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Referred: Finance

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR SENATE BILL NO. 104 (Judiciary) am H

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the judiciary; establishing a court
7 of appeals; amending the jurisdiction of the supreme
8 court, the superior court, and the district court;
9 clarifying and amending the sentence appeal and other
10 appellate jurisdiction of the superior court; changing
11 the qualifications of justices and judges; providing
12 that justices and judges may serve as delegates to
13 constitutional conventions; amending the time period in
14 which the judicial council is to provide information to
15 the public concerning judicial officers standing for
16 retention election; changing Rule 21, Rules of Appel-
17 late Procedure and Rule 7, District Court Criminal
18 Rules; and providing for an effective date."

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

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

21 CHAPTER 07. THE COURT OF APPEALS.

22 Sec. 22.07.010. ESTABLISHMENT. There is established the court of
23 appeals, consisting of three judges. The court of appeals is a court of
24 record.

25 Sec. 22.07.020. JURISDICTION. (a) The court of appeals has
26 appellate jurisdiction in actions and proceedings commenced in the
27 superior court involving:

- 28 (1) criminal prosecution;
29 (2) post-conviction relief;

1 (3) children's court matters under AS 47.10.010(a)(1) includ-
2 ing waiver of children's court jurisdiction over a minor under AS 47.10;
3 (4) extradition;
4 (5) habeas corpus;
5 (6) probation and parole; and
6 (7) bail.

7 (b) The court of appeals has jurisdiction to hear appeals of
8 sentences of imprisonment imposed by the superior court on the grounds
9 that the sentence is excessive or too lenient and, in the exercise of
10 this jurisdiction, may modify the sentence as provided by law and the
11 state constitution.

12 (c) The court of appeals has jurisdiction to review (1) a final
13 decision of the district court in an action or proceeding involving
14 criminal prosecution, post-conviction relief, extradition, probation and
15 parole, habeas corpus or bail; and (2) the final decision of the district
16 court on a sentence imposed by it. In this subsection "final decision"
17 means a decision or order, other than dismissal by consent of all
18 parties, that closes a matter in the district court.

19 (d) An appeal to the court of appeals is a matter of right in all
20 actions and proceedings within its jurisdiction except that (1) the
21 right of appeal to the court of appeals is waived if an appellant
22 chooses to appeal the final decision of the district court to the
23 superior court; and (2) the state has no right of appeal in criminal
24 cases except to test the sufficiency of the indictment or information
25 or to appeal a sentence on the ground that it is too lenient.

26 (e) The court of appeals may in its discretion (1) review a final
27 decision of the superior court on an appeal from a district court in an
28 action or proceeding involving criminal prosecution, post-conviction
29 relief, extradition, probation and parole, habeas corpus or bail; (2)

1 review the final decision of the superior court on appeal of a sentence
2 imposed by the district court. In this subsection "final decision"
3 means a decision or order, other than a dismissal by consent of all
4 parties, that closes a matter in the superior court.

5 (f) The court of appeals may issue injunctions, writs and all
6 other process necessary for the complete exercise of its jurisdiction.

7 (g) A final decision of the court of appeals is binding on the
8 superior court and on the district court unless superseded by a decision
9 of the supreme court.

10 Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the
11 supreme court for review of a final decision of the court of appeals in
12 accordance with AS 22.05.010 and rules adopted by the supreme court.
13 Review is in the discretion of the supreme court as set out in AS 22.-
14 05.010(c). In this section, "final decision" means a decision or order,
15 other than a dismissal by consent of all parties, that closes a matter
16 in the court of appeals.

17 Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of
18 appeals shall be a citizen of the United States and of the state, a
19 resident of the state for five years immediately preceding his appoint-
20 ment, have been engaged for not less than eight years immediately pre-
21 ceding his appointment in the active practice of law, and at the time of
22 appointment be licensed to practice law in the state. For purposes of
23 this section, the active practice of law is the same as defined for the
24 justices of the supreme court in AS 22.05.070.

25 Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of
26 appeals, upon entering office, shall take and subscribe to the oath or
27 affirmation of office required of all officers under the constitution.

28 Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of
29 appeals is subject to approval or rejection as provided in the Alaska

1 Election Code (AS 15). The judicial council shall conduct an evaluation
2 of each judge before his retention election and shall provide informa-
3 tion to the public about the judge and may provide a recommendation
4 regarding his retention or rejection. The information and any recommen-
5 dation shall be made public at least 60 days before the election. The
6 judicial council shall also provide the information and any recommenda-
7 tion to the office of the lieutenant governor in time for publication in
8 the election pamphlet as required by AS 15.57.025. If a majority of
9 those voting on the question rejects the candidacy of a judge, he may
10 not for a period of four years thereafter be appointed to fill a vacancy
11 in the supreme court, the court of appeals, the superior court, or the
12 district court of the state.

13 Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy
14 or appoint a successor to fill an impending vacancy in the office of
15 judge of the court of appeals within 45 days after receiving nominations
16 from the judicial council, by appointing one of two or more persons
17 nominated by the council for each actual or impending vacancy. An
18 appointment to fill an impending vacancy becomes effective upon the
19 actual occurrence of the vacancy.

20 (b) The office of a judge of the court of appeals becomes vacant
21 90 days after the election at which he is rejected by a majority of
22 those voting on the question or for which he fails to file his declara-
23 tion of candidacy to succeed himself. Upon the occurrence of (1) an
24 actual vacancy; (2) the certification of rejection following an elec-
25 tion; or (3) the failure of a judge to file a declaration of candidacy
26 to succeed himself, the judicial council shall meet within 45 days and
27 submit to the governor the names of two or more persons qualified for
28 the judicial office; however, the 45-day period may be extended by the
29 judicial council with the concurrence of the supreme court. In the

1 event of an impending vacancy other than by reason of rejection or
2 failure to file a declaration of candidacy, the judicial council may
3 meet at any time within the 90-day period immediately preceding the
4 effective date of the vacancy and submit to the governor the names of
5 two or more persons qualified for the judicial office.

6 Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals
7 while holding office may not practice law, or engage in the conduct of
8 any other profession, vocation or business for profit or compensation,
9 which conduct would interfere with his performance of his judicial
10 duties, nor may he hold office in a political party, or hold any other
11 office or position of profit under the United States, the state or its
12 political subdivisions. A judge of the court of appeals filing for
13 another elective public office other than delegate to a constitutional
14 convention of this state or the United States forfeits his judicial
15 position.

16 Sec. 22.07.090. COMPENSATION. (a) The monthly salary of a judge
17 of the court of appeals is equal to Step E, Range 29 of the salary
18 schedule in AS 39.27.011(a) for Juneau, Alaska. The compensation of a
19 judge may not be diminished during his term of office, unless by general
20 law applying to all salaried officers of the state.

21 (b) A salary warrant may not be issued to a judge of the court of
22 appeals until he has filed with the state officer designated to issue
23 salary warrants an affidavit that no matter referred to the judge for
24 opinion or decision has been incompleated or undecided by him for a
25 period of more than six months.

26 Sec. 22.07.100. PROCESS. Process of the court of appeals shall be
27 in the name of the State of Alaska, signed by the clerk of the court or
28 his deputy, dated when issued, sealed with the seal of court, and made
29 returnable according to rule prescribed by the supreme court.

1 * Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

2 Sec. 22.05.010. JURISDICTION. (a) The supreme court has final
3 appellate jurisdiction in all actions and proceedings. However, a party
4 has only one appeal as a matter of right from an action or proceeding
5 commenced in either the district court or the superior court.

6 (b) Appeal to the supreme court is a matter of right only in those
7 actions and proceedings from which there is no right of appeal to the
8 court of appeals under AS 22.07.020 or to the superior court under
9 AS 22.10.020 or AS 22.15.240.

10 (c) A decision of the superior court on an appeal from an adminis-
11 trative agency decision may be appealed to the supreme court as a matter
12 of right.

13 (d) The supreme court may in its discretion review a final deci-
14 sion of the court of appeals on application of a party under AS 22.07.-
15 030. The supreme court may in its discretion review a final decision of
16 the superior court on an appeal of a civil case commenced in the dis-
17 trict court. In this subsection "final decision" means a decision or
18 order, other than a dismissal by consent of all parties, that closes a
19 matter in the court of appeals.

20 (e) The supreme court may issue injunctions, writs and all other
21 process necessary to the complete exercise of its jurisdiction.

22 * Sec. 3. AS 22.05 is amended by adding a new section to read:

23 Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme
24 court may transfer to the court of appeals for decision a case pending
25 before the supreme court if the case is within the jurisdiction of the
26 court of appeals.

27 (b) The supreme court may take jurisdiction of a case pending
28 before the court of appeals if the court of appeals certifies to the
29 supreme court that the case involves a significant question of law under

1 the Consitution of the United States or under the constitution of the
2 state or involves an issue of substantial public interest that should be
3 determined by the supreme court.

4 (c) A case filed in the supreme court or in the court of appeals
5 may not be dismissed by one court on the ground that it is within the
6 jurisdiction of the other court. The case shall be transferred to the
7 proper court.

8 * Sec. 4. AS 22.05.060 is amended to read:

9 Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is
10 a vignette of the official flag of the state with the words "Seal of the
11 Supreme Court of the State of Alaska" surrounding the vignette. The
12 supreme court shall prescribe by rule the seals of court for the court
13 of appeals and for the superior and district courts.

14 * Sec. 5. AS 22.05.070 is amended to read:

15 Sec. 22.05.070. QUALIFICATIONS OF JUSTICES. A justice of the
16 supreme court shall be a citizen of the United States and of the state,
17 a resident of the state for five [THREE] years immediately preceding his
18 appointment, have been engaged for not less than eight years immediately
19 preceding his appointment in the active practice of law, and at the time
20 of appointment be licensed to practice law in the state. The active
21 practice of law includes

22 (1) sitting as a judge in a state or territorial court;

23 (2) being actually engaged in advising and representing
24 clients in matters of law;

25 (3) rendering legal services to an agency, branch, or depart-
26 ment of a civil government within the United States or a state or terri-
27 tory of the United States, in an elective, appointive or employed capac-
28 ity;

29 (4) serving as a professor, associate professor, or assistant

1 professor in a law school accredited by the American Bar Association.

2 * Sec. 6. AS 22.05.100 is amended to read:

3 Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice
4 is subject to approval or rejection as provided in the Alaska Election
5 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
6 tion of each justice before his retention election and shall provide to
7 the public information about that justice and may provide a recommenda-
8 tion regarding his retention or rejection. Such information and any
9 recommendation shall be made public at least 60 [30] days before the
10 retention election. The judicial council shall also provide such infor-
11 mation and any recommendation to the office of the lieutenant governor
12 in time for publication in the election pamphlet under AS 15.57.025. If
13 a majority of those voting on the question rejects his candidacy, he
14 shall not be appointed to fill any vacancy in the supreme court, court
15 of appeals, [OR] superior court, or district courts [COURTS] of the
16 state for a period of four years thereafter.

17 * Sec. 7. AS 22.05.130 is amended to read:

18 Sec. 22.05.130. RESTRICTIONS. A supreme court justice while
19 holding office may not practice law, nor engage in the conduct of any
20 other profession, vocation or business for profit or compensation, which
21 conduct would interfere with his performance of his judicial duties, nor
22 may he hold office in a political party, or hold any other office or
23 position of profit under the United States, the state [,] or its poli-
24 tical subdivisions. A supreme court justice filing for another elective
25 public office other than delegate to a constitutional convention of
26 this state or the United States forfeits his judicial position.

27 * Sec. 8. AS 22.10.020(a) is amended to read:

28 (a) The superior court is the trial court of general jurisdiction,
29 with original jurisdiction in all civil and criminal matters, including

1 but not limited to probate and guardianship of minors and incompetents.
2 The jurisdiction of the superior court extends over the whole of the
3 state. The superior court and its judges may issue injunctions, writs
4 of review, mandamus, prohibition, habeas corpus and all other writs
5 necessary or proper to the complete exercise of its jurisdiction. A
6 writ of habeas corpus may be made returnable before any judge of the
7 superior court. The superior court has jurisdiction in all matters
8 appealed to it from a subordinate court, or administrative agency when
9 appeal is provided by law. Appeals are a matter of right, but no appeal
10 from a subordinate court may be taken by the defendant in a criminal
11 case after a plea of guilty, except on the ground that the sentence was
12 excessive, as futher provided by this section. The state has no right
13 to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE],
14 except to test the sufficiency of an indictment or information or to
15 appeal a sentence on the ground it is too lenient. An appeal to the
16 superior court may be taken on the ground that a sentence of impri-
17 sonment of 90 [180] days or more was excessive and the superior court in
18 the exercise of this jurisdiction has the power to reduce [MODIFY] the
19 sentence [APPEALED FROM UPWARD OR DOWNWARD]. When a sentence is ap-
20 pealed by the state on the ground it is too lenient, the court may not
21 increase the sentence but may express its approval or disapproval of
22 the sentence and its reasons in a written opinion. The hearings on
23 appeal from a final order or judgment of a subordinate court or adminis-
24 trative agency shall be on the record unless the superior court, in its
25 discretion, grants a trial de novo, in whole or in part.

26 * Sec. 9. AS 22.10.090 is amended to read:

27 Sec. 22.10.090. QUALIFICATIONS OF JUDGES. A judge of the superior
28 court shall be a citizen of the United States and of the state, a resi-
29 dent of the state for five [THREE] years immediately preceding his

1 appointment, have been engaged for not less than five years immediately
2 preceding his appointment in the active practice of law, and at the time
3 of appointment be licensed to practice law in the state. The active
4 practice of law shall be as defined for justices of the supreme court in
5 AS 22.05.070 [SUPREME COURT JUSTICES].

6 * Sec. 10. AS 22.10.150 is amended to read:

7 Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge
8 is subject to approval or rejection as provided in the Alaska Election
9 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
10 tion of each judge before his retention election and shall provide to
11 the public information about the judge and may provide a recommendation
12 regarding his retention or rejection. Such information and any recom-
13 mendation shall be made public at least 60 [30] days before the reten-
14 tion election. The judicial council shall also provide such information
15 and any recommendation to the office of the lieutenant governor in time
16 for publication in the election pamphlet under AS 15.57.025. If a major-
17 ity of those voting on the question rejects his candidacy, he shall not
18 for a period of four years thereafter be appointed to fill any vacancy
19 in the supreme court, court of appeals, [OR] superior courts, or district
20 courts of the state.

21 * Sec. 11. AS 22.10.180 is amended to read:

22 Sec. 22.10.180. RESTRICTIONS. A superior court judge while
23 holding office may not practice law, nor engage in the conduct of any
24 other profession, vocation or business for profit or compensation,
25 which conduct would interfere with his performance of his judicial
26 duties, nor may he hold office in a political party, or hold any other
27 office or position of profit under the United States, the state or
28 its political subdivisions. A superior court judge filing for an-
29 other elective public office other than delegate to a constitutional

1 convention of this state or the United States forfeits his judicial
2 position.

3 * Sec. 12. AS 22.15.160(a) is amended to read:

4 (a) A district judge shall be a citizen of the United States and
5 of the state, at least 21 years of age, a resident of the state for at
6 least five years [ONE YEAR] immediately preceding his appointment, and
7 (1) have been engaged in the active practice of law for not less than
8 three years immediately preceding his appointment and at the time of his
9 appointment licensed to practice law in the State of Alaska; or (2)
10 have served for at least seven years as a magistrate in the state. The
11 supreme court may prescribe additional qualifications.

12 * Sec. 13. AS 22.15.195 is amended to read:

13 Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge
14 is subject to approval or rejection as provided in the Alaska Election
15 Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-
16 tion of each judge before his retention election and shall provide to
17 the public information about the judge and may provide a recommendation
18 regarding his retention or rejection. Such information and the recom-
19 mendation shall be made public at least 60 [30] days before the elec-
20 tion. The judicial council shall also provide such information and any
21 recommendation to the office of the lieutenant governor in time for
22 publication in the election pamphlet under AS 15.57.025. If a majority
23 of those voting on the question rejects his candidacy, he shall not for
24 a period of four years thereafter be appointed to fill any vacancy in
25 the supreme court, court of appeals, superior courts or district courts
26 of the state.

27 * Sec. 14. AS 22.15.210(a) is amended to read:

28 (a) A district judge [,] while holding office [,] may not practice
29 law, nor engage in the conduct of any other profession, vocation or

1 business for profit or compensation, which conduct would interfere with
2 his performance of his judicial duties, nor may he hold office in a
3 political party, or hold any other office or position of profit under
4 the United States, the state or its political subdivisions, except that,
5 with the approval of the chief justice of the Alaska Supreme Court, a
6 [THE] district judge may be appointed deputy clerk of the superior court
7 and may hold the office of United States magistrate. A district judge
8 who files for another elective public office other than delegate to a
9 constitutional convention of this state or the United States forfeits
10 his judicial position.

11 * Sec. 15. AS 22.15.240 is amended to read:

12 Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment
13 of the district court in a civil action to the superior court [WHEN THE
14 SUM IN CONTROVERSY IS NOT LESS THAN \$50, OR FOR THE RECOVERY OF PERSONAL
15 PROPERTY OF THE VALUE OF NOT LESS THAN \$50 EXCLUSIVE OF COSTS IN EITHER
16 CASE, EXCEPT WHEN THE SUM IS GIVEN BY CONFESSION OR FOR WANT OF AN
17 ANSWER].

18 (b) The defendant may appeal a judgment of conviction given in the
19 district court in a criminal action to the superior court. When the
20 judgment is given on a plea of guilty, no appeal may be taken by the
21 defendant except on the ground that a sentence of imprisonment of 90
22 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE
23 MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY].
24 The state has no right of appeal in criminal actions for which judgment
25 is given in the district courts, except to test the sufficiency of the
26 information or to appeal a sentence on the ground it is too lenient.
27 When a sentence is appealed by the state on the ground it is too le-
28 lenient, the court may not increase the sentence but may express its ap-
29 proval or disapproval of the sentence and its reasons in a written

1 opinion.

2 (c) An appeal from the district court shall be taken within 30
3 days from the date of entry of the judgment. All appeals shall be on
4 the record [UNLESS THE SUPERIOR COURT, IN ITS DISCRETION, GRANTS A TRIAL
5 DE NOVO, IN WHOLE OR IN PART].

6 (d) The supreme court shall prescribe further rules for the pro-
7 cedure for appeals from district courts.

8 * Sec. 16. AS 22.20.010 is amended to read:

9 Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial
10 officer" means a supreme court justice, including the chief justice,
11 a judge of the court of appeals, a judge of the superior court, a dis-
12 trict judge and a magistrate.

13 * Sec. 17. AS 22.20.110 is amended to read:

14 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,
15 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme
16 court, the commissioner shall serve and execute all process issued by
17 the court of appeals, the superior court and the district courts, attend
18 to and wait upon grand and petit juries, maintain order, attend the
19 sessions of the courts, and exercise the power and perform the duties
20 concerning all matters within the jurisdiction of the courts as may be
21 assigned to him. The commissioner is the executive officer of the court
22 of appeals, the superior court and district courts.

23 * Sec. 18. AS 22.25.010(g) is amended to read:

24 (g) The word "justice" means a supreme court justice, and the word
25 "judge," unless the context clearly indicates otherwise, means a judge
26 of the court of appeals, a superior court judge or district court judge.

27 * Sec. 19. AS 22.30.080(2) is amended to read:

28 (2) "judge" means a justice of the supreme court, a judge of
29 the court of appeals, a judge of the superior court, or a judge of the

1 district court who is the subject of an investigation or proceeding
2 under sec. 10, art. IV, Constitution of the State of Alaska and this
3 chapter.

4 * Sec. 20. AS 11.56.900(2) is amended to read:

5 (2) "judicial officer" means a supreme court justice, in-
6 cluding the chief justice, a judge of the court of appeals, a judge of
7 the superior court, a district court judge, or a magistrate;

8 * Sec. 21. AS 15.15.030(10) is repealed and re-enacted to read:

9 (10) A separate nonpartisan judicial ballot shall be desig-
10 nated for each judicial district in which a justice or judge is seeking
11 to succeed himself. The ballot shall be divided into four parts and
12 each part shall bear a heading indicating the court to which the candi-
13 date is seeking approval. Within each part the question of whether the
14 justice or judge shall be approved or rejected shall be set out in
15 substantially the following manner: (A) "Shall be re-
16 tained as justice of the supreme court for 10 years?"; (B) "Shall . . .
17 be retained as judge of the court of appeals for eight years?";
18 (C) "Shall be retained as judge of the superior court for
19 six years?"; or (D) "Shall be retained as judge of the
20 district court for four years?" Provision shall be made for marking
21 each question "Yes" or "No".

22 * Sec. 22. AS 15.35 is amended by adding new sections to read:

23 Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF
24 APPEALS. Each judge of the court of appeals is subject to approval or
25 rejection at the first general election held more than three years after
26 his appointment. If approved, he is thereafter subject to approval or
27 rejection in a like manner every eighth year.

28 Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF
29 APPEALS. Each judge of the court of appeals seeking to succeed himself

1 in office shall file with the lieutenant governor a declaration of
2 candidacy not less than 90 days before the date of the general election
3 at which approval or rejection is requisite.

4 Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.
5 At the time the declaration is filed, each candidate shall pay a filing
6 fee to the lieutenant governor. The filing fee for a candidate for the
7 court of appeals is \$100.

8 Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON
9 BALLOT. The lieutenant governor shall place the name of a judge of the
10 court of appeals who has properly filed a declaration of candidacy on
11 the judicial ballot in each judicial district of the state for the
12 general election at which approval is sought.

13 * Sec. 23. AS 15.57.025 is amended to read:

14 Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFI-
15 CERS. No later than 60 days before the applicable state election, the
16 judicial council shall file with the lieutenant governor a statement
17 including information about each supreme court justice, court of appeals
18 judge, superior court judge, and district court judge who will be sub-
19 ject to a retention election, following the evaluation of each such
20 justice or judge conducted by the judicial council according to law.
21 Each such statement may not exceed 300 words.

22 * Sec. 24. AS 15.57.040(2) is amended to read:

23 (2) judicial officer other than supreme court justice or
24 court of appeals judge, \$50 each;

25 * Sec. 25. AS 24.55.330(2) is amended to read:

26 (2) "agency" includes a department, office, institution,
27 corporation, authority, organization, commission, committee, council or
28 board of a municipality or in the executive, legislative or judicial
29 branches of the state government, and a department, office, institution,

1 corporation, authority, organization, commission, committee, council or
2 board of a municipality or of the state government independent of the
3 executive, legislative and judicial branches; it also includes an offi-
4 cer, employee or member of an "agency" acting or purporting to act in
5 the exercise of his official duties, but does not include the governor,
6 lieutenant governor, a member of the legislature, justice of the supreme
7 court, judge of the court of appeals, a superior court judge, [OR]
8 district court judge, magistrate, member of a city council or borough
9 assembly, elected city or borough mayor, or a member of an elected
10 school board;

11 * Sec. 26. AS 39.20.310(1) is amended to read:

12 (1) members of the state legislature, the governor, the
13 lieutenant governor, and justices and judges of the supreme and superior
14 courts and of the court of appeals, but nothing in AS 39.20.200 -
15 39.20.330 may be construed to diminish the salaries fixed by law for
16 these officers by reason of absence from duty on account of illness or
17 otherwise;

18 * Sec. 27. AS 39.35.680(21)(C)(vi) is amended to read:

19 (vi) justices of the supreme court or judges of the
20 court of appeals or of the superior or district courts of
21 Alaska;

22 * Sec. 28. AS 39.50.200(2) is amended to read:

23 (2) "judicial officer" means a person appointed as a justice
24 to the supreme court or as a judge to the court of appeals, superior
25 court, district court, or magistrate court.

26 * Sec. 29. AS 12.55.120(a) is amended to read:

27 (a) A sentence of imprisonment lawfully imposed by the superior
28 court for a term or for aggregate terms of [EXCEEDING] one year or more
29 may be appealed to the court of appeals [SUPREME COURT] by the defendant

1 on the ground that the sentence is excessive. By appealing a sentence
2 under this section, the defendant waives the right to plead that by a
3 revision of the sentence resulting from the appeal he has been twice
4 placed in jeopardy for the same offense.

5 * Sec. 30. AS 12.55.120(b) is amended to read:

6 (b) A sentence of imprisonment lawfully imposed by the superior
7 court may be appealed to the court of appeals [SUPREME COURT] by the
8 state on the ground that the sentence is too lenient; however, when a
9 sentence is appealed by the state and the defendant has not appealed the
10 sentence, the court is not authorized to increase the sentence but may
11 express its approval or disapproval of the sentence and its reasons in a
12 written opinion.

13 * Sec. 31. AS 12.55.120 is amended by adding a new subsection to read:

14 (d) A sentence of imprisonment lawfully imposed by the district
15 court for a term or for aggregate terms exceeding 90 days may be ap-
16 pealed to the superior court by the defendant on the ground that the
17 sentence is excessive. By appealing a sentence under this section, the
18 defendant waives the right to plead that by a revision of the sentence
19 resulting from the appeal he has been twice placed in jeopardy for the
20 same offense. A sentence of imprisonment lawfully imposed by the dis-
21 trict court may be appealed to the superior court by the state on the
22 ground that the sentence is too lenient; however, when a sentence is
23 appealed by the state, the court may not increase the sentence but may
24 express its approval or disapproval of the sentence and its reasons in a
25 written opinion.

26 * Sec. 32. A judge of the court of appeals is not required to contribute
27 to the retirement system under AS 22.25.011 if, at the time of his appoint-
28 ment to the court of appeals, he holds a judicial office to which the retire-
29 ment benefits of AS 22.25 apply and to which he was appointed before July 1,

1 1978.

2 * Sec. 33. Notwithstanding the effective date of this Act, operations of
3 the court of appeals shall begin on a date determined by the supreme court
4 after all judges of the court of appeals have taken office.

5 * Sec. 34. Cases pending in the supreme court on the date on which the
6 operations of the court of appeals begin which have been heard by or sub-
7 mitted to the supreme court on the briefs shall be retained by the supreme
8 court for decision. The supreme court may transfer to the court of appeals
9 all other pending cases within the jurisdiction of the court of appeals.

10 * Sec. 35. It is the intent of the legislature that the court of appeals
11 begin operations as soon as possible after the effective date of this Act.
12 The administrative director of courts shall immediately take necessary action
13 to provide suitable facilities for the court of appeals. When advised by the
14 supreme court, the judicial council shall meet and submit nominations to the
15 governor for the initial vacancies for judge of the court of appeals.

16 * Sec. 36. The amendments enacted in secs. 5, 9 and 12 of this Act apply
17 only to justices and judges appointed on or after the effective date of this
18 Act.

19 * Sec. 37. Sections 8, 15 and 31 of this Act have the effect of changing
20 Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal
21 Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that
22 a sentence of 90 days or more imposed by the district court may be appealed.

23 * Sec. 38. Section 29 of this Act has the effect of changing Rule 21,
24 Rules of Appellate Procedure by enacting and amending AS 12.55.120(a) to
25 provide that a sentence of one year or more may be appealed.

26 * Sec. 39. This Act takes effect immediately in accordance with AS 01.10.
27 070(c).

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