

1 IN THE HOUSE

BY MR. SANDERS
BY REQUEST

2 HOUSE BILL NO. 197

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SECOND LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Disqualification of
7 Judges, as a matter of right by parties in
8 any action or proceeding in the Superior
9 Court of the State of Alaska, and providing
10 for an effective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 Section 1. PREJUDICE OF JUDGE - CHANGE OF VENUE. No judge
13 of a superior court of the State of Alaska shall sit to hear or
14 try any action or proceeding when it shall be established, as
15 hereinafter provided, that such judge is prejudiced against any
16 party or attorney, or the interest of any party or attorney
17 appearing in such cause. In such case, the presiding judge shall
18 forthwith transfer the action to another department of the same
19 court, or call in a judge from some other judicial district, or
20 apply to the Chief Justice of the Supreme Court to send a judge,
21 to try the case; or, if the convenience of witnesses in the
22 interest of justice will not be interfered with by such course,
23 and the action is of such a character that a change of venue
24 thereof may be ordered, he may send the case for trial to the most
25 convenient court; provided, that in criminal prosecutions the
26 case shall not be sent for trial to any court outside the judicial
27 district unless the accused shall waive his right to a trial by
28 a jury of the judicial district in which the offense is alleged
29 to have been committed.

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1. Sec. 2. AFFIDAVIT OF PREJUDICE. Any party to or any
2 attorney appearing in any action or proceeding in a superior court,
3 may establish such prejudice by motion, supported by affidavit
4 that the judge before whom the action is pending is prejudiced
5 against such party or attorney, so that such party or attorney
6 cannot, or believes that he cannot, have a fair and impartial
7 trial before such judge; provided, that such motion and affidavit
8 is filed and called to the attention of the judge before he shall
9 have made any ruling whatsoever in the case, either on the motion
10 of the party making the affidavit, or on the motion of any other
11 party to the action, of the hearing of which the party making
12 the affidavit has been given notice, and before the judge pre-
13 siding has made any order or ruling involving discretion, but the
14 arrangement of the calendar, the setting of an action, motion or
15 proceeding down for hearing or trial, the arraignment of the
16 accused in a criminal action or the fixing of bail, shall not be
17 construed in a criminal action or the fixing of bail, shall not
18 be construed as a ruling or order involving discretion within
19 the meaning of this proviso; and in any event, in judicial
20 districts where there is but one resident judge, such motion and
21 affidavit shall be filed not later than the day on which the
22 case is called to be set for trial; and

23 PROVIDED FURTHER, that notwithstanding the filing of such
24 motion and affidavit, if the parties shall, by stipulation in
25 writing, agree, such judge may hear argument and rule upon any
26 preliminary motions, or other matter thereafter presented; and

27 PROVIDED FURTHER, that no party or attorney shall be permitted
28 to make more than one such application in any action or proceeding
29 under this section and Sec. 1.

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Sec. 3. EFFECTIVE DATE. This Act takes effect July 1, 1962