

1 IN THE SENATE

BY SENATOR POLLOCK

2 SENATE BILL NO. 122

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the probate court;  
7 providing for its jurisdiction and venue,  
8 the appointment, qualifications and compen-  
9 sation of probate judges; providing for  
10 their functions, powers and duties; and  
11 providing for appeals from judgments."

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

13 \* Section 1. AS 22 is amended by adding a new chapter to  
14 read:

15 CHAPTER 17. PROBATE COURT

16 Sec. 22.17.010. ESTABLISHMENT OF PROBATE COURT. There  
17 is created and established one probate court for the state.  
18 The court shall consist of four districts as described in  
19 AS 22.10.010. Judges shall be appointed by the supreme  
20 court for those judicial districts where the work load  
21 warrants it.

22 Sec. 22.17.020. JURISDICTION. The probate court has  
23 jurisdiction in probate of estates, sanity and competency  
24 hearings, guardianships, adoptions and accounting and en-  
25 forcement in child support matters. Whenever the jurisdic-  
26 tion of the probate court and the superior court is the  
27 same, the jurisdiction is concurrent. The jurisdiction of  
28 the probate court extends over the whole of the state.

29 Sec. 22.17.030. VENUE. The probate court in which an

1 action is pending may change the place of trial in an action  
2 from one place to another place in the same judicial district  
3 or to a designated place in another judicial district for  
4 any of the following reasons:

5 (1) if there is reason to believe that an im-  
6 partial trial cannot be had;

7 (2) if the convenience of witnesses and the  
8 ends of justice would be promoted by the change;

9 (3) if for any cause the judge is disqualified  
10 from acting, and another judge is not assigned to try the  
11 action;

12 (4) if the court finds that the defendant will  
13 be put to unnecessary expense and inconvenience, and if the  
14 court finds that the expense and inconvenience was intention-  
15 ally caused, the court may assess costs against the plaintiff.

16 Sec. 22.17.040. SESSIONS AND GENERAL POWERS OF COURT.

17 (a) The probate court shall always be open for the transac-  
18 tion of business, except on judicial holidays as determined  
19 by rule of the supreme court. However, the court may at  
20 any time

21 (1) issue orders pertaining to bail;

22 (2) receive a verdict or discharge a jury;

23 (3) issue writs of habeas corpus;

24 (4) issue warrants of arrest and summons and  
25 search warrants.

26 (b) The court shall meet at such times and at such  
27 places as may be designated by rule or order of the supreme  
28 court. The probate court has all power and authority  
29 necessary to carry into complete execution all its judgments

1 and determinations in all matters within its jurisdiction  
2 according to the constitution and the laws of this state  
3 and the common law.

4 Sec. 22.17.050. POWERS. A probate judge has the power

5 (1) to issue writs of habeas corpus for the  
6 purpose of inquiring into the cause of restraint of liberty,  
7 returnable before a judge of the superior court, and the  
8 same proceedings shall be made on the writ as if it has  
9 been granted by the superior court judge under the laws of  
10 the state in such cases;

11 (2) of a notary public;

12 (3) to issue warrants of arrest, summons and  
13 search warrants according to manner and procedure prescribed  
14 by law and the supreme court;

15 (4) of the superior court in all respects in-  
16 cluding but not limited to contempts, attendance of wit-  
17 nesses, and bench warrants;

18 (5) to set, receive and forfeit bail and order  
19 the release of persons under bail;

20 (6) to act as a referee in matters and actions  
21 referred to him by the superior court, with all powers  
22 conferred upon referees by law.

23 Sec. 22.17.060. SEAL OF COURT. The seal of the  
24 probate court is a vignette of the official flag of the  
25 state with the words "Seal of the Probate Court of the State  
26 of Alaska" surrounding the vignette.

27 Sec. 22.17.070. PROCESS. Process of the probate court  
28 shall be in the name of the State of Alaska, be signed by  
29 a probate judge, be dated when issued, sealed with the seal

1 of the court, and made returnable according to rule pres-  
2 cribed by the supreme court, and shall run throughout the  
3 state.

4 Sec. 22.17.080. QUALIFICATIONS OF JUDGES. (a) a  
5 judge of the probate court shall be a citizen of the United  
6 States, a resident of the state for three years immediately  
7 preceding his appointment, have been engaged for not less  
8 than five years immediately preceding his appointment in the  
9 active practice of law, and at the time of appointment be  
10 licensed to practice law in the state. The active practice  
11 of law shall be as defined for supreme court justices.

12 Sec. 22.17.090. SELECTION AND TENURE OF PROBATE JUDGE.  
13 A judge of the probate court shall be appointed by, and serve  
14 at the pleasure of, the supreme court. A vacancy is filled  
15 in the same manner as an appointment.

16 Sec. 22.17.100. OATH OF OFFICE. A probate judge,  
17 upon entering office, shall take and subscribe to an oath  
18 of office required of all officers under the constitution  
19 and any further oath prescribed by law.

20 Sec. 22.17.110. ASSIGNMENT OF JUDGES. The supreme  
21 court may assign any probate judge to serve temporarily in  
22 any other judicial district. Rules and procedures for  
23 temporary assignment shall be as prescribed by the supreme  
24 court.

25 Sec. 22.17.120. INCAPACITY. When a probate judge  
26 appears to be so incapacitated as substantially to prevent  
27 him from performing his duties, the supreme court may  
28 remove him, after notice and hearing, by majority vote of  
29 its members. Notice of the hearing shall be given to the

1 judge in writing at least 30 days before the hearing.

2 Sec. 22.17.130. RESTRICTIONS. A judge of the probate  
3 court, while holding office, may not practice law. He may  
4 not engage in the conduct of another profession, vocation  
5 or business for profit or compensation, hold office in a  
6 political party, or hold another office or position of pro-  
7 fit under the United States, the state or its political  
8 subdivisions. A judge of the probate court who files for  
9 an elective public office forfeits his judicial position.

10 Sec. 22.17.140. COMPENSATION. (a) A judge of the  
11 probate court shall receive an annual salary of \$15,000.  
12 The compensation shall be payable annually in 12 equal monthly  
13 installments.

14 (b) No salary warrant may be issued to a probate judge  
15 until he has filed with the state officer designated to  
16 issue salary warrants, an affidavit that no matter referred  
17 to him for opinion or decision has been uncompleted or un-  
18 decided by him for a period of more than six months.

19 (c) Subject to rule of the supreme court, a probate  
20 judge shall receive a per diem allowance and a transporta-  
21 tion allowance commensurate with that authorized for other  
22 state employees.

23 Sec. 22.17.150. APPEALS. (a) Any party may appeal  
24 a judgment of the probate court to the superior court.

25 (b) An appeal shall be taken within 30 days from the  
26 date of entry of the judgment. All appeals shall be on  
27 the record unless the superior court, in its discretion,  
28 grants a trial de novo, in whole or in part.

29 (c) The supreme court shall prescribe further rules

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for the procedure for appeals from probate courts.

Sec. 22.17.160. MONEY COLLECTED. All money collected by the probate court shall be accounted for and transmitted to the administrative director of the judicial system.

Sec. 22.17.170. BOND. Before entering upon his duties each probate judge shall execute and file with the administrative director a surety bond in form and amount to be determined by rule of the supreme court. The state shall pay for the bond.

\* Sec. 2. The superior court shall transfer actions and proceedings to the probate court when, in the opinion of the supreme court, the probate court is ready to receive them.