

HB22-1272 Repeal Of Attorney Fees On Motions To Dismiss

Wednesday March 16 -- House Judiciary --1:30 pm -- HCR 0107

Good afternoon, Mr. Chair and committee members. My name is Trey Rogers. I am here today on behalf of the Denver Metro Chamber of Commerce and our affiliate organization, the Colorado Competitive Council, to express our opposition to HB22-1272. I am a member of the Chamber board which I chaired last year.

Professionally, I am a lawyer with the Recht Kornfeld firm here in Denver where I have a government and litigation practice. Over 25 years of practice, I have represented both plaintiffs and defendants in litigated matters. In fact, I can't say which side I've been on more, but I certainly could not be characterized as a defense lawyer.

The Chamber is deeply concerned that HB-1272, if it becomes law, would remove a strong deterrent against baseless tort litigation. Our current system discourages plaintiffs and their lawyers from filing tort claims that are legally flawed—claims that cannot survive a motion to dismiss. The system discourages the filing of these suits by making plaintiffs responsible for the defendant's legal fees if a defendant prevails on a motion to dismiss. I can tell you from experience, this is an important deterrent against baseless tort litigation.

House Bill 1272 would shift the burden of paying a defendant's legal fees in the case of an unmeritorious case from the plaintiffs to defendants. This change would encourage plaintiffs to file claims they know do not have merit. Imagine an individual or small business facing a meritless tort suit. That owner has two options: pay a lawyer thousands, or tens of thousands of dollars, to prepare and file a motion to dismiss or pay the plaintiff for a quick settlement. Often, the least costly option will be to settle—to pay a plaintiff for a meritless claim. That's not right.

In deciding a motion to dismiss, the judge assumes all facts in the plaintiff's complaint are true and then determines if the plaintiff might have a valid claim. This is a very low bar for a suit to clear. And, it is generally easy for a plaintiff's lawyer to determine if her suit meets this standard before filing a complaint. It is important to note that the current statute does not apply where a defendant wins on a motion for summary judgment or at trial—only where a plaintiff's claim is so legally deficient that the judge grants a motion to dismiss, typically early in the litigation.

Proponents will tell you that another statute permits a judge to award fees where a complaint is groundless, frivolous, or vexatious. A fees award under that statute, 13-17-101 et seq., is discretionary—and judges very, very rarely use their discretion to award fees. It is no deterrent at all against the filing of a legally deficient complaint.

Proponents will also tell you that plaintiffs should be able to seek a change in the law without facing liability for a defendant's fees. But under this bill, there would be hundreds, or thousands of groundless suits filed in an effort to get a quick settlement for every one suit is filed in a sincere effort to change the law. That very, very rare event simply cannot justify the change in the law this bill would make.

Thank you for the opportunity to testify. Please vote no. I'm happy to answer any questions.