

HB

56

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## MEMORANDUM

DATE: April 2, 2004

TO: Senator Ralph Seekins  
Chairman, Senate Judiciary Committee

FROM: Rep. Gara

RE: Hearing for HB 56

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I am requesting that HB 56, "Consumer Attorney's Fees for State" be scheduled for hearing in the Senate Judiciary Committee at your earliest convenience.

Included are copies of HB 56 and CSHB56(L&C), a sponsor's statement, sectional analysis, fiscal notes, a statement describing the difference between the original and CS, and two letters of support.

Thank you.

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# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## SPONSOR STATEMENT

### **HB 56: Making State's Fight Against Consumer Fraud More Effective; And More Cost Effective.**

This bill provides the state with a needed tool to fight consumer fraud more effectively, more efficiently, and without any cost to the state. This bill strengthens the state's ability to represent Alaskans who have been victimized by fraudulent business practices, whether by used car dealers, telemarketers, or others who prey on Alaska's consumers. It does so while actually saving the state money. Senator Fred Dyson and I have worked on similar cost-effective consumer protection measures in the past, and will join hands to advance this proposal in our respective legislative houses.

Currently victims of consumer fraud can contact the State's Attorney General's Office for help. However, due to budget constraints, the State cannot help many such victims. In 2001 roughly half of all Alaskans who complained of consumer law violations were turned away due to budget constraints.

HB 56 changes the law to allow the state to recover its full enforcement, investigation and court costs if it prevails against a party that has violated Alaska's consumer protection laws. The bill is modeled after legislation in other areas that allow state and federal investigators and enforcement authorities to recover their enforcement costs. For example, federal anti-trust, and federal and state hazardous waste laws allow the recovery of enforcement costs and full attorneys fees from parties who violate the law.

The public policies behind this bill are simple: Those who engage in unfair business practices should not force the state to bear the costs of their misconduct. Moreover, by allowing the state to recover not only the existing penalties that are available under state law, but its enforcement costs, the law will help fund a more vibrant, more cost-effective consumer protection presence in Alaska.

Current law prevents the state from recovering many types of investigative and enforcement costs, and allows the state to recover only 20% of its attorney fee costs. Please feel free to contact me with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Les Gara", with a horizontal line extending to the right.

Les Gara

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## Differences Between HB 56 and CSHB 56(L&C)

### **There is one change:**

The original bill did not include a statement that this bill involves a court rule change.

Since that version was introduced, however, it has been made clear that, indeed, the Act would substantively change Court Rules 54(d), 79 and 82 of the Alaska Rules of Civil Procedure. The proposed CSHB 56 takes this into account and incorporates the court rule changes (Sec. 2., starting page 1, line 10 of proposed CS).

The bill now states a 2/3 vote is required because a court rule change is involved.

As a result, Sec. 4 of the original bill, the EFFECT NOTWITHSTANDING VOTE clause, is no longer necessary and has also been removed.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 56(L&C)  
 (H) Publish Date: 4/28/03

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

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (GF/PR)</b>	*****	*****	*****	*****	*****	*****
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 HB 56 allows the attorney general to recover full reasonable attorneys fees and costs when the state prevails in an action brought under Alaska's Consumer Protection Act, AS 45.50.471 *et seq.* Currently, private parties who bring successful actions under the Act can recover full fees and costs, but the state can only recover a portion of its fees pursuant to Alaska Civil Rule 82 for bringing the same action. It is unclear how much, if any, additional revenues might result if this bill passes. Presently, most actions brought by the attorney general under the Act are settled, and the settlement often considers the time and expenses incurred by the attorney general to bring the action. In larger multi-state cases, settlements often include payment of attorneys fees and costs. In smaller, local cases, however, potential violators may be deterred by the risk of paying the state's full attorneys fees and costs. In cases where litigation is inevitable, this bill would allow the recovery of additional funds, and may assist in settlement negotiations.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division: Attorney General's Office Date/Time 4/21/03 4:17 PM  
 Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General Date 4/21/2003  
 Agency: Department of Law

# LEGAL SERVICES

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## MEMORANDUM

March 7, 2003

**SUBJECT:** CSHB 56( ) relating to attorney fees and costs awarded in unfair trade actions (Work Order No. 23-LS0300\H)

**TO:** Representative Les Gara  
Attn: Ryan

**FROM:**  Theresa L. Bannister  
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.

**Section 1.** Provides that in an unfair trade practice action the state shall be awarded its actual reasonable attorney fees and costs, including investigation costs, if the state wins the case.

**Section 2.** Explains how sec. 1 indirectly causes changes in Rules 54(d), 79, and 82 of the court's rules of civil procedure.

**Section 3.** Applies sec. 1 to causes of action that accrue on or after the effective date of this Act.

If I may be of further assistance, please advise.

TLB:med  
03-272.med

# ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

## Sectional Analysis: HB 56

This bill provides the state with a needed tool to fight consumer fraud more effectively, more efficiently, and without any cost to the state. This bill strengthens the state's ability to represent Alaskans who have been victimized by fraudulent business practices, whether by dishonest used car dealers, telemarketers, or others who prey on Alaska's consumers. It does so while actually saving the state money.

HB 56 changes the law to allow the state to recover its full enforcement, investigation and court costs if it prevails against a party that has violated Alaska's consumer protection laws. The bill is modeled after legislation in other areas that allows the state to recover its enforcement costs. For example, federal anti-trust, and federal and state hazardous waste laws allow the state to recover its enforcement costs from parties who violate the law.

**Section 1:** Currently the state is entitled to only partial compensation for its enforcement efforts when it prevails in a case under Alaska's consumer protection law, the Unfair Trade Practices Act. This section changes the law to entitle the state, if it prevails in such a case, to receive full compensation for its enforcement efforts on behalf of a victim. Under this section, a court may award full compensation to the state for its attorneys fees and investigation and other enforcement costs. The state would have to prove that these costs were reasonable.

**Section 2:** This notice is required when the Legislature changes existing court rules on attorney's fees and costs.

**Section 3:** Provides for a standard effective date, and that the new law only applies to new cases that arise because of conduct that occurs after this law is enacted.



Honorable Tom Anderson, Chair  
House Labor and Commerce Committee  
Alaska Capital, Room 432  
Juneau, AK 99801-1182

March 27, 2003

RE: HB 56 (Gara)-Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 56, authored by Representative Les Gara.

This bill will allow the State of Alaska to recover all costs involved in the prosecution of an entity that violates the State's consumer protection laws. We fully agree with Representative Gara that the State should not bear the costs for someone who conducts business illegally here. Many AARP members are the victims of consumer fraud. We know many more would be able to secure the professional assistance of the Attorney General's office if more funding was available. HB 56 is an ideal way to provide that funding.

AARP urges an "AYE" vote on HB 56.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capitol City Task Force; Patrick Luby

3501 C Street, Suite 1420 | Anchorage, AK 99503 | 907-341-2277 | 907-341-2270 fax | 1-877-434-7598 TTY  
James G. Parkel, President | William D. Novelli, Executive Director and CEO | [www.aarp.org](http://www.aarp.org)

(907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Sincerely,

*Marguerite Stetson*

Marguerite Stetson  
AARP Alaska  
Executive Council Member for Advocacy  
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cc: Vice-Chair Bob Lynn  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg  
Representative Les Gara  
Marie Darlin  
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# AKPIRG

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## Statement in Support of HB 56

**HB 56 deserves a prompt hearing because of its value to Alaskan consumers and the Attorney General's office.**

HB 56 bolsters the State of Alaska's ability to fight consumer fraud. With the proliferation of both phone and internet solicitations and Alaskan's reliance on such commercial mechanisms, fraudulent businesses have ever-increasing avenues to engage in illegal business practices. Identity theft has risen to become the most prevalent form of fraud reported to the Department of Law. Yet, in 2001 around half of all Alaskans who complained about consumer law violations couldn't get help from the state due to a lack of funding. This bill makes bad businesses pay for their violations

HB 56 gives the state another method to fight consumer fraud without expense to the state. Through this legislation, the state will be able to represent Alaskans who have been wronged by fraudulent business practices. While doing this, the law will also allow the state to recover its full court costs if it prevails against a party that has violated Alaska's consumer protection laws. Current law prevents the state from recovering many types of investigative and enforcement costs, and allows the state to recover only 20% of its attorney fee costs. Just as businesses must purchase a license to operate in Alaska, those businesses that break Alaska laws should be held responsible for the costs they rack up in Alaska courts.

HB 56 is patterned after legislation, both state and federal, which allows the recovery of enforcement costs. Federal anti-trust laws, and federal and state hazardous waste laws allow the state to recover its enforcement costs from parties who violate the law.

Currently, Alaska is entitled to only partial compensation for its enforcement efforts when it prevails in a case under the Unfair Trade Practices Act. HB 56 changes the law to entitle the state to receive full compensation for its investigation and enforcement efforts on behalf of a victim, if it prevails in such a case. The state would have to prove that these costs were reasonable.

AkPIRG urges quick passage of HB 56.