

February 8, 2025

Greetings.

I submit this testimony on SB 65 as a private citizen who is interested in good governance and precision in the legislative process.

I take no position on the policy issues that SB 65 implicates.

Rather, I write because I believe that the editor's summary of the bill could be misleading. The summary makes two statements regarding possible awards of attorney fees:

- (1) "The Act lets a plaintiff who wins this type of suit recover attorney fees."
- (2) "The Act lets a defendant who wins this type of suit recover attorney fees if the plaintiff's claim was frivolous."

In both instances, the summary uses the word "lets," suggesting that the circumstances that could lead to an award of attorney fees to a winning plaintiff are analogous to the circumstances that could lead to an award of attorney fees to a winning defendant if the plaintiff's claim was frivolous. In addition, the word "lets" sounds permissive rather than mandatory, which might lead a reader to believe that the bill would not always require attorney-fee awards (either to prevailing plaintiffs or to prevailing defendants).

But the two attorney fees provisions in the bill itself differ fundamentally from each other.

As currently drafted, paragraph 2(a) of SB 65 states that a court "shall award" reasonable attorney fees to a prevailing plaintiff. Use of the word "shall" appears to make an attorney-fee award **mandatory** in every case brought pursuant to SB 65 in which the plaintiff prevails.

In contrast, paragraph 2(b) of the draft bill provides that a court "may award" reasonable attorney fees to a prevailing defendant if the court determines that the plaintiff's claim was frivolous. That is, in such a circumstance, it appears that an award of attorney fees would be **discretionary** with the court.

I write solely to highlight that SB 65 would require (make mandatory) an award of reasonable attorney fees to every plaintiff who wins a case brought under the new statute. In my view, the editor's summary does not make that point clear.

Respectfully,

Erika Hadlock