

ALASKA LEGISLATURE

1924

HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000

HB

42

3714

N14H

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: March 20, 2000

FURTHER REFERRALS:

Date of Committee Action: 3/21/00

The FINANCE Committee considered:

SSHB 42

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 42

CIVIL LIABILITY FOR IMPROPER LITIGATION

"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 an effective date."

recommends it be replaced with the following committee substitute CSHB 42 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) LAW fiscal note(s) _____
Alaska Court System

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>[Signature]</i>	mulder	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	Williams			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	Bunde	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	Aushman			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	J. Davis			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	Grossendort			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	Moses			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	G. Davis			<input checked="" type="checkbox"/>	
<i>[Signature]</i>	Forster	<input checked="" type="checkbox"/>			
<i>[Signature]</i>	Phillips	<input checked="" type="checkbox"/>			

(4)

(6)

CO CHAIR'S SIGNATURE *[Signature]*
mulder

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (FIN)

3-20-00 work draft

Revision Date/Time (Note if correction) 3/20/00 Work Draft Dept. Affected Alaska Court System
 Title False Claims & Improper Practice in Civil BRU 769
Cases Component Trial Courts
 Sponsor Rep. Mulder
 Requester House Finance Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	47.0	47.0	47.0	47.0	47.0	47.0
Travel						
Contractual	17.7	17.7	17.7	17.7	17.7	17.7
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	64.7	64.7	64.7	64.7	64.7	64.7

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	64.7	64.7	64.7	64.7	64.7	64.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	64.7	64.7	64.7	64.7	64.7	64.7

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time						
Part-time	2	2	2	2	2	2
Temporary	2	2	2	2	2	2

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: Doug Wooliver
 Division: Alaska Court System
 Approved by: Stephanie Cole, Administrative Director
 Agency: Alaska Court System

Phone: 463-4756
 Date/Time: 3/20/00 5:00 PM
 Date: 3/20/00

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Alaska Court System
Fiscal Analysis
CSSSHB 42 (3/20/00 Work Draft)

Draft CSSSHB 42 creates civil liability for actions that it describes as false claims and improper practice in civil cases. Section 1 of the bill essentially codifies Civil Rule 11, with three primary differences. First, CR 11 allows a judge to impose sanctions in a case in which improper practice took place, whereas CSSSHB 42 would authorize the aggrieved party to file a separate case before a separate judge, to be heard subsequent to the initial case. Any claim that the second case involved improper practice would result in a third case, and so on.

Second, by allowing a civil action for improper practice, CSSSHB 42 essentially makes financial sanctions (in the form of compensatory and/or punitive damage) for such behavior mandatory. This differs from CR 11, which gives the judge discretion in imposing sanctions (these might include financial sanctions, exclusion or admission of disputed evidence, extension or limitation of discovery, etc.). The federal courts began requiring mandatory sanctions for improper practice in 1983. This rule generated a dramatic increase in claims, and as a result, the federal courts repealed the requirement in 1993. Federal sanctions are once again discretionary.

Third, if a party makes a false statement of a material fact the trier of fact must enter judgment against that party on the issue to which the false statement relates. This differs from CR 11, which gives the judge discretion to dismiss a case or impose lesser sanctions if appropriate under the circumstances. As noted above, the federal experience suggests that mandatory sanctions actually increase caseloads.

While potentially beneficial for certain litigants, we believe that this legislation will result in a net increase in the number of cases before the courts. Had CSSSHB 42 been in effect in FY 99 it would have applied to over 8,000 civil cases in superior court, and roughly 15,000 civil cases in district court. If only 2.5 percent of those cases had resulted in a civil action for frivolous practice (either by the defendant or the plaintiff), there would have been roughly 575 new cases filed. If only 2.5 percent of those had resulted in a trial, there would have been 15 new trials. This note provides for the judicial time, clerical costs, and jury fees necessary to cover those additional trials.

This fiscal note does not take into account the additional motion practice that will occur in those new cases that are filed but settle prior to trial. It also does not reflect the additional time required to deal with motions filed in the underlying case that relate to having the trier of fact find that one party has made a false statement of material fact. Attorneys can be expected to be aggressive in their use of CSSSHB 42 as a new tool to pressure the opposing party into settling a case on their terms. More filings and more motion practice in existing cases will result in additional judicial time, as well as increased clerical costs.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>"...relating to civil liability...amending Rules 79 and 82(b), Alaska Rules of Civil Procedure..."</u>	BRU <u>Criminal Division; Civil Division</u>
Sponsor <u>Representative Mulder</u>	Component <u>Criminal Justice Litigation; Special Litigation</u>
Requester <u>House Finance Committee</u>	Component Serial No. <u>2202;2213</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	95.0	95.0	95.0	95.0	95.0	95.0
Travel	3.4	3.4	3.4	3.4	3.4	3.4
Contractual	43.3	43.3	43.3	43.3	43.3	43.3
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	149.7	143.2	143.2	143.2	143.2	143.2

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	75.7	72.7	72.7	72.7	72.7	72.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	74.1	70.6	70.6	70.6	70.6	70.6
TOTAL	149.7	143.2	143.2	143.2	143.2	143.2

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill creates several new causes of action similar to but broader than common law abuse of process. A party to a civil suit could bring a separate civil action against persons who signed pleadings in the original suit, under certain circumstances, or against persons who participated 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 "valid under applicable law." Potential defendants in the separate action are not limited to people who were parties to the original case, but include witnesses who sign affidavits, attorneys, and others who participate as representatives of parties in the litigation of the original case. A civil suit under this bill could not be brought until after a final judgment was entered in the original case. In addition, other preconditions to a separate lawsuit are that the party bringing an action under this bill must have given notice to the opposing party of the allegedly improper conduct

Prepared by: <u>Joan M. Kasson</u>	Phone <u>465-5370</u>
Division <u>Attorney General's Office</u>	Date/Time <u>3/20/00, 5:07 PM</u>
Approved by <u>Commissioner</u> <u>Bruce M. Bolelho, Attorney General</u>	Date <u>3/20/00</u>
Agency <u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (JUD)

ANALYSIS CONTINUATION

in the original case and that party must not have corrected the challenged conduct within 21 days of the notice. The bill does not require notice and opportunity to correct be given to non-parties, such as witnesses or representatives of parties, even though they could be sued separately under this bill. The party bringing the action under this bill must have prevailed on the claim or defense that was the basis for the notice given to the opposing party.

As drafted, this bill would have substantial fiscal impacts on the Department of Law, not because it would authorize claims against the state or state employees that would have merit, but rather by encouraging a large number of unfounded claims that would increase litigation costs. The department handles a disproportionate volume of pro se litigation (where the opposing party is unrepresented by legal counsel) in a variety of legal subject areas. Although the bill does not apply to an action "brought by a person incarcerated by the state," or involving divorce, dissolution, or child adoption, custody, support or visitation, it may not foreclose litigation under the bill by former prison inmates or parties to Child In Need of Aid proceedings.

We anticipate that many pro se litigants would assert that state filings and defenses violated the prohibitions of this bill, and would file separate lawsuits against state employees, officials, and attorneys who were involved in civil litigation with which the pro se litigants were unhappy. In addition, even where a party is represented by counsel and prevails but does not recover the full costs of litigation, this bill would provide a second chance at getting additional compensation, by litigating whether the losing opponent and its attorneys had "a reasonable basis in fact" or valid applicable law behind their claims or defenses. Because the defendants could have varying degrees of responsibility for the underlying litigation, and could likely have divergent defenses, the potential for conflicts among defendants is significant and would likely result in the need to retain separate counsel. Lawyers and their clients could each need their own counsel to defend their conduct in litigating the original case, and expert witnesses would be called upon to establish the reasonableness of their position. While the state could counterclaim on its own behalf under the provisions of this bill, or could be awarded attorney's fees if it prevails on litigation brought under this bill, the state would not likely recover much, as many pro se litigants are judgment proof.

If it can be demonstrated that the plaintiff in an action brought under this bill had failed to give the required notice of improper conduct to the opposing party in the original case or did not prevail on the claim or defense that was the subject of the notice, the action could be dismissed on motion practice, without a trial. However, in situations where notice was given and the challenged issue was not corrected (as, for example, where it goes to the heart of the dispute between the parties), the action brought under this bill would likely present triable issues that could not be resolved by motion. So too will there likely be disputes about whether a party prevailed in the original case on the claim or defense that was the subject of a notice, and whether they can pursue relief under this bill.

Overall, the department estimates that CSSSHB 42 (JUD) would increase the cost of litigation by about 1 percent in each division. Based on the number of equivalent positions handling civil litigation, this will result in an increase of three-quarters of a full-time equivalent attorney position in the civil division, and an estimated 120 hours of attorney time in the criminal division.

The department's FY01 weighted cost for an attorney position is \$134,712 per year, and \$93.42 per hour. The weighted cost includes clerical support, communications, space, supplies, data processing, and all other normal overhead expenses. It does not include direct, out-of-pocket case costs such as experts, court reporters, and case travel, or one time new equipment purchases. The projected in-house

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. CSSSHB 42 (JUD)

ANALYSIS CONTINUATION

staff cost would be \$101,025 for the civil division, plus \$6,500 in FY01 only for new equipment, (46.14% GF and 56.86% IAR) and \$11,200 in general funds for the criminal division. \$5,000 will be needed by the civil division for direct case costs (46.14% GF and 56.86% IAR), and \$1,000 for the criminal division. Additionally, due to conflicts, \$25,000 in outside counsel costs will probably be incurred by the civil division (46.14% GF and 56.86% IAR). No outside counsel costs are anticipated for the criminal division.

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Karen Cowart

**THE ALLIANCE**

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

**Alaska Support Industry Alliance
Support Testimony to House Finance Committee
House Bill 42 – Frivolous Lawsuit Prevention Act**

March 21, 2000

By Karen Cowart, General Manager

My name is Karen Cowart, general manager of the Alaska Support Industry Alliance. I appreciate the opportunity to provide testimony before this committee in support of House Bill 42.

For two decades, The Alaska Support Industry Alliance (The Alliance) has served as the statewide non-profit trade organization 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.

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 suing 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 serve to delay developments that are important to Alaskans' quality of life and our state's economic well being.

House Bill 42 creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to ensure their claims have a factual bearing before filing a lawsuit. The bill would also make those that filed a frivolous suit responsible for assessed damages. Further, the bill would assign financial liability to those who tried to cloud the issue with false or misleading claims, in hopes of finding a party willing to settle rather than spend dollars to litigate.

We believe each party in a lawsuit has a responsibility to present factual and legitimate information. A system that allows deceit to be awarded is just not right and needs to be changed.

Thank you for the opportunity to provide the support industry's view on this issue.

*adopted as amended
2 amended pg 2*

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 42(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MULDER, Rokeberg

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 Rules 79 and 82(b), Alaska Rules of Civil Procedure."

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, claims, or defenses that are false;

11 (2) initiate or sign a civil pleading before making reasonable inquiry
12 and forming a reasonable belief

13 (A) in the existence of the facts upon which the claim or
14 defense is based; and

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(B) that, under the facts described in (A) of this paragraph, the claim or defense is valid under the applicable law; or

(3) participate as a party or as a representative of a party in the continuation of a claim or defense after the person discovers that the claim or defense is not

(A) supported by a reasonable basis in fact; or

(B) valid under applicable law.

(b) If the trier of fact determines that a party to a civil action intentionally made a false statement of a material fact in connection with the prosecution or defense of a civil action, the court shall dismiss the claim or defense to which the false statement relates. If the civil action involves multiple claims or defenses and the false statement does not apply to all claims or defenses, the dismissal required under this subsection shall apply only to those claims or defenses to which the false statement directly relates.

(c) The dismissal required by (b) of this section does not apply to a civil action in which the court determines that dismissal would be unfair to the interests of another party not involved in the wrongdoing. If the court determines that dismissal as to a claim or defense would be unfair to another party not involved in the wrongdoing, the court shall enter an order awarding monetary damages against the party making the false statement in an amount sufficient to fairly compensate the injured party for damages incurred and to deter others from similar conduct.

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

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

(2) paragraph (a)(2) of this section may bring an action for recovery of compensatory damages against the person who wrongfully initiated or signed the pleading;

(3) paragraph (a)(3) of this section may bring an action for compensatory damages against the person who wrongfully participates in the continuation of a claim or defense.

(e) If a party brings an action under (d) of this section, the court shall award

1 actual reasonable attorney fees and actual reasonable costs to the prevailing party.

2 (f) A person may not bring a civil action to recover damages under (d) of this
3 section unless

4 (1) a notice of the specific conduct alleged to violate (a) of this section,
5 with any supporting evidence, was served on the opposing party as required under the
6 Alaska Rules of Civil Procedure, but not filed with the court;

7 (2) the challenged conduct was not appropriately corrected within 21
8 days after the notice described in (1) of this subsection was served;

9 (3) the person prevailed on the claim or defense that was the basis for
10 the notice described under (1) of this subsection; and

11 (4) final judgment has been entered in the civil action described in (a)
12 of this section.

13 (g) Nothing contained in this section shall be construed to prohibit a good faith
14 argument for the extension, modification, or reversal of existing law.

15 (h) This section does not apply to an action

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

17 (2) involving divorce or dissolution;

18 (3) involving adoption, custody, support, or visitation of a child;

19 (4) filed as a small claims action; or

20 (5) involving children in need of aid under AS 47.10.

21 (i) In this section, "civil pleading" includes motions and affidavits by a party
22 to the civil action.

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

25 **INDIRECT COURT RULE AMENDMENT.** AS 09.65.190(e), enacted in sec. 1 of this
26 Act, has the effect of amending Rule 79, Alaska Rules of Civil Procedure, by allowing the
27 award of actual reasonable costs in certain civil actions.

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

30 **INDIRECT COURT RULE AMENDMENT.** AS 09.65.190(e), enacted in sec. 1 of this
31 Act, has the effect of amending Rule 82(b), Alaska Rules of Civil Procedure, by allowing the

1 award of actual reasonable attorney fees in certain civil actions.

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

4 APPLICABILITY. This Act applies to an act or omission described under
5 AS 09.65.190, added by sec. 1 of this Act, that occurs on or after the effective date of this
6 Act.

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

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

Supporters of HB42... Frivolous Lawsuit Bill

Associations

AK Support Industry Alliance
National Federation of Independent Business
Nat Assoc of Independent Insurers
Alaska Restaurant & Beverage Association
Alaska State Chamber of Commerce
Alaska Visitors Association
Alaska Hospitality Alliance
Southeast Conference
Alaska Hotel & Motel Association
Alaska School Activities Association

Individuals

Robert Mintz	
Frank Rose	Alaska Lodging Mgt.
Justin Ripley	Alaska Travel Network
Thomas Ely	Sockeye Cycle
Kirk Hoessle	Alaska Wildland Adventures
Kelly Bay	Wrangell Mountain Air
Robert Dindinger	Alaska Travel Adventures
Bob Didier	Silverbow Construction
James Ingraham	Interior Medical Supply
Ronald Aksamit	M&A Consulting Engineers
Heidi Atkinson	
Erika Weld	Dalton Highway Adventures
Alice Orlich	Wiseman Museum
Lee Kenaston	Arctic Circle Trading Post
Kathy Hedges	
Gregg MacDonald	Aurora Drilling
10 Signatures	Jan's Distributing
Esther Alsworth	Alaskan Aircraft Engines



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

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Small Business Works
FOR ALASKA
...and NFIB works for small business.

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Vahlhoven Oilfield System Services
Bill Webb
Business Consultant

GENERAL MANAGER

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



ALASKA VISITORS ASSOCIATION

2525 C Street, Suite 400 • Anchorage, Alaska 99503

Phone: (907) 561-5733 • Fax: (907) 561-5727

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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



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,

A handwritten signature in cursive script that reads "Karen Rogina".

Karen Rogina
Executive Vice President.

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

R



**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

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



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, prejudice 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 Support Industry
ALLIANCE**

4220 'B' Street, Suite 200
Anchorage, AK 99503
Phone 907.563.2226
Fax 907.561.8870
www.akalliance.org

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Karen Cowart



THE ALLIANCE

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

**Alaska Support Industry Alliance
Support Testimony for House Bill 42 – Frivolous Lawsuit
Prevention Act**

March 17, 2000

By Karen Cowart, General Manager

My name is Karen Cowart, general manager of the Alaska Support Industry Alliance. I appreciate the opportunity to testify before this committee and support House Bill 42.

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 suing 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.

House Bill 42 creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to ensure their claims have a factual bearing before

filing a lawsuit. The bill would also make those that filed a frivolous suit responsible for assessed damages. Further, the bill would assign financial liability to those who tried to cloud the issue with false or misleading claims, in hopes of finding a party willing to settle rather than spend dollars to litigate.

We believe each party in a lawsuit has a responsibility to present factual and legitimate information. A system that allows deceit to be awarded is just not right and needs to be changed.

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.

SILVER BOW CONSTRUCTION

5331 Shaunc 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

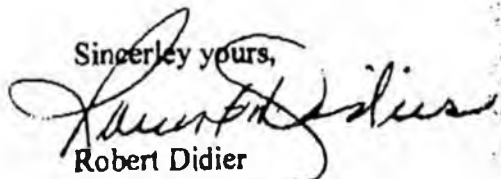
Dear committee Members,

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 Thyse Shaub, fax. 463-5128

2

INTERIOR Medical Supply

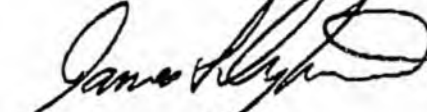
2040 South Cushman, Fairbanks, Alaska 99701, Phone (907) 457-8486, Fax (907) 457-8488

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

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 destination, 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



Erik Weld
Dalton Highway Adventures

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.

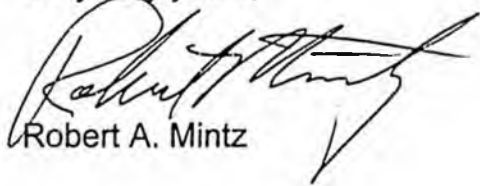
The Bill creates an enforceable obligation for litigants and attorneys to make reasonable efforts to assure that claims have a reasonable basis. Also, if a claim is knowingly or recklessly false, both the attorney and the party can be assessed damages. The trier of fact, usually a jury, will make the 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

AURORA DRILLING

A DIVISION OF AMERICAN ARCTIC COMPANY
P.O. BOX 61618 • FAIRBANKS, ALASKA 99708 • PHONE (907) 456-6712 • FAX (907) 451-4356

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



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

A handwritten signature in black ink, appearing to read 'Lee Kenaston', with a small star or asterisk at the end of the signature.

Lee Kenaston
Arctic Circle Trading Post

MARCH 16, 2000

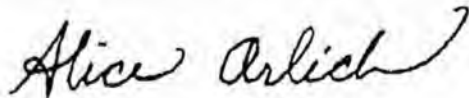
REPRESENTATIVE PETE KOTT
HOUSE JUDICIARY COMMITTEE
JUNEAU, ALASKA 99801

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

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

nl

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

Principals: G. Wayne Boedecker, P.E. ■ Ronald E. Aksamit
Associates: Jon L. Morse ■ David J. Morrone, P.E., CLEP, LC ■ Alexander T. Reeve, P.E. ■ Bradley S. Sordahl, P.E.

Specializing in Arctic, Subarctic, Northern Maritime and Remote Regions

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.

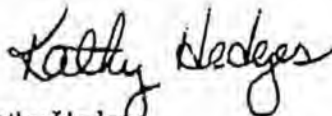
Many visitor industry businesses I have worked for from Juneau to Fairbanks provide an opportunity for guests to enjoy Alaska. These include hot springs resorts, snow machine tours, dog sled rides, motorcoach companies and art galleries. All of these businesses - large and small - have trained staff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

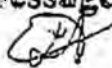


Kathy Hedges

CC: Representative Joe Green
Representative Jeannette James
Representative Lisa Murkowski
Representative Norman Rokeberg
Representative Eric Croft
Representative Beth Korttula

Kathy Hedges * PO Box 72818 * Fairbanks AK 99707 * 907-474-2035

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.** 

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 ones, House Bil. 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



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 Maguire
Johan H. Langer

Tiffany Hunsrow

[Signature]

Bob Scott

[Signature]

Deborah Jind

[Signature]

Paul Liffich

Sylvia K. East

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

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: Support of HB42 (Frivolous Lawsuits)

Date: Mon, 28 Feb 2000 10:53:10 -0900

From: Anne Adasiak-Andrew <aadasiak@avanet.org>

To: "Representative_Eldon_Mulder@legis.state.ak.us" <Representative_Eldon_Mulder@legis.state.ak.us>

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



THE ALLIANCE

4220 W Street, Suite 200 • Anchorage, Alaska 99503-5911 • Phone: (907) 583-2226 • Fax: (907) 581-8870

MEMORANDUM

TO: Representative Joe Green
 FROM: Karen Cowart *Karen*
 RE: Support for HB 42 – Frivolous Lawsuit Prevention Act
 DATE: March 1, 2000
 PAGES: 1, including cover memo

Representative Green,

The Alliance supports HB 42 - Frivolous Lawsuit Prevention Act, for a number of reasons and asks that you consider support for the bill as well.

This bill creates an obligation, in statute, for litigants and attorneys to make reasonable efforts to ensure their claims have a factual bearing before filing a lawsuit. The bill would also make those that filed a frivolous suit responsible for assessed damages. Further, the bill would assign financial liability to those who tried to cloud the issue with false or misleading claims, in hopes of finding a party willing to settle rather than spend dollars to litigate.

We believe each party in a lawsuit has a responsibility to present factual and legitimate information. A system that allows deceit to be awarded is just not right and needs to be changed.

We ask your support for House Bill 42.

Thank you.

Post-it® Fax Note	7671	Date <i>3/2/00</i>	# of pages <i>1</i>
To <i>Rep. Anderson</i>	From <i>Karen Cowart</i>		
Co./Dept.	Co.		
Phone #	Phone #		
Fax # <i>907-465-3518</i>	Fax #		



REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON

ALASKA STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

"PROUD TO BE A MULDOONER"



SPONSOR STATEMENT

CS for SPONSOR SUBSTITUTE FOR HOUSE BILL 42 (JUD)

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 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 in addition to exalating 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 occur. 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.

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, deter 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 bill assigns financial liability to those who:

- Intentionally advance a civil pleading containing a false allegation of material fact
- Use claims or cross claims to cloud an issue
- File unsuccessful claims on the hope of finding someone willing to settle rather than spend the dollars to litigate the suit
- Sign a civil pleading before making reasonable inquiry to determine it is well grounded in fact and warranted by existing law

The basic purpose of HB42 is to give injured parties effective remedies for bad faith civil litigation. Those who are trying to tell the truth will have nothing to fear from this bill, as it would only apply if the trier of fact finds a party has made an intentional, false statement of material fact.

SECTION BY SECTION ANALYSIS OF CSSHB42

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).



REPRESENTATIVE ELDON MULDER

DISTRICT 23 - MULDOON & FORT RICHARDSON

ALASKA STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

"PROUD TO BE A MULDOONER"



SPONSOR STATEMENT

CS for SPONSOR SUBSTITUTE FOR HOUSE BILL 42 (JUD)

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 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 in addition to escalating 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 occur. 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.

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, deter 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 bill assigns financial liability to those who:

- Intentionally advance a civil pleading containing a false allegation of material fact
- Use claims or cross claims to cloud an issue
- File unsuccessful claims on the hope of finding someone willing to settle rather than spend the dollars to litigate the suit
- Sign a civil pleading before making reasonable inquiry to determine it is well grounded in fact and warranted by existing law

The basic purpose of HB42 is to give injured parties effective remedies for bad faith civil litigation. Those who are trying to tell the truth will have nothing to fear from this bill, as it would only apply if the trier of fact finds a party has made an intentional, false statement of material fact.

HB

43

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 13, 1999

FURTHER REFERRALS:

Date of Committee Action: 4-20-99

The FINANCE Committee considered:

HB 43

HOUSE BILL NO. 43

MUNI.ORDINANCES:POLICE TRAINING SURCHARGE

"An Act relating to police training surcharges imposed for violations of municipal ordinances."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) DCRA 3/5/99

DPS 3/5/99

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Therianault			<input checked="" type="checkbox"/>	
<i>Chas B. ...</i>	Bunde	<input checked="" type="checkbox"/>			
<i>Van ...</i>	Kuhring				<input checked="" type="checkbox"/>
<i>William ...</i>	Austerman	<input checked="" type="checkbox"/>			
<i>John ...</i>	J. DAVIES			<input checked="" type="checkbox"/>	
<i>Ben ...</i>	Grossindorf			<input checked="" type="checkbox"/>	
<i>Frank ...</i>	J. DAVIS	<input checked="" type="checkbox"/>			
<i>...</i>	Williams	<input checked="" type="checkbox"/>			
<i>...</i>	...	<input checked="" type="checkbox"/>			
<i>...</i>	...		<input checked="" type="checkbox"/>		

CHAIR'S SIGNATURE

Gene Theriault
 Therianault

STATE OF ALASKA
1999 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 43
(H) Publish Date: 3/5/99

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to police training surcharges BRU: _____
imposed for violations of municipal ... Component: _____
 Sponsor: REPRESENTATIVE DAVIS
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
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	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709
 Division: Division of Administrative Services Date: 2/22/99
 Approved by Commissioner: *Mike Duda* Date: 2/22/99
 Agency: Community & Regional Affairs

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FISCAL NOTE

No: 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 43

(H) Publish Date: 3/5/99

Revision Date: 2-23-99

Dept. Affected: Department of Public Safety

Title: An Act... relating to police training surcharges

BRU:

Component: Alaska Police Standards Council

Sponsor: Rep. Davis

Requestor: (H) C&RA

COMPONENT SERIAL NO. 0519

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 00) impact: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared By: Laddie Shaw

Phone: 465-4378

Division: Alaska Police Standards Council

Date: 2-23-99

Approved by Commissioner:

Date: 2-25-99

Agency: Ronald L. Otte, Dept. of Public Safety

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STATE OF ALASKA
1999 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 43

(H) Publish Date: 3/5/99

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to police training surcharges BRU: _____
imposed for violations of municipal ... Component: _____
 Sponsor: REPRESENTATIVE DAVIS
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
OPERATING						
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	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE: | _____ | _____ | _____ | _____ | _____ | _____

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

enactment of this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709
 Division: Division of Administrative Services Date: 2/22/99
 Approved by Commissioner: *Mike Miller* Date: 2/22/99
 Agency: Community & Regional Affairs

FISCAL NOTE

No: 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 43
 (H) Publish Date: 3/5/99

Revision Date: 2-23-99 Dept. Affected: Department of Public Safety
 Title: An Act... relating to police training surcharges BRJ:
 Component: Alaska Police Standards Council
 Sponsor: Rep. Davis
 Requestor: (H) C&RA COMPONENT SERIAL NO. 0519

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

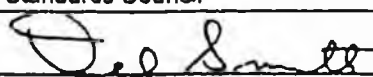
Estimate of current year (FY 00) impact: \$ -0-

POSITIONS:

POSITIONS	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared By: Laddle Shaw Phone: 465-4378
 Division: Alaska Police Standards Council Date: 2-23-99
 Approved by Commissioner:  Date: 2-25-99
 Agency: Ronald L. Otte, Dept. of Public Safety

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STATE OF ALASKA
1999 LEGISLATIVE SESSION

FISCAL NOTE

Bill Version: HB 43
(H) Publish Date: 3/5/99

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to police training surcharges BRU: _____
imposed for violations of municipal ... Component: _____
 Sponsor: REPRESENTATIVE DAVIS
 Requestor: House CRA Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY04	FY 05
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	0.0	0.0	0.0	0.0	0.0	0.0

REVENUE FUND SOURCE:

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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709
 Division: Division of Administrative Services Date: 2/22/99
 Approved by Commissioner: *Mike Dunne* Date: 2/22/99
 Agency: Community & Regional Affairs

FISCAL NOTE

No: 2

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: HB 43
 (H) Publish Date: 3/5/99

Revision Date: 2-23-99 Dept. Affected: Department of Public Safety
 Title: An Act... relating to police training surcharges BRU:
 Component: Alaska Police Standards Council
 Sponsor: Rep. Davis
 Requestor: (H) C&RA COMPONENT SERIAL NO. 0519

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES () Revenue Code	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

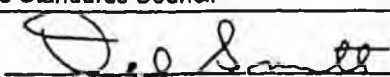
Estimate of current year (FY 00) impact: \$ -0-

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared By: Laddie Shaw Phone: 465-4378
 Division: Alaska Police Standards Council Date: 2-23-99
 Approved by Commissioner:  Date: 2-25-99
 Agency: Ronald L. Otte, Dept. of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SPONSOR STATEMENT

An act relating to police training surcharges imposed for violations of municipal ordinances

The Police Training Fund was established to provide training for the law enforcement and corrections community of the state. Appropriations to this fund may be made from income derived from the imposition of surcharges on criminal convictions.

Last year, legislation was passed expanding the types of crimes for which a surcharge is imposed and increasing the amount of the surcharge applied. This surcharge is imposed on both state and municipal law violations.

Recently, concern was raised that the phrasing used in the legislation could be interpreted as requiring surcharges to be imposed on civil as well as criminal violations of the law. Additionally, it was argued that if a local government did not authorize the imposition of a surcharge, an entire ordinance could be found invalid rather than just the section imposing the fine.

House Bill 43 is a housecleaning measure to address these two concerns. First, the legislation clarifies that the surcharge will be imposed on a violation of a municipal ordinance that imposes a criminal penalty for its violation. Second, this legislation specifies that the municipality can not enforce (or collect) a penalty for a violation unless the municipality also authorizes the imposition of a surcharge on the violation.

HB43/ss/020199

Session: State Capitol, Juneau, AK 99801 • Phone 907/465-2693 or 800/463-2693 • Fax 907/465-3835
Interim: 145 Main St. Lp., Ste. 223, Kenai, AK 99611 • Phone 907/283-7095 or 907/224-2051 • Fax 907/283-3075
Email: Representative_Gary_Davis@legis.state.ak.us

HB

43

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/3/00

FURTHER:

REPORTED OUT OF
SFC 4/6/00

DATE TURNED
IN TO OFFICE: 16 April 00

Finance Committee considered

HOUSE BILL NO. 43

"An Act relating to police training surcharges imposed for violations of municipal ordinances."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<u>ROD E. JEFF</u>	✓	<u>Lyde Green</u>	✓		
		<u>Al Caproni</u>	✓		
		<u>Pete Kelly</u>	✓		
		<u>Ray West</u>	✓		
		<u>Loren D. Linn</u>	✓		
		<u>Dave Woles</u>	✓		
Co-Chair: <u>Norm</u>	✓	Co-Chair:			
Co-Chair: <u>Alan Powell</u>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Public Safety	1/28/00	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

HOUSE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIS, Croft

Introduced: 1/19/99

Referred: Community and Regional Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to police training surcharges imposed for violations of municipal**
2 **ordinances."**

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

4 *** Section 1.** AS 12.55.039(a) is amended to read:

5 (a) In addition to any fine or other penalty prescribed by law, a defendant who
6 pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

7 (1) felony shall be assessed a surcharge of \$100;

8 (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031,
9 AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a
10 misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and
11 adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

12 (3) misdemeanor or a violation of a municipal ordinance if a sentence
13 of incarceration may be imposed for the misdemeanor or ordinance violation, other
14 than a provision identified in (2) of this subsection, shall be assessed a surcharge of

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: HB 43
(S) Publish Date: 2-3-00

Revision Date 1/28/00 Dept. Affected Public Safety
Title An Act... relating to police training surcharges BRU APSC
Component: APSC
Sponsor Representative Davis
Requester S. JUD Component No. 519

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
Approved by: [Signature] Date 1-31-00
Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education & Early Development
State of Alaska

HOUSE BILL NO. 43

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES DAVIS, Croft

Introduced: 1/19/99

Referred: Community and Regional Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to police training surcharges imposed for violations of municipal
2 ordinances."

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

4 * Section 1. AS 12.55.039(a) is amended to read:

5 (a) In addition to any fine or other penalty prescribed by law, a defendant who
6 pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

7 (1) felony shall be assessed a surcharge of \$100;

8 (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031,
9 AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a
10 misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and
11 adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

12 (3) misdemeanor or a violation of a municipal ordinance if a sentence
13 of incarceration may be imposed for the misdemeanor or ordinance violation, other
14 than a provision identified in (2) of this subsection, shall be assessed a surcharge of

1 \$50;

2 (4) misdemeanor for which a sentence of incarceration may not be
3 imposed. a violation or an infraction under state law, or [A MISDEMEANOR OR] a
4 violation of a municipal ordinance imposing a penalty authorized by
5 AS 29.25.070(a) if a sentence of incarceration may not be imposed for the
6 [MISDEMEANOR OR] ordinance violation, shall be assessed a surcharge of \$10 if the
7 fine or bail forfeiture amount for the offense is \$30 or more.

8 * Sec. 2. AS 29.25.074(a) is amended to read:

9 (a) A municipality may not enforce a penalty for violation of an ordinance
10 for which a surcharge is required to be imposed under AS 12.55.039 [FINE OF \$30
11 OR MORE OR IMPRISONMENT IS PRESCRIBED AS A PENALTY] unless the
12 municipality authorizes the imposition of and provides for the collection of the
13 surcharge [REQUIRED TO BE IMPOSED UNDER AS 12.55.039]. The surcharge
14 shall be deposited into the general fund of the state and accounted for under
15 AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality
16 that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the
17 municipality in collecting the surcharge and transmitting the surcharge to the state.
18 The reimbursement may not exceed 10 percent of the surcharge collected and
19 transmitted to the state.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: HB 43
(S) Publish Date: 2-3-00

Revision Date 1/28/00 Dept. Affected Public Safety
Title An Act... relating to police training surcharges BRU APSC
Component: APSC
Sponsor Representative Cavis
Requester S. JUD Component No. 519

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
Approved by: [Signature] Date 1-31-00
Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

No. 3
Bill Version: HB 43
(S) Publish Date: 2-3-00

Revision Date 1/28/00 Dept. Affected Public Safety
Title An Act... relating to police training surcharges BRU APSC
Component: APSC
Sponsor Representative Davis
Requester S. JUD Component No. 519

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The purpose of HB 43 is to amend (section 1) AS 12.55.039 for clarification of surcharges that are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation; (section 2) AS 29.25.074, to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

Prepared by: Royce Weller, Special Assistant Phone 465-4322
Division Office of the Commissioner Date/Time 1/28/00 12:00 PM
Approved by: [Signature] Date 1-31-00
Agency Commissioner Ronald L. Otte, Dept. of Public Safety

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ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43 SPONSOR STATEMENT

An act relating to police training surcharges imposed for violations of municipal ordinances

House Bill 43 is a housecleaning measure that addresses concerns expressed by municipal attorneys about legislation passed in 1998. Attorneys were concerned that the 1998 legislation did not exclude civil offenses from the surcharge. Additionally, there was concern that municipal ordinances could not be enforced if a municipality did not authorize the collection of surcharges.

The first section of House Bill 43 rephrases AS 12.55.039(a)(4) within the Sentencing and Probation section of the Code of Criminal Procedures. The statute is amended to state that a surcharge is imposed on violations of municipal ordinances having a penalty authorized by **AS 29.25.070(a)**, the statute that authorizes municipalities to impose **criminal** penalties. This change further clarifies that the surcharge only applies to criminal or quasi-criminal offenses.

The second section of House Bill 43 states that if a municipality has not authorized the imposition of the surcharge, it may not enforce penalties on criminal violations of municipal ordinances. This allows the other aspects of the ordinances to go into effect. By authorizing the collection of surcharges, a municipality may amend its municipal code without further concern.

Background

The Alaska Police Training Fund was created in 1994 to "provide a stable funding source for law enforcement and corrections officer training...." To provide funding, a surcharge was imposed on motor vehicle violations at both the municipal and state levels. The intent of the surcharges was to have the cost of training law enforcement personnel shared with those who cause the need.

The Police Training Fund provides training to the state's law enforcement and corrections community. In 1998, the amount of the surcharge was increased and the list of surcharge crimes was expanded to include all criminal and quasi-criminal violations.

The types of crimes for which surcharges are imposed were expanded beyond motor vehicle offenses so that more offenders are required to contribute. This change allowed all communities to contribute to the police training fund rather than only those on the road system. Every community receives some benefit from the Police Training Fund—those that provide their own law enforcement personnel and that those depend on state troopers to enforce the laws within their boundaries.

HB43ss022100



ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

HOUSE BILL 43

SECTIONAL ANALYSIS

An act relating to police training surcharges imposed for violations of municipal ordinances

- Section 1: Amends AS 12.55.039, Surcharges, subsection (a)(4) to clarify that surcharges are imposed on violations of a municipal ordinance if that ordinance imposes a criminal penalty for its violation.
- Section 2: Amends AS 29.25.074, Surcharges, subsection (a) to specify that a municipality cannot enforce a penalty for the violation of an ordinance unless it has authorized the imposition of the surcharge set out in AS 12.55.039.

HB43/sa/020199

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Interim: 145 Main St. Lp., Ste. 223, Kenai, AK 99611 • Phone 907/283-7095 or 907/224-2051 • Fax 907/283-3075
Email: Representative_Gary_Davis@legis.state.ak.us

- (2) make written findings of the facts considered in
 - (A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and
 - (B) determining the defendant's gross and daily net incomes.
- (d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.
- (e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) The Alaska Court System shall evaluate and prepare a report every two years not later than February 1 on the use of day fines and their effectiveness. The court system shall notify the legislature that the report is available. The report must include

- (1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;
- (2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,
 - (A) eligible for a day fine, who receive another sentence; and
 - (B) not eligible for a day fine, who receive another sentence;
- (3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;
- (4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and
- (5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund. (§ 5 ch 79 SLA 1994; am § 6 ch 21 SLA 1995)

Postponed repeal of subsection (f). — Section 7, ch. 79, SLA 1994 repeals (f) of this section, effective February 2, 2004.

Cross references. — For effect of enactment of this section on Alaska Rule of Criminal Procedure 32, see § 6, ch. 79, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1995 amendment, effective August 8, 1995, in the first sentence of the

introductory language of subsection (f), substituted "prepare a report every two years" for "report every two years to the legislature" and added the second sentence.

Legislative history reports. — For House letter of intent relating to CSHB 119(JUD) am, from which ch. 79, SLA 1994, which enacted this section derived, see 1993 House Journal 1413.

Sec. 12.55.039. Surcharge. (a) In addition to any fine or other penalty prescribed by law, a defendant who pleads guilty or nolo contendere to, forfeits bail for, or is convicted of a

- (1) felony shall be assessed a surcharge of \$100;
- (2) violation of a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032, or a violation of a municipal ordinance comparable to a misdemeanor offense under AS 28.33.030, 28.33.031, AS 28.35.030, or 28.35.032 and adopted under AS 28.01.010, shall be assessed a surcharge of \$75;

(3) misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may be imposed for the misdemeanor or ordinance violation, other than a provision identified in (2) of this subsection, shall be assessed a surcharge of \$50;

(4) violation or an infraction under state law or a misdemeanor or a violation of a municipal ordinance if a sentence of incarceration may not be imposed for the misdemeanor or ordinance violation shall be assessed a surcharge of \$10 if the fine or bail forfeiture amount for the offense is \$30 or more.

(b) A court may not fail to impose the surcharge required under this section. The surcharge may not be waived, deferred, or suspended. A court may allow a defendant who is unable to pay the surcharge required to be imposed under this section to perform community work under AS 12.55.055(c) in lieu of the surcharge.

(c) The surcharge shall be paid within 10 days of imposition or such shorter period of time as ordered by the court. Failure to pay the surcharge is punishable as contempt of court. Proceedings to collect the surcharge may be instituted by the state, the municipality, or by the court on its own motion.

(d) Money collected under this section shall be deposited into the general fund and accounted for under AS 37.05.142. (§ 2 ch 119 SLA 1994; am § 4 ch 56 SLA 1998)

Cross references. — For legislative findings and purpose in connection with the enactment of this section, see § 1, ch. 119, SLA 1994 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective August 27, 1998, rewrote subsection (a).

Effective dates. — Section 7, ch. 119, SLA 1994 makes this section effective January 1, 1996.

Editor's notes. — With respect to subsection (d), § 10, ch. 56, SLA 1998 provides the following: "Notwithstanding the requirements of AS 12.55.039(d) and AS 37.05.142 that surcharges collected under AS 12.55.039 be accounted for separately, the Alaska Court System shall deposit money collected under AS 12.55.039 in the general fund and shall, by February

1 of each year, provide to the Department of Administration, to the Legislative Budget and Audit Committee, and to each house of the legislature an estimate of the money collected under AS 12.55.039 for that fiscal year."

Section 11, ch. 56, SLA 1998 provides a repeal date for § 10, ch. 56, SLA 1998 as follows: "Section 10 of this Act is repealed on the earlier of (1) the date that the Alaska Court System has the capability to separately track and account electronically for money collected under AS 12.55.039, or (2) June 30, 2002. The executive director of the Alaska Court System shall notify the lieutenant governor and the revisor of statutes when the electronic capability described in this section has been obtained."

Sec. 12.55.040. Increased punishment for habitual criminal after conviction of petty larceny or misdemeanor involving fraud. [Repealed, § 21 ch 166 SLA 1978.]

Sec. 12.55.045. Restitution. (a) The court may order a defendant convicted of an offense to make restitution as provided in this section, including restitution to the victim or other person injured by the offense, to a public, private, or private nonprofit organization that has provided or is or will be providing counseling, medical, or shelter services to the victim or other person injured by the offense, or as otherwise authorized by law. In determining the amount and method of payment of restitution, the court shall take into account the

(1) public policy that favors requiring criminals to compensate for damages and injury to their victims; and

(2) financial burden placed on the victim and those who provide services to the victim and other persons injured by the offense as a result of the criminal conduct of the defendant.

(b) An order of restitution under this section does not limit any civil liability of the defendant arising from the defendant's conduct.

(c) If a defendant is sentenced to pay restitution, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(d) In any case, including a case in which the defendant is convicted of a violation of AS 11.46.120 — 11.46.150 and the property is commercial fishing gear as defined in AS 16.43.990, the court shall consider the victim's loss and may order restitution that may include compensation for loss of income.

enactments regulating lobbying. 42 ALR3d 1046.

Validity of statute or ordinance forbidding pharmacist to advertise prices of drugs or medicines. 44 ALR3d 1301.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold. 46 ALR3d 369.

Validity and construction of statute or ordinance regulating or prohibiting self-service gasoline filling stations. 46 ALR3d 1393.

Operation of nude-model photographic studio as offense. 48 ALR3d 1313.

Validity and construction of statute or ordinance forbidding treatment in health clubs or massage salons by persons of the opposite sex. 51 ALR3d 936.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor. 51 ALR3d 1061.

Validity and construction of regulations dealing with misrepresentation in the sale of Kosher food. 52 ALR3d 959.

Validity of municipal ordinances regulating time during which restaurant business may be conducted. 53 ALR3d 942.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 ALR3d 93.

Validity and construction of curfew statute, ordinance, or proclamation. 59 ALR3d 321; 83 ALR4th 1056.

Validity and construction of statute or ordinance prohibiting commercial exhibition of malformed or disfigured persons. 62 ALR3d 1237.

Application of city ordinance requiring license for laundry, to supplier of coin-operated laundry machines intended for use in apartment building. 65 ALR3d 1296.

Application of statute or regulation dealing with registration or carrying of weapons to transient non-resident. 68 ALR3d 1253.

Larceny as within disorderly conduct statute or ordinance. 71 ALR3d 1156.

Validity and construction of ordinance prohibiting roof signs. 76 ALR3d 1162.

Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation — modern cases. 77 ALR3d 519.

Validity of statutes, ordinances, and regulation requiring the installation or maintenance of various bathroom facilities in dwelling units. 79 ALR3d 716.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 ALR3d 740.

Validity of state or local regulation dealing with resale of tickets to theatrical or sporting events. 81 ALR3d 655.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 ALR3d 551.

Validity and construction of statute or ordinance prohibiting desecration of church. 90 ALR3d 1128.

Validity and construction of statute or ordinance specifically criminalizing passenger misconduct on public transportation. 78 ALR4th 1127.

Validity and construction of statute, ordinance, or regulation applying to specific dog breeds, such as "pit bulls" or "bull terriers." 80 ALR4th 70.

Validity, construction, and effect of juvenile curfew regulations. 83 ALR4th 1056.

Laws regulating begging, panhandling, or similar activity by poor or homeless persons. 7 ALR5th 455.

Validity and construction of statutes or ordinances imposing civil or criminal penalties on alarm system users, installers, or servicers for false alarms. 17 ALR5th 825.

Governmental regulation of place of amusement, entertainment, or recreation as violating rights of owner or operator under equal protection clause of Federal Constitution's Fourteenth Amendment — Supreme Court cases. 104 L Ed 2d 1078.

Sec. 29.25.010. Acts required to be by ordinance. (a) In addition to other actions that this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

- (1) establish, alter, or abolish municipal departments;
- (2) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;
- (3) provide for the levying of taxes;
- (4) make appropriations, including supplemental appropriations or transfer of appropriations.
- (5) grant, renew, or extend a franchise;
- (6) adopt, modify, or repeal the comprehensive plan, land use and subdivision regulations, building and housing codes, and the official map;
- (7) approve the transfer of a power to a first or second class borough from a city;
- (8) designate the borough seat;
- (9) provide for the retention or sale of tax-foreclosed property;
- (10) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025; this paragraph applies to home rule and general law municipalities.

(b) This section does not grant authority, but requires the governing body to use ordinances in exercising certain of its powers. (§ 8 ch 74 SLA 1985)

Sec. 29.25.060. Resolutions. (a) The governing body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 74 SLA 1985)

NOTES TO DECISIONS

Cited in Lazy Mt. Land Club v. Matanuska-Susitna Borough Bd. of Adjustment & Appeals, 904 P.2d 373 (Alaska 1995).

Sec. 29.25.070. Penalties. (a) For the violation of an ordinance, a municipality may by ordinance prescribe a penalty not to exceed a fine of \$1,000 and imprisonment for 90 days. For a violation that cannot result in incarceration or the loss of a valuable license, a municipality may allow disposition of the violation without court appearance and establish a schedule of fine amounts for each offense.

(j) The municipality or an aggrieved person may institute a civil action against a person, including a minor as provided in AS 29.25.072, who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed \$1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. On application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Each day that a violation of an ordinance continues constitutes a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

(d) This section does not apply to an ordinance adopted under AS 04.11.501(c).

(e) The municipality shall provide written notice to the commissioner of health and social services or to the commissioner's designee of the commencement of a civil enforcement action for the violation of an ordinance under (b) of this section against a minor. Unless the commissioner and the municipality have negotiated an agreement making other arrangements for the municipality to provide the notice required by this subsection, the municipality shall provide the notice by mailing a copy of the citation or other document setting out the notice of the commencement of the civil enforcement action. This subsection applies to home rule and general law municipalities.

(f) In this section, "minor" means a person under 13 years of age. (§ 8 ch 74 SLA 1985; am § 16 ch 80 SLA 1986; am § 11 ch 76 SLA 1987; am § 65 ch 101 SLA 1995; am §§ 2, 3 ch 107 SLA 1998)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection (d).

The 1998 amendment, effective July 1, 1998, in-

serted ", including a minor as provided in AS 29.25.072," in the first sentence in subsection (b) and added subsections (e) and (f).

NOTES TO DECISIONS

Punishment for failure to list taxable property authorized. — A city had the power to enact an ordinance requiring a taxpayer to file a statement under oath listing all personal property at its just and fair value, and a former, similar provision provided the authority to prescribe its punishment, including fine and imprisonment. *City of Anchorage v. Campbell*, 105 F. Supp. 607 (D. Alaska 1952).

An act may be made a penal offense under both state statute and municipal ordinance. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Ordinance may impose penalties on class of persons. — While an ordinance which made an act done by one penal and imposed upon another no penalty for a like act done under like circumstances could not receive judicial sanction for the reason that it was unjust and unreasonable, the same could not be said of discrimination by municipal authority against a whole class of persons who were lawfully regarded as proper subjects for police regulation, such as persons without occupation or visible means of support. *Guidoni v. Wheeler*, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Sec. 29.25.072. Civil penalties for violation of municipal ordinances by minors. (a) Except as otherwise provided in this section, the enforcement under AS 29.25.070(b) of a civil penalty against a minor for violation of a municipal ordinance shall be heard in the district court in the same manner as for similar allegations brought against an adult, except that the minor's parent, guardian, or legal custodian shall be present at all proceedings unless the court excuses the parent, guardian, or legal custodian from attendance for good cause.

(b) If provision is made by ordinance for use of a hearing officer to decide enforcement of a civil penalty under AS 29.25.070(b), allegations against a minor for a civil penalty under a municipal ordinance may be assigned to a hearing officer for the municipality for decision.

(c) An action for a civil penalty filed against a minor under this section does not give rise to the right to a trial by jury or to counsel appointed at public expense. (§ 4 ch 107 SLA 1998)

Effective dates. — Section 59, ch. 107, SLA 1998 provides that this section applies to all offenses committed on or after July 1, 1998.

Editor's notes. — Section 57, ch. 107, SLA 1998

Sec. 29.25.074. Surcharge. (a) A municipality may not enforce an ordinance for which a fine of \$30 or more or imprisonment is prescribed as a penalty unless the municipality authorizes the imposition of and provides for the collection of the surcharge required to be imposed under AS 12.55.039. The surcharge shall be deposited into the general fund of the state and accounted for under AS 37.05.142. Subject to appropriation, the legislature may reimburse a municipality that collects a surcharge required to be imposed under AS 12.55.039 for the cost to the municipality in collecting the surcharge and transmitting the surcharge to the state. The reimbursement may not exceed 10 percent of the surcharge collected and transmitted to the state.

(b) This section applies to home rule and general law municipalities. (§ 8 ch 56 SLA 1998)

Revisor's notes. — This section was enacted as AS 29.25.072. Renumbered in 1998. which enacted this section, took effect on August 27, 1998.

Effective dates. — Section 8, ch. 56, SLA 1998,

Sec. 29.25.075. Collection of penalties. The court may collect for a municipality any monetary penalty or surcharge or item to be forfeited as a result of the violation of an ordinance. The supreme court may prescribe by rule the fees to be charged by all courts to municipalities for providing collection services under this section. (§ 47 ch 36 SLA 1990; am § 9 ch 56 SLA 1998)

Effect of amendments. — The 1998 amendment, effective August 27, 1998, inserted "surcharge or" in the first sentence.

Sec. 29.25.080. Breast-feeding. A municipality may not enact an ordinance that prohibits or restricts a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. In a municipal ordinance, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this section may be construed to authorize an act that is an offense under a municipal ordinance that establishes an offense with elements substantially equivalent to the elements of an offense under AS 11.61.123. This section is applicable to home rule and general law municipalities. (§ 4 ch 78 SLA 1998)

Municipal Attorneys Contacted Regarding HB 43

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ALASKA STATE LEGISLATURE

REPRESENTATIVE GARY DAVIS

Discussion of Municipal Attorneys' Concerns re: HB 43

§1: AS 12.55.039(a)

- Insert the word "criminal" before penalty on page 1 line 5 to clarify that civil penalties are not affected. (*Brooks Chandler of Hicks Boyd Chandler & Falconer, representing Dillingham, Galena, Kotlik, Soldotna and Unalaska*)

This is not necessary because it is only in criminal or quasi-criminal proceedings that a defendant pleads guilty or nolo contendere, forfeits bail, or is convicted. Additionally, Subsection (4) on page 2 is amended to specify a "penalty authorized by AS 29.25.010(a)." This statute specifically addresses a municipality's authority to impose criminal penalties. AS 29.25.010(b) addresses their authority regarding civil penalties.

- Imposition of \$50 surcharge on misdemeanors with possibility of incarceration could apply to all municipal violations because of the catch-all or blanket penalty sections allowing fines and/or incarceration for any violation. Reference was made to animal control tickets and fire cracker violations which can carry a fine of \$50. (*Michael Gatti, Mat-Su Borough Attorney; Scott Brand-Erichsen, Ketchikan Borough Attorney.*)

Because of the lack of uniformity in fines and incarceration periods across the state, it was decided that the differentiation between whether an offense was punishable by incarceration or not was the best place to draw the line. For boroughs with offenses for which they want the lower surcharge, it might be better to amend the ordinances to omit incarceration, rather than changing the standard for the entire state.

- Exempt municipalities such as the Fairbanks North Star Borough from the surcharge requirement because since they have no law enforcement powers, they have no police training program, and thus do not benefit from the Police Training Fund. Animal control tickets and fire cracker violations were again mentioned. (*Mayor Hank Hovø, Fairbanks North Star Borough*)

Even though the borough may not have its own police training program or law enforcement powers, the borough still benefits from the fund because of the training received by the state troopers who enforce the laws within its boundaries. There is a benefit even though the boroughs do not receive direct payments.

§2: AS 29.25.074(a)

- Repeal the section in its entirety because a municipality is mandated to collect the surcharge because of the phrasing "shall". This word is sufficient to compel the collection of the surcharge (*Michael Gatti, Mat-Su Borough Attorney; Gordon Tans of Perkins COIE, LLP representing Chignik, Homer, King Cove, St. Mary's and Sand Point*)

This section was adopted in 1998 in response to a question raised in a letter from the Court System about whether the legislature had the ability to require the imposition of surcharges on municipal ordinance violations without such a provision.



MATANUSKA-SUSITNA BOROUGH

350 EAST DAHLIA AVENUE, PALMER, ALASKA 99645-6488

BOROUGH ATTORNEY'S OFFICE

MICHAEL GATTI
BOROUGH ATTORNEY

PHONE (907) 745-9677

February 24, 2000

Deb Davidson
Legislative Aide to Representative Gary Davis
State Capitol
Juneau, AK 99801

Re: House Bill 43: An Act Relating to Police Training Surcharges Imposed
for Violation of Municipal Ordinances

Dear Ms. Davidson:

Thank you for your correspondence of February 17, 2000. The borough's position with regard to this legislation is contained in my correspondence of February 25, 1999. However, I understand the concerns that have been expressed by the court system, as well as the need for certainty with regard to its authority to collect the surcharge. Accordingly, it does not appear that any suggested amendments to HB 43 will be forthcoming.

However, I have conferred with Public Safety Director Kevin Koechlein who advises that the borough, since it does not have a police force, would not receive a direct benefit from any surcharges paid by it to the police training fund. He suggests that it would be helpful if the fund were structured so that money for courses pertaining to code compliance and animal control enforcement matters could be presented.

Alternatively, when training seminars are presented in our area it might be helpful to Mr. Koechlein's department to have sections added that are pertinent to his activities, such as information on conducting an investigation, drafting a complaint, administrative searches and seizures, and perhaps other items that would be of interest to borough code enforcement officials. If it is possible to provide the borough with grants from the fund or to conduct seminars that relate to training issues pertinent to borough operations, the borough's law enforcement

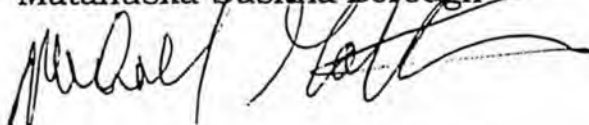
February 24, 2000

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officials and the public will be well served.

Please call if you have any questions or if I can be of further assistance with regard to questions you or others may have on HB 43.

Sincerely,
Matanuska-Susitna Borough

A handwritten signature in black ink, appearing to read "Michael Gatti", with a long horizontal flourish extending to the right.

Michael Gatti, Borough Attorney

MG:kl

cc: Kevin Koechlein, Public Safety Director

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PHONE (907) 745-9677

February 25, 1999

Representative Gary Davis
Alaska House of Representatives
State Capitol
Room 513
Juneau, AK 99801-1182

Re: HB 43

Dear Representative Davis:

I am writing in response to Legislative Aide Deborah L. Davidson's January 22, 1999, correspondence seeking comments on HB 43, which was introduced to address the concerns of municipalities that the mandatory surcharge requirement in the legislation swept with a broader brush than intended and could potentially impact municipal enforcement if the surcharge were not adopted. In accordance with HB 43, the Matanuska-Susitna Borough adopted Ordinance Serial No. 98-134, amending its penalties and violations section of the code to require the imposition of the surcharge to be collected by the borough for the police training fund. A copy of the borough's adopted code section is attached for your information.

After the passage of HB 43, the borough was concerned about the language of the bill, which apparently prohibited the enforcement of an ordinance for which a surcharge is required, if the surcharge was not imposed pursuant to HB 43. The borough felt it was somewhat ironic that a municipality could not enforce an ordinance unless it collected a surcharge for police training. While the borough certainly supports the benefits of trained law enforcement officers, it believes that any language that would prohibit the enforcement of a municipal ordinance for the failure to collect the surcharge is not well considered.

Municipalities adopt ordinances to address concerns affecting the public's health, safety, and welfare that may be enforced in their discretion to protect that interest. Any legislation that would somehow eliminate or reduce a municipality's discretion to

February 25, 1999

Page 2

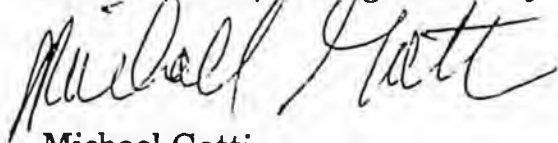
enforce its ordinances is a direct imposition on a municipality's broad powers delegated to it by statute. The existing language of AS 29.25.074 prohibiting ordinance enforcement should be repealed and the proposed language of HB 43 Sec. 2 should not be adopted. Instead, collection of the surcharge should be based upon the mandatory legislative direction to the municipality to collect the surcharge (by the use of the word "shall) which in the borough's opinion should be sufficient to compel the collection of the surcharge. The limitation of a municipalities enforcement options is thus eliminated and the surcharge should be collected based on the affirmative duty to do so.

I must also concur with the comments presented by Ketchikan Gateway Borough Attorney, Scott Brandt-Erickson, in his January 29, 1999 correspondence. A misdemeanor is specifically defined in AS 11.81.900 and means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed. Like the Ketchikan Gateway Borough, the Matanuska-Susitna Borough has a system of citations that imposes fines but not imprisonment for a violation and are considered by the borough to be infractions. Under the proposed language on line 12 of page 1 and line 2 of page 2, confusion with regard to this term could arise.

In summary, it appears that the bill requires some additional consideration in order to remediate earlier interpretations of HB 43. Please call if you have any questions.

Very truly yours,

MATANUSKA-SUSITNA BOROUGH
Michael Gatti, Borough Attorney



Michael Gatti

MG:drm

Atts.

cc: Scott Brand-Erickson,
Ketchikan Gateway Borough
Kevin Ritchie,
Alaska Municipal League

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