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FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 02/07/11
LAST UPDATED 03/07/11 **HB** 208/aHJC

SHORT TITLE Reciprocal Attorney Fee Award **SB** _____

ANALYST Aledo

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 208 makes a waiver of the rights conferred pursuant to this section void only if executed after July 1, 2011 or if the waiver is executed as part of a complete settlement of a bona fide dispute. The HJC amendment also changes the bill's applicability to any civil action commenced on or after July 1, 2011.

Synopsis of Original Bill

House Bill 208 creates a new statutory provision that states civil actions based upon a contract, promissory note, or other writing, courts may award costs and attorney fees to a prevailing party if the contract at issue allows recovery of costs and fees for at least one party. HB 208 also provides that a waiver of this right is void. Any agreement between the contracting parties that one party is not entitled to attorney's fees will not be enforced in court.

Except as provided hereinafter, HB 208 shall apply to any promissory note, written contract or other writing executed on or after July 1, 2011. However, after June 30, 2014, HB 208 shall apply to any promissory note, written contract or other writing executed before July 1, 2011.

SIGNIFICANT ISSUES

According to the Administrative Office of the Courts and the Administrative Office of the District Attorneys, the constitutionality of Section 2(B) may be challenged, because Article II, Section 19 provides: “No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature.” An ex post facto law is a law passed after the occurrence of an event or action which retrospectively changes the legal consequences of the event or action.

MCA/svb:mew