A

Plaintiff



B

**Original
Defendant**



C

**Third Party
Defendant**

Alaska State Legislature

WHILE IN SESSION
CAPITOL BUILDING
JUNEAU, ALASKA 99801-1100
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1 800-870-4931
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TRADE & TOURISM
MEMBER, RESOURCES
MEMBER, ETHICS
MEMBER, MILITARY & VETERAN AFFAIRS

BUDGET SUBCOMMITTEES
ALASKA COURT SYSTEM
DEPT. OF CORRECTIONS
DEPT. OF LAW

Representative Joe Green

District 10

Under current state law, if a plaintiff sues a defendant who is only partially responsible for the plaintiff's loss, the defendant must prove to the court the portion of fault shared by any third party defendants. If the original defendant is successful, the plaintiff automatically receives a judgment against the third party defendant for the third party defendant's percentage of fault. If a third party defendant prevails, the original defendant must pay the third-party's attorney fees.

The plaintiff bears no risk of incurring any third party defendant's attorney fees. This saves the plaintiff the cost (and liability) of pursuing all of the potential defendants, and allows them to "cherry pick" the easy targets. It also creates an undue burden on a defendant who is not entirely at fault for a plaintiff's loss.

House Bill 427 would place the responsibility for pursuing third party defendants on the plaintiff. The proposed changes to statute would require a plaintiff to file notice with the court if the plaintiff intends to pursue judgment against any third party defendants identified by the original defendant. The plaintiff then becomes partially responsible for the attorney's fees of any prevailing third party defendants the plaintiff chose to seek judgment against.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 427
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: All Departments
 Title Third Party Civil Action BRU _____
 Component _____
 Sponsor Rep. Joe Green
 Requester House Judiciary Committee Component No. _____

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)

This bill is expected to have no fiscal impact.

Prepared by: Heather Nobrega, Counsel
 Division: House Judiciary Committee
 Approved by: Rep. Norman Rokeberg, Chairman
 Agency: House Judiciary Committee

Phone 907-465-4990
 Date/Time 2/28/02 1:16 PM
 Date 2/28/2002

Alaska Action Trust

P.O. Box 102323 • Anchorage, Alaska 99510
Office: 813 West Third Avenue • Anchorage, AK 99501
(907) 258-4040 • FAX (907) 258-8751

MARCH 1, 2002

MAR 11 2002

HEATHER M. NOBREGA, J.D.
STAFF TO HOUSE JUDICIARY COMMITTEE
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801

DEAR MS. NOBREGA:

I AM GRATEFUL FOR THE TIME YOU WERE ABLE TO SPEND WITH ME DISCUSSING LEGISLATION OF IMPORTANCE TO THE ALASKA ACADEMY OF TRIAL LAWYERS & THE ALASKA ACTION TRUST.

AS WE DISCUSSED, HOUSE BILL 427 IS OF PARTICULAR INTEREST TO THE PLAINTIFFS' BAR. THE BILL NOT ONLY ENCOURAGES FRIVOLOUS APPORTIONMENT OF FAULT CLAIMS BUT UNFAIRLY SHIFTS THE BURDEN OF THOSE FRIVOLOUS CLAIMS TO THE PLAINTIFF. WE BELIEVE THAT TO FURTHER AND UNFAIRLY BURDEN INJURED PERSONS SEEKING REDRESS IS NOT IN THE PUBLIC'S BEST INTEREST. SPECIFICALLY, TO CREATE A NARROW FACT-FINDING WINDOW WHEN AN ADDITIONAL DEFENDANT IS BROUGHT INTO A LAWSUIT BY THE ORIGINAL DEFENDANT CREATES A SITUATION IN WHICH PLAINTIFFS ARE SUBJECT TO UNFAIR FINANCIAL RISK IN A SITUATION NOT UNDER THEIR CONTROL.

IN ADDITION, WE CONTINUE TO BE CONCERNED ABOUT THE BLANKET IMMUNITY PROVIDED TO CAB DRIVERS IN HOUSE BILL 68 AND WILL WORK WITH THE CHAIRMAN OF THE SENATE JUDICIARY COMMITTEE TO ADDRESS OUR CONCERNS.

AGAIN, THANK YOU FOR TAKING THE TIME TO MEET WITH ME.

YOURS VERY TRULY,


MICHAEL J. SCHNEIDER