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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:

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

11 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
12 exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees,
13 and request is so made, the district judge or magistrate shall hear
14 the action as a small claim unless important or unusual points of law
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. *Alaska 1978 (1978)*

18 * Sec. 2. AS 22.15.120 is amended to read:

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

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

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

28 (3) for the recovery of a penalty or forfeiture, whether
29 given by statute or arising out of contract, not exceeding \$5,000

1 [\$1,000];

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;

5 (5) to give judgment of conviction upon a plea of guilty by
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14 (8) REPEALED]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).

SECTIONAL ANALYSIS

SB77 "AN ACT RELATING TO THE SMALL CLAIMS JURISDICTIONAL LIMITATION
AND THE DUTIES OF MAGISTRATES; ED"

- Section One Raises small claims amount from \$2000 to \$5000. The \$2000 was set in 1978; up from \$1000 in 1970 and \$500 in 1961. Attached sheet shows rate of inflation used by the Alaska Permanent Fund for the years 1979-1985 (FY).
- Section Two Brings the dollar amount in other proceedings over which magistrates preside into conformity with the amendment in section one (small claims). The \$1000 limit was set in 1972, up from \$500 set in 1964. (Note: in both 1972 and 1964, the amendment was included in the revisor's bill, suggesting either that the amendments were not controversial, or that the revisor was attempting uniformity in this dollar limit.)



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

RATES OF INFLATION USED BY THE ALASKA PERMANENT FUND CORPORATION

F.Y. 1979	6.66%
F.Y. 1980	10.26%
F.Y. 1981	13.52%
F.Y. 1982	10.35%
F.Y. 1983	6.10%
F.Y. 1984	3.22%
F.Y. 1985	4.26%

7.77% Average for the period

T 12 S R 30 W, S.M., to the SE corner of T 12 S R 30 W, S.M., thence easterly along the south boundary of T 12 S R 29 W, S.M., to the shoreline of Horseshoe Cove located in Section 32, T 12 S R 29 W, S.M., thence northerly, westerly, and northerly along the line of mean high tide to the point of beginning.

* Sec. 16. AS 18.65.060(b) is amended to read:

(b) The Department of Public Safety may adopt regulations necessary to carry out the purposes of this section; however, regulations proposed by the department shall be submitted to the presiding officer of each house of the legislature on the day the house convenes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the proposed regulations. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members of the legislature in joint session, the regulations become effective at a date to be designated by the department.

* Sec. 17. AS 19.30.171(b) is amended to read:

(b) The costs incurred by the commissioner in acquiring this land or interest in land includes all costs and any fees incidental to acquisition, including relocation assistance and payments in accordance with AS 34.60. All costs incurred by the commissioner in connection with the acquisition of the land or interest in land shall be paid by the local government for which the land or interest in land is acquired.

* Sec. 18. AS 22.15.120(1) is amended to read:

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

* Sec. 19. AS 22.15.120(2) is amended to read:

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

* Sec. 20. AS 22.15.120(3) is amended to read:

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

* Sec. 21. AS 22.20.100 is amended to read:

Sec. 22.20.100. DUTY OF THE COMMISSIONER IN THE SUPREME COURT. The commissioner is the executive officer of the supreme court and shall serve and execute all process issued by the supreme court or a justice of the supreme court, and shall attend the supreme court, and has the authority necessary for the execution of these duties.

* Sec. 22. AS 22.20.120 is amended to read:

Sec. 22.20.120. GENERAL AUTHORITY AND DUTY OF THE

COMMISSIONER. The authority necessary for the performance of the duties of execution, seizure and detention of property, forfeited or levied upon, and arrest with civil matters, is vested in any court of the state issuing any process for execution of service to a designee.

* Sec. 23. AS 22.30.010 is amended to read:

Sec. 22.30.010. COMMISSION ON JUDICIAL QUALIFICATIONS. The Commission on Judicial Qualifications shall have nine members as follows: one justice elected by the justices of the supreme court; one judge of the district court; one judge of the district court; two judges of the district court; two lawyers in this state for 10 years, appointed by the governor and subject to the approval of a majority of the members of the legislature; one member of the Commission membership terminates if the position that qualified him for the commission and one member may serve on the commission and on the legislature simultaneously. The commission shall elect one member to serve as chairman for a term of one year. A vacancy shall be filled by the governor. A vacancy shall be filled by the governor for the remainder of the term.

* Sec. 24. AS 23.20.409(5) is amended to read:

(5) "exhaustee" means an individual who has not received unemployment benefits for any week of unemployment period.

(A) has no right to unemployment benefits or allowances, as the case may be, under the Unemployment Insurance Act, as amended, or under the 1962, the Automotive Products Act, or under other federal laws which provide for unemployment benefits issued by the United States; and has not received and is not entitled to receive unemployment benefits under the unemployment insurance laws of the Virgin Islands or of Canada; and the commissioner determines that he is not entitled to receive unemployment benefits under that law he is considered an exhaustee.

(B) has received, or is entitled to receive, unemployment benefits, all of the regular unemployment benefits payable to him under this chapter, including dependents' allowances, or is entitled to federal civilian employees' allowances under 5 U.S.C. chapter 85, in his calendar week; however, if an individual is considered an exhaustee in a calendar week, he shall not receive all of the regular unemployment benefits payable to him even though he may be entitled to added regular unemployment benefits of a pending appeal with respect to that week.

apter, and to make allotment or
money to other state agencies;

to employ necessary person-

to adopt regulations to
at this section.

§ 19.540. Limitations. The pro-
of the Rural Development
are subject to the following
provisions:

no program for any one com-
may exceed \$10,000 in cost a
and

no first- or second-class city
2,000 population is eligible for
see.

This Act takes effect on the
its passage and approval or on
it becomes law without such

Approved April 21, 1964

amendments by the revisor of

(S.B. 267)

the office maintains another
in the state which meets the re-
quirements outlined in secs. 360 and
of this chapter.

AS 08.04.630 is amended to

08.04.630. Injunction against Un-
lawful Act. Whenever, in the judgment
of the board, any person has engaged
in an act which constitutes a violation
of secs. 500-610 of this chapter, the
board may apply to the appropriate
court for an order enjoining the act.
On a showing by the board that a
person has engaged in the act, the
court shall grant an injunction or any
other appropriate order without bond.

AS 10.05.255(a)(8) is amended

any provision limiting or

denying to shareholders the pre-
emptive right to acquire additional or
treasury shares of the corporation;

Sec. 5. AS 10.05.255(a)(9) is amended
to read:

(9) any provision, not incon-
sistent with law, which the incorpora-
tors elect to set out in the articles of
incorporation for the regulation of the
internal affairs of the corporation, in-
cluding a provision which, under this
chapter, is required or permitted to be
set out in the bylaws;

Sec. 6. AS 10.05.564 is amended to
read:

Sec. 10.05.564. Stated Powers and
Duties of Receiver. The order appoint-
ing the liquidating receiver shall state
his powers and duties. The powers and
duties may be increased or diminished
at any time during the liquidation pro-
ceedings.

Sec. 7. AS 10.05.567 is amended to
read:

Sec. 10.05.567. Compensation of Re-
ceiver and Attorneys. The court may
allow from time to time as expenses of
the liquidation compensation to the
receiver and to attorneys in the pro-
ceeding, and direct the payment of
compensation out of the assets of the
corporation or the proceeds of a sale or
disposition of assets.

Sec. 8. AS 11.20.480 is amended to
read:

Sec. 11.20.480. Defrauding Hotel
Keepers. A person who puts up at a
hotel, inn, boardinghouse, or lodging-
house and who procures a fare, board,
or lodging from the owner or keeper by
means of a trick, deception, or false
representation, or a false show of
baggage or effects, with the intent to
cheat or defraud the owner or keeper
out of the pay for the fare, board, lodg-
ing, or accomodation; or who with that
intent absconds, surreptitiously re-
moves, or causes to be removed baggage
or effects from a hotel, inn, boarding-
house, or lodginghouse without first
paying the proper charges due is guilty
of a misdemeanor, and, upon convic-
tion, is punishable by a fine of not more
than \$200, or by imprisonment for
not more than six months, or by both.

The words "fare, board, or lodging" do
not include spirituous or malt liquors
or intoxicants of any description.

Sec. 9. AS 11.30.020(b) is amended to
read:

(b) A person convicted of perjury
committed in a proceeding in a court
other than a criminal action referred
to in (a) is punishable by imprison-
ment in a penitentiary for not less
than three years nor more than 10
years.

Sec. 10. AS 14.15.750(a) is amended
to read:

(a) A school district may construct,
improve, extend, repair, reconstruct,
acquire, and operate school buildings
and facilities connected therewith, and
incur general obligation bond and
revenue bond indebtedness for any of
these purposes.

Sec. 11. AS 14.25.060(a) is amended to
read:

(a) Retroactive contributions are
not required for creditable membership
service prior to June 30, 1955.

Sec. 12. AS 22.15.120 is amended to
read:

Sec. 22.15.120. Limitations on Pro-
ceedings Which Deputy Magistrate May
Hear. A deputy magistrate shall pre-
side only in cases and proceedings un-
der secs. 40, 100, and 110 of this chap-
ter, and as follows,

(1) for the recovery of money or
damages only when the amount
claimed, exclusive of costs, interest, and
attorney fees, does not exceed \$500;

(2) for the recovery of specific
personal property when the value of
the property claimed and the damages
for the detention do not exceed \$500;

(3) for the recovery of a penalty
or forfeiture, whether given by statute
or arising out of contract, not exceed-
ing \$500;

(4) to give judgment without ac-
tion upon the confession of the de-
fendant for any of the cases specified
in this section, except for a penalty or
forfeiture imposed by statute;

for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$1,000;

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

to give judgment of conviction upon a plea of guilty by the defendant in a criminal proceeding within the jurisdiction of the district court.

to hear, try, and enter judgments in all cases involving misdemeanors, if the defendant consents in writing that the magistrate may try the case;

to hear, try and enter judgments in all cases involving infractions under AS 28 and violations of ordinances of political subdivisions;

repealed by § 8 ch 110 SLA 1967. (§ 19 ch 184 SLA 1959; am § 5 ch 100 SLA 1960; am § 1 ch 85 SLA 1961; am § 2 ch 91 SLA 1961; am § 10 ch 70 SLA 1964; am § 3 ch 24 SLA 1966; am § 8 ch 110 SLA 1967; am § 1 ch 19 SLA 1968; am § 20 ch 71 SLA 1972; am § 1 ch 65 SLA 1978)

Cross references. — As to declaration of judgment proceeding under magistrate, see AS 28.01.20 et seq.

Amendments. — The 1978 amendment deleted "other than violations of ordinances of political subdivisions" and "cases involving misdemeanors" and inserted "infractions

under AS 28.01.010 — 28.35.270 and" in paragraph (7).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES TO DECISIONS

Magistrates are "judges of other courts within the meaning of Alaska Statute, art. IV, § 4. Buckalew v. Holloway, 604 P.2d 1079 (File No. 1988 (File No. 4058), 604 P.2d 1079).
Applied in Larson v. State, Sup. Ct. Op.

No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Stated in Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L.Ed.2d 547 (1966).

Cross references. — Constitutional restrictions on nonattorney acting

as judge in criminal proceeding. 71 ALR3d 562.

Sec. 22.15.130. Seal of court.

Repealed by § 2 ch 64 SLA 1974.

Cross references. — As to seals of courts, see AS 22.05.060.

derived from § 9, ch. 184, SLA 1959; § 5, ch. 143, SLA 1968.

Editor's note. — The repealed section

Sec. 22.15.140. Process. Process of the district court shall be in the name of the State of Alaska, be signed by the district judge, magistrate,

CHAPTER 91

AN ACT

Relating to the district magistrates court; amending Ch. 184, SLA 1959; and providing for an effective date.

(S.S.S.B. 78)

Be it enacted by the Legislature of the State of Alaska: 19, Ch. 184, SLA 1959 are amended to read:

Section 1. Sec. 8, Ch. 184, SLA 1959 is amended by the addition of Subsec. (4) to read:

(4) When the claim for relief so requests and does not exceed \$500.00 exclusive of costs, interest and attorneys fees, the district magistrate or deputy 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.

Sec. 2. Subsecs. (1), (2) and (3), Sec.

(1) For the recovery of money or damages only when the amount claimed exclusive of costs, interest and attorneys fees does not exceed \$500.00;

(2) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed five hundred (\$500.00) dollars;

(3) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding five hundred (\$500.00) dollars;

Sec. 3. This Act takes effect on May 1, 1961.

Approved April 14, 1961

CHAPTER 92

AN ACT

Relating to the relief of tax liability incurred under the Cigarette Tax Act; and providing for an effective date.

(S.B. 128)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The purpose of this Act is to relieve the tax liability of a class of vendors of tobacco products who the legislature has determined have in good faith attempted to comply with the Cigarette Tax Act, but who have been over a period of approximately three years misinformed by the state as to their liability and who have as a result not collected any cigarette tax from the retailer of ultimate consumer of cigarettes purchased on military reservations. The legislature determines that this tax relief is necessitated by the gross inequity created by

the state in giving misinformation regarding tax liability, and that this relief is given to this class of taxpayers in the best interest of the state.

Sec. 2. Vendors of tobacco products are relieved of any tax liability, including penalties and interest, incurred under Ch. 187, SLA 1955, before December 1, 1961 for cigarettes acquired for sale or resale through vending machines on military reservations when the tax was not included in the retail sales price.

Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 14, 1961

District court lacked jurisdiction over action for accrued rent. — Where district court had no jurisdiction over forcible entry and detainer in district court also lacked jurisdiction to grant judgment on a second cause of accrued rent under the special summons used in forcible entry and detainer actions. *McDowell v. State*, Sup. Ct. Op. No. 1242 (File No. 1346 P.2d 1315 (1976)).

Serving as a district judge constitutes the "practice of law." In re Application of Brewer, Sup. Ct. Op. No. 864 (File No. 1643, 506 P.2d 676 (1973)).

District judge is continuously involved with legal problems of a wide variety as indicated by the statutory juris-

diction of the district court, and the nature of the judge's duties includes conducting court hearings, ruling on questions of evidence, and adjudicating issues of law and fact, so as clearly to constitute the "practice of law." In re Application of Brewer, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

Applied in *Oxereok v. State*, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Cited in *Dowling Supply & Equip., Inc. v. City of Anchorage*, Sup. Ct. Op. No. 739 (File No. 1450), 490 P.2d 907 (1971); *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

§ 22.15.040. Small claims. When a claim for relief does not exceed \$2,000 exclusive of costs, interest and attorney fees, and request for judgment, 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 of review to assure simplicity and the expeditious handling of small claims. (AS 22.15.040) ch 184 SLA 1959; added by § 1 ch 91 SLA 1961; am § 1 ch 184 SLA 1970; am § 1 ch 23 SLA 1978)

References. Small claims rules promulgated in District Court Civ. R. 1001.

Effect of amendments. — The 1978 amendments increased the maximum limit

for small claims from \$1,000 to \$2,000.

Legislative history reports. — For report on 1961 amendment see 1961 House Journal, pp. 314, 315.

- NOTES TO DECISIONS -

Magistrates are "judges of other courts" within the meaning of Alaska Stat. § 4. Buckalew v. Holloway, 100 Alaska No. 1988 (File No. 4058), 604 P.2d 1071 (1979).

Notice to indigent bush defendants. — Greater tailoring of notice to the needs and circumstances of indigent defendants requires the communication of substantially more information about the methods by which such defendants can respond to a lawsuit than is presently imparted. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Notice that fails to inform the indigent defendant of the right to file a motion for judgment is not reasonably calculated to afford the defendant an opportunity to be heard at a meaningful time and

in a meaningful manner. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

The summons served upon indigent bush defendants in a small claims action was constitutionally defective because it did not adequately convey the information necessary to their defense against a creditor's claim. The district court's assumption of personal jurisdiction over the debtors based on such a summons therefore violated the due process rights which inure to the debtors under Alaska Const., art. I, § 7. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Counsel for collection suit defendants. — The bulk of collection suit defendants, due to indigency, cannot afford to engage counsel to advise them of their "venue" rights. *Aguchak v. Montgomery*

ALASKA COURT SYSTEM

SB77 - SMALL CLAIMS JURISDICTIONAL LIMITATION AND DUTIES OF MAGISTRATES

FISCAL IMPACT

It is anticipated that the increase in small claims jurisdiction from \$2,000 to \$5,000 will have a significant impact on court operations.

The Civil Division of the Anchorage Clerk's Office, which is the court location with the greatest number of small claims filings, anticipates that a jurisdictional increase would result in a 15-20% increase in small claims filings. Some of these cases would be matters previously handled in District Court. Others would be new to the system, representing legal problems with a relatively low dollar amount involved for which persons are reluctant to incur the costs entailed for an attorney, but which they wish to handle themselves in small claims court.

Additionally, some litigants would be willing to waive the amount of their claim over \$5,000 and proceed in small claims court, balancing the waiver of the claim amount against the savings in attorney fees in small claims.

Judicial resources should not be impacted by the increase since most of these types of cases are already in the system. However, additional clerical help will be required. The small claims procedures involve an extensive amount of clerical assistance, including mailing notices for litigants and substantial time expended in advising the public. General District Court matters require only simple filing and journaling of documents. This impact could be handled by the addition of three and one-half (3½) positions with costs calculated on the following page. One and one-half of these positions would be located in Anchorage. Fairbanks and Juneau would each receive one position.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQ'EST

Bill/Resolution No.: SB 77
 Title: Small Claims Jurisdiction
al Lmt. and Duties of Magistrates
 Sponsor: Senate Judiciary
 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
OPERATING						
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						
----------------	--	--	--	--	--	--

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						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Roger Lewis
 Division: Senate Judiciary Committee

Phone: 465-3717
 Date: 1/22/85

Approved by Commissioner: [Signature]
 Agency: Alaska Court System

Date: 1/22/85

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

ALASKA COURT SYSTEM
FISCAL NOTE ANALYSIS

SB77 - SMALL CLAIMS JURISDICTIONAL LIMIT
AND DUTIES OF MAGISTRATES

PERSONNEL:	SALARY	BENEFITS	TOTAL COST
1½ COURT CLERK I (Anchorage - 3B)	\$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.