

Sponsor Statement

HB 249

“An Act relating to actions involving monopolies and restraints of trade; and providing for an effective date.”

This bill clarifies the provision of the Alaska Antitrust Act that governs the award of attorney fees and costs to the prevailing party.

Since 1962, Alaska statutes have authorized the Alaska Supreme Court to adopt court rules providing that the losing party in a lawsuit shall pay all or part of the costs and attorney fees of the prevailing party. The Supreme Court has adopted such a rule, specifically Alaska Rule of [Civil Procedure 82\(a\)](#), which provides that as a matter of routine, the losing party in litigation in Alaska is ordered to pay costs and partial attorney fees to the prevailing party. These rules discourage bringing meritless lawsuits and encourage bringing valid claims and presenting valid defenses by providing the successful party with partial reimbursement for the costs of litigation.

The Alaska Antitrust Act includes a provision specifically declaring that a successful plaintiff may recover at least partial attorney fees, and in some circumstances may recover full attorney fees. See [AS 45.50.576\(a\)](#). The Act does not state expressly how, if at all, this special statutory provision is intended to affect the right of a successful antitrust defendant to recover partial attorney fees from the losing plaintiff, in accordance with Rule 82.

The history of the Alaska Antitrust Act confirms that there was never an intent to preclude a successful antitrust defendant from recovering partial attorney fees. However, some courts have reached a different interpretation by assuming that successful antitrust defendants could not recover any attorney fees because the current statute does not explicitly authorize such an award. This bill is designed to clarify that the standard attorney fee rules, applicable to essentially all civil cases, apply to successful antitrust defendants. It ensures that the provision that authorizes recovery of attorney fees to successful antitrust plaintiffs will not be misinterpreted to prohibit successful antitrust defendants from partial recovering attorney fees in accordance with standard court rules.

It is unfair to permit a situation where antitrust defendants, if they go to trial and lose a complex lawsuit, must be prepared to pay part or all of the plaintiffs' attorney fees, while plaintiffs face no risk of paying even part of the defendants' fees if a jury decides that plaintiffs' claims are meritless. This bill does not even demand full equity, because successful defendants would be enabled to recover only partial attorney fees, in contrast to some successful plaintiffs' ability to recover full attorney fees. However, this bill ensures that some right of recovery, along with some risk of having to pay damages, applies to both sides in an antitrust case.

The Legislature enacted a very similar statutory provision in 1998 concerning attorney fees in consumer protection and unfair trade practice cases, which are closely related to antitrust cases. AS 45.50.537 states expressly that a successful plaintiff in a consumer protection and unfair

trade practice case shall recover full reasonable attorney fees, and a successful defendant shall recover partial attorney fees in accordance with standard court rules.

Because this bill does not create any change in law, but merely clarifies existing law, it is appropriate for the bill to take effect immediately upon passage.