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STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS data base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	2/15/85	1:30 pm
" "	2/19/85	1:30 pm

COMMITTEE REPORT
HOUSE

2/22

(7)

FURTHER: FINANCE

1/25/85

Date: 2-19-85

The Committee on JUDICIARY has had HB 118

"An Act relating to the small claims jurisdictional limitation and the duties of magistrates; and providing for an effective date."

under consideration and recommends:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 118 (Jud) same title
 new title
- and recommends CS HR 118 DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note Sup 2-1
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

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CHAIRMAN

is passed out

Original sponsor: Judiciary/Chief Justice
Alaska Supreme Court

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 118 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to small claims, and the duties of
7 magistrates; and providing for an effective date."

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

9 * Section 1. AS 22.15.040 is amended to read:

10 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
11 exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees,
12 and request is so made, the district judge or magistrate shall hear
13 the action as a small claim unless important or unusual points of law
14 are involved. The supreme court shall prescribe the procedural rules
15 and standard forms to assure simplicity and the expeditious handling
16 of small claims.

17 * Sec. 2. AS 22.15.040 is amended by adding a new subsection to read:

18 (b) All potential small claim litigants shall be informed if
19 mediation, conciliation, and arbitration services are available as an
20 alternative to litigation.

21 * Sec. 3. AS 22.15.120 is amended to read:

22 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
23 HEAR. A magistrate shall preside only in cases and proceedings under
24 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

25 (1) for the recovery of money or damages only when the
26 amount claimed, exclusive of costs, interest, and attorney fees, does
27 not exceed \$5,000 [\$1,000];

28 (2) for the recovery of specific personal property when the
29 value of the property claimed and the damages for the detention do not

1 exceed \$5,000 [\$1,000];

2 (3) for the recovery of a penalty or forfeiture, whether
3 given by statute or arising out of contract, not exceeding \$5,000
4 [\$1,000];

5 (4) to give judgment without action upon the confession of
6 the defendant for any of the cases specified in this section, except
7 for a penalty or forfeiture imposed by statute;

8 (5) to give judgment of conviction upon a plea of guilty by
9 the defendant in a criminal proceeding within the jurisdiction of the
10 district court;

11 (6) to hear, try, and enter judgments in all cases involv-
12 ing misdemeanors, if the defendant consents in writing that the magis-
13 trate may try the case;

14 (7) to hear, try and enter judgments in all cases involving
15 infractions under AS 28 and violations of ordinances of political
16 subdivisions [;

17 (8) REPEALED].

18 * Sec. 4. This Act takes effect on the effective date of an amendment
19 by the Supreme Court to Rule 9(c)(2) of the Rules Governing the Adminis-
20 tration of All Courts raising the filing fee for small claims actions from
21 \$5 to at least \$15.

Levy
2/18/85

Original sponsor: Judiciary/Chief Justice Alaska Supreme Court

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IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 118 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to small claims, compulsory arbitration, and the duties of magistrates; amending Rule 15, District Court Rules of Civil Procedure; and providing for an effective date."

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

* Section 1. AS 22.15.040 is amended to read:

Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees, and request is so made, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims. A party may not be represented by an attorney in a hearing for a small claim under this section. This section does not preclude an attorney from appearing as a party in a hearing for a small claim.

* Sec. 2. AS 22.15.040 is amended by adding a new subsection to read:

(b) All potential small claim litigants shall be informed that mediation, conciliation, and arbitration services are available as an alternative to litigation.

* Sec. 3. AS 22.15.120 is amended to read:

Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY HEAR. A magistrate shall preside only in cases and proceedings under AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

1 (1) for the recovery of money or damages only when the
2 amount claimed, exclusive of costs, interest, and attorney fees, does
3 not exceed \$5,000 [\$1,000];

4 (2) for the recovery of specific personal property when the
5 value of the property claimed and the damages for the detention do not
6 exceed \$5,000 [\$1,000];

7 (3) for the recovery of a penalty or forfeiture, whether
8 given by statute or arising out of contract, not exceeding \$5,000
9 [\$1,000];

10 (4) to give judgment without action upon the confession of
11 the defendant for any of the cases specified in this section, except
12 for a penalty or forfeiture imposed by statute;

13 (5) to give judgment of conviction upon a plea of guilty by
14 the defendant in a criminal proceeding within the jurisdiction of the
15 district court;

16 (6) to hear, try, and enter judgments in all cases involv-
17 ing misdemeanors, if the defendant consents in writing that the magis-
18 trate may try the case;

19 (7) to hear, try and enter judgments in all cases involving
20 infractions under AS 28 and violations of ordinances of political
21 subdivisions [;

22 (8) REPEALED].

23 * Sec. 4. Section 1 of this Act has the effect of amending Rule 15,
24 District Court Rules of Civil Procedure, by prohibiting parties from being
25 represented by an attorney in a hearing for a small claim under AS 22.15.-
26 040.

27 * Sec. 5. This Act takes effect on the effective date of Supreme Court
28 rules adopted to implement the compulsory arbitration provisions of AS 09.-
29 43.190 - 09.43.220 for small claims.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

K5

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 118 (Jud)
 Title: An Act Relating to Small
 Claims and Magistrate Jurisdiction
 Sponsor: Judiciary Committee
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: _____
Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
100 PERSONAL SERVICES		94.8	100.5	106.5	112.9	119.7
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.8	102.6	108.7	115.2	122.1

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		105.8	102.6	108.7	115.2	122.1
FEDERAL FUNDS						
OTHER						
TOTAL		105.8	102.6	108.7	115.2	122.1

POSITIONS:

FULL-TIME		3	3	3	3	3
PART-TIME		1	1	1	1	1
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The original fiscal note submitted by the Court System for HB 118 is still correct; however, the costs incurred will be more than offset by the increase in filing fees required under Sec. 4 of the House Judiciary Committee Substitute for HB 118.

ANALYSIS:

Prepared By: Hayden Kaden, Committee Counsel Phone: 465-4990
 Division: House Judiciary Committee Date: 2-20-85
 Approved by *[Signature]* Chairman Date: 2-20-85
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 118
 Title: An Act Relating to Small
Claims and Magistrate Jurisdiction
 Sponsor: _____
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: _____
Administration of Justice
 BRU, Program or Subprogram(s) Affected: _____
Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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POSITIONS:

FULL-TIME		3	3	3	3	3
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TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert G. Fisher, Fiscal Officer Phone: 264-0561
 Division: Alaska Court System Date: 2/4/85

Approved by Commissioner:  Date: 2/4/85
 Agency: Alaska Court System

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

12/1/83

ALASKA COURT SYSTEM
FISCAL NOTE ANALYSIS

HB 118 - SMALL CLAIMS & MAGISTRATE JURISDICTION

PERSONNEL:	SALARY	BENEFITS	TOTAL COST
1½ COURT CLERK I (Anchorage - 8B)	\$28,926	\$10,418	\$39,344
1 COURT CLERK I (Fairbanks - 8B)	21,744	7,496	29,240
1 COURT CLERK I (Juneau - 8B)	19,284	6,945	26,229

	Total Personnel Costs		94,813
SUPPLIES			2,000
EQUIPMENT (one-time items)			8,996

TOTAL FY 86 COST			\$105,809 =====

Subsequent fiscal years adjusted to reflect 6% inflation.

Introduced: 1/22/85
Referred: Judiciary and
Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 77

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the small claims jurisdictional
7 limitation and the duties of magistrates; and
8 providing for an effective date."

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

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11 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
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15 are involved. The supreme court shall prescribe the procedural rules
16 and standard forms to assure simplicity and the expeditious handling
17 of small claims.

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19 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
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29 given by statute or arising out of contract, not exceeding \$5,000

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2 (4) to give judgment without action upon the confession of
3 the defendant for any of the cases specified in this section, except
4 for a penalty or forfeiture imposed by statute;

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6 the defendant in a criminal proceeding within the jurisdiction of the
7 district court;

8 (6) to hear, try, and enter judgments in all cases
9 involving misdemeanors, if the defendant consents in writing that the
10 magistrate may try the case;

11 (7) to hear, try and enter judgments in all cases involving
12 infractions under AS 28 and violations of ordinances of political
13 subdivisions. [;

14 (8) REPEALED]

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
16 10.070(c).

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 15, 1985

SUBJECT: Right to counsel in small claims hearings
(HB 118)

TO: Representative Don Clocksin
Majority Leader

FROM: Keith B. Levy ^{KBL}
Legislative Counsel

You have asked whether an amendment to HB 118 that prohibits attorneys from appearing in small claims court as a representative of a party violates the party's constitutional due process right to be represented by counsel. In my opinion it does not.

In Prudential Ins. Co. v. Small Claims Court, 173 P.2d 38 (Cal. App. 1946), a California Court of Appeals found that a similar statute, California Code of Civil Procedure, sec. 117g (now sec. 117.4, a copy of which is enclosed), does not violate due process. The court ruled that, although there is a right to be represented by counsel in civil cases, the statute adequately protects that right. The plaintiff is protected because he or she has the choice of bringing suit in a higher court and being represented by counsel. The defendant is protected because, he or she may appeal to a higher court and receive a hearing de novo with full representation of counsel.

Although your amendment to HB 118 does not specifically include these protections, they are incorporated into existing law and court rules. AS 22.15.040 requires cases to be heard as small claims if "request is so made." District Court Civil Rule 8(a) provides, in part, that the small claims rules apply "when all parties to the action elect to be governed by them." Thus, the plaintiff is protected because he or she may elect not to proceed in small claims court. The defendant is protected because

Representative Don Clocksin
February 15, 1985
Page 2

AS 22.10.020 provides that in an appeal to the superior court, the court may hear the case de novo. District Court Civil Rule 18 provides that in an appeal from a small claim must be heard de novo "if the proceedings in the district court were not of record." Although these provisions could be amended to make it clear that a defendant has an absolute right to a hearing de novo in an appeal from a small claim, the existing law probably provides adequate protection.

The policy considerations that influenced the Court in Prudential, the need for an informal setting in which to hear small claims and make these proceedings accessible to those who cannot afford counsel, are likely to prevail before the Alaska Supreme Court as well. Therefore, your amendment to HB 118 does not present a constitutional problem.

An issue that was not addressed in your amendment is the effect it will have on District Court Civil Rule 15. Because Rule 15 allows parties to be represented by counsel in small claims, your amendment has the effect of amending the rule. Accordingly, a title change and a section indicating the effect on the rule is required by Art. IV, sec. 15 of the State Constitution (Leege v. Martin, 379 P.2d 447 (Alaska 1963)), and the Uniform Rules of the Alaska State Legislature, Rule 39(e):

If a bill or portion of a bill contains matter changing a supreme court rule governing practice and procedure in civil or criminal cases, the bill must contain a section expressly citing the rule and noting what change is being proposed. The section containing the change in a court rule must be approved by an affirmative vote of two-thirds of the full membership of each house.

Therefore, the amendment should be redone to satisfy this requirement. If I may be of further assistance, please feel free to contact me.

KBL:ojb
J11/101

Enclosure

me. The judge may consult the controversy. If the defendant require plaintiff to present evidence judgment and make such orders as judge deems to be just and equitable provisions of Section 579 of this code

in the small claims court is entitled of enforcing the judgment rendered s of service of the order for the

163 § 1; Stats 1981 ch 958 § 4; Stats 1982 ch 497 h 527 § 5.

subd (a); and (2) added subd (b). of subd (a). e or she" before "deems to be just" in the fifth for "execution upon a judgment" in subd (b).

ear that the prevailing party is entitled to the costs ll claims judgment may be enforced as provided in

is to others: § 579. Jur 3d (Rev) Costs §§ 4, 6, 18, Courts § 151. ic LJ 334.

ocedure? (1974) 49 St BJ 458.

2 ch 527, Stats 1974 chs 120, 247, led by Stats 1976 ch 1289 § 1.]

all be on simple nontechnical forms unci. Such forms or the instructions rform the claimant that he or she and that he or she has no right of claims court; and that, if he or she service of the claim by the sheriff, ask that such fees be waived by the s, using the forms approved by the

958 § 5.

h accompany such forms"; (2) "or she" after "that § "claims court".

d reference. 1 Council Nos. SC-100(79), SC-110(77). ic LJ 241.

§ 117.3. [Appearance date]

When there are two or more defendants and one or more of them resides outside the county in which the action is brought, the date for the appearance of all the defendants shall not be more than 70 nor less than 30 days from the date of the order to appear.

Added Stats 1976 ch 1289 § 2; Amended Stats 1977 ch 46 § 3, effective May 14, 1977. Prior Law: Former § 117d, as amended by Stats 1972 ch 527 § 4.

Amendments: 1977 Amendment: Added "70 nor less than".

Extension of appearance date: § 116.5. 16 Cal Jur 3d Courts §§ 109, 111.

California Garagemen's Liens—Impact and aftermath of *Adams v Department of Motor Vehicles*. (1975) 6 Pacific LJ 98.

Review of Selected 1977 California Legislation. 9 Pacific LJ 389.

§ 117.4. [Attorney may not take part; Permissible assistance; Appearance on behalf of incarcerated plaintiff]

No attorney at law or other person than the plaintiff and the defendant shall take any part in the filing or the prosecution or defense of such litigation in small claims court, unless the attorney is appearing to prosecute or defend an action by or against himself or herself, or by or against a partnership in which he or she is a general partner and in which all the partners are attorneys, or by or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys at law. Nothing herein shall prevent an attorney from rendering advice to a party to such litigation, either before or after the commencement of such an action; nor shall anything herein prevent an attorney from testifying to facts of which he or she has personal knowledge and about which he or she is competent to testify. However, if the court determines that a party does not speak or understand the English language sufficiently to comprehend the proceedings or give testimony, or cannot properly present his or her own case and needs assistance in so doing, the court may permit another person (other than an attorney at law) to assist such party. A plaintiff incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility shall be entitled to waive personal appearance and submit written declarations to serve as evidence supporting the party's claim, or allow another person (other than an attorney at law) to appear on the plaintiff's behalf.

The presence of the plaintiff or defendant, whether individual or corporate, at the hearing shall not be required to permit the proof of the items of an account but such proof shall be in accordance with the provisions of Sections 1270 and 1271 of the Evidence Code.

Added Stats 1976 ch 1289 § 2; Amended Stats 1977 ch 46 § 4, effective May 14, 1977; Stats 1982 ch 1350 § 1.

Prior Law: Former § 117g, as amended by Stats 1974 ch 120 § 1, Stats 1975 ch 1228 § 2.

Amendments: 1977 Amendment: Added the second paragraph.

1982 Amendment: (1) Generally added feminine pronouns; (2) added the last sentence of the first paragraph; and (3) substituted "Sections" for "Section" in the second paragraph.

Cal Jur 3d Appearance § 11, Appellate Review § 59, Constitutional Law § 360, Courts §§ 108, 111, 112.

Review of Selected 1977 California Legislation. 9 Pacific LJ 389.

Do the small claims courts portend an informal trial procedure? (1974) 49 St BJ 458.

KS



Official Business

Alaska State Legislature House

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: Members of House Judiciary Committee

FROM: Max Gruenberg *MGP*

RE: HB 118 JUDICIARY
Proposed Committee Amendment to Sec. 3 (effective date clause) in the nature of a substitute for the present language of this section.

*Sec. 3, This Act takes effect on the effective date of an amendment to Rule 9(c)(2) of the Rules Governing the Administration of All Courts raising the filing fee for small claims actions from \$5.00 to at least \$15.00.


STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 7, 1985

SUBJECT: Effective date for HB 118
TO: Representative Max Gruenberg
FROM: Billy G. Berrier 
Director
Division of Legal Services

You have proposed an amendment to HB 118 which would provide an effective date contingent on a change in court rules increasing the filing fee for small claims from \$5 to \$15. You have asked whether in our opinion this effective date is legally proper.

In my opinion it is proper.

Section 18, Article II of the constitution of the State of Alaska provides:

SECTION 18. EFFECTIVE DATE. Laws passed by the legislature become effective ninety days after enactment. The legislature may, by concurrence of two-thirds of the membership of each house, provide for another effective date.

Although the general statement is frequently made that the purpose of a delayed effective date is to learn of the laws (e.g. State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) and Sutherland, Statutory Construction Sec. 33.07) the constitution does not so limit the legislature. A delayed effective date may be used in order to prevent a hiatus in the law (an example is contained in HB 78 which changes license fees mandated by statute to fees established by regulations and provides the sections relating to establishment of fees become effective when the necessary regulations are adopted.

Frequently an appropriation for cost of a program becomes effective on the date of an Act establishing the program.

Representative Max Gruenberg
February 7, 1985
Page 2

Immediate effective dates are common and most appropriation bills are effective at the beginning of a new fiscal year. The apparent purpose of the proposed effective date is to assure that a revenue source is available when the bill becomes effective which will produce revenue equivalent to the new costs necessitated by the bill. This purpose is not constitutionally prohibited.

An effective date may be conditioned on other action outside control of the legislature if the occurrence of the condition may be objectively determined and if the required condition does not violate other constitutional requirements.

Clearly the occurrence of the condition is objectively verifiable.

The only other constitutional requirement which appears to raise a question is the restriction on delegation of powers. The legislature may not delegate to another the powers to make law. The net legal effect of the bill with the conditional effective date is that the amendments become effective when specified action to create a revenue source is taken, otherwise current law remains in effect. In my opinion this does not amount to a delegation of the power to make law, it merely specifies conditions on which one provision or another is applicable and there is a reasonable distinction between the two conditions.

BGB:ojb
J11/065