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499



Alaska Court System

State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 26, 1990

HAND DELIVERED

Senator Lloyd Jones
Alaska State Legislature
P. O. Box Y
Juneau, AK 99811

Re: SB 499 - An Act relating to appeal of administrative action
against a driver's license.

Dear Senator Jones:

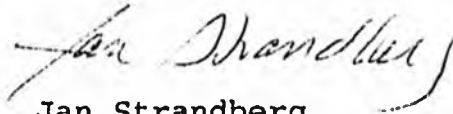
The purpose of SB 499 is to conform the Department of Motor Vehicle driver's license revocation appeal procedure to the procedure followed by other DMV and non-DMV administrative appeals.

The present statute, AS 28.05.141(d), provides that license revocation appeals are to be heard de novo by the district court "in accordance with the applicable Rules of Court governing appeals in civil matters". However, there are no rules governing appeals to district court because there are no other appeals to district court. The statutes defining district court jurisdiction (AS 22.15) do not give the district court appellate jurisdiction. Jurisdiction over appeals from administrative agencies is specifically given to the superior court by AS 22.10.020(d).

This bill would give the superior court appellate jurisdiction over driver's license revocation appeals and these appeals would be on the record rather than de novo. This would both simplify and standardize the administrative appeal process.

Thank you for this opportunity to explain the reason why the court system requested this proposed legislation. I would be happy to answer questions you may have about it.

Sincerely,



Jan Strandberg
Staff Counsel

JS:gb

cc: Senate Transportation Committee members:

Senator Fahrenkamp
Senator Fischer
Senator Pourchot
Senator Coghill

mit, or privilege issued or allowed under this title or regulations adopted under this title is suspended, revoked, cancelled, limited, restricted, or denied or a vehicle is impounded by the department. If action is required under this section and prior opportunity for a hearing cannot be afforded the department shall promptly give notice of the opportunity for a hearing as soon after the action as possible to the parties concerned.

(b) The notice under this section must state the reasons for the department's proposed action and provide for a reasonable attendance date of not less than 10 days after service of the notice. If there is no request for a hearing by the attendance date specified in the notice, the hearing is considered to have been waived. (§ 6 ch 178 SLA 1978)

NOTES TO DECISIONS

This section does not apply to a re- 28.35.032. *Graham v. State*, 633 P.2d 211
vocation of a license under AS (Alaska 1981).

Sec. 28.05.141. Hearings and appeals. (a) Unless otherwise specifically provided, all hearings required under this title or regulations adopted under this title shall be conducted by the department under regulations adopted by the commissioner governing practice and procedure and consistent with due process of law. Hearings must be informal, and technical rules of evidence do not apply. A person who requests a hearing may retain an attorney. The hearing officer shall be appointed by the commissioner and may be appointed from the department. A hearing officer need not be an attorney, but must be impartial and may not have participated in the decision that is under review. The hearing officer does not have to file a full opinion or make formal findings of fact or conclusions of law, but the hearing officer must state the reasons for the determination and indicate the evidence relied upon. The proceedings at the hearing shall be recorded.

(b) A hearing ordered under (a) of this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless the department and the person agree that the hearing is to be held elsewhere. The department shall grant a hearing delay if the person presents good cause for the delay. If a person fails to appear for the hearing at the time and place stated by the department and if a hearing delay has not been granted, the person's failure to appear is considered a waiver of the hearing and the department may take appropriate action with respect to the person.

(c) If at the hearing under (a) of this section it appears that the record of the person sustains suspension, revocation, limitation, denial, or other remedial action, the hearing officer shall so order and the department may suspend, revoke, limit, deny, or take other remedial action against that person's license, registration, or title and, if

appropriate, the department shall adjust the person's point total accumulated under AS 28.15.231.

(d) A person aggrieved by the decision of the hearing officer may, within 30 days, initiate a proceeding in district court to rescind the department's action by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. The court shall conduct a hearing de novo. The decision of the department suspending, revoking, canceling, limiting, restricting, or denying a license, registration, title, permit, or privilege is stayed and does not take effect during the pendency of an appeal. (§ 6 ch 178 SLA 1978; am § 2 ch 60 SLA 1986)

Cross references. — For rules of court relating to appeals from administrative proceedings, see App. Rules 601-611.

Effect of amendments. — The 1986 amendment in subsection (c) inserted ", registration, or title."

NOTES TO DECISIONS

This section does not apply to a re-vocation of a license under AS 28.35.032. *Graham v. State*, 633 P.2d 211 (Alaska 1981).

Article 4. Disposition of Certain Vehicle and Traffic Offenses.

Section

151. Citations for scheduled vehicle and traffic offenses

Sec. 28.05.151. Citations for scheduled vehicle and traffic offenses. The supreme court shall determine by rule or order those motor vehicle and traffic offenses, except for offenses subject to a scheduled municipal fine, that are amenable to disposition without court appearance and shall establish a scheduled amount of bail, not to exceed fines prescribed by law, for each offense. A municipality shall determine by ordinance the municipal motor vehicle and traffic offenses that may be disposed of without court appearance and shall establish a fine schedule for each offense. (§ 6 ch 178 SLA 1978; am § 8 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, rewrote this section.

NOTES TO DECISIONS

"Motor vehicle for which driver's license is required." — When viewed in context, the phrase "a motor vehicle for which a driver's license is required" refers to a type of motor vehicle, rather than to the vehicle's location. *Caulkins v. State, Dep't of Pub. Safety, 743 P.2d 366 (Alaska 1987).*

Revocation for operating in parking lot. — The Department of Public Safety may revoke the driver's license of an intoxicated person who operates a motor vehicle in a privately owned parking lot held open to the public. *Caulkins v. State, Dep't of Pub. Safety, 743 P.2d 366 (Alaska 1987).*

Admission of suppressed test results held improper. — Because no breath sample was preserved and no second test

was given to the defendant, the hearing officer's decision to admit breathalyzer test results which had been suppressed on due process grounds in a criminal prosecution was improper in a subsequent license revocation hearing. *Briggs v. State, Dep't of Pub. Safety, 732 P.2d 1078 (Alaska 1987).*

Applied in *Champion v. Department of Pub. Safety, 721 P.2d 131 (Alaska 1986).*

Quoted in *Barcott v. State, Dep't of Pub. Safety, 711 P.2d 226 (Alaska 1987); Tulowetzke v. State, Dep't of Pub. Safety, 743 P.2d 368 (Alaska 1987); State, Dep't of Pub. Safety v. Conley, 754 P.2d 232 (Alaska 1988).*

Cited in *Thorne v. Department of Pub. Safety, Sup. Ct. Op. No. 3445 (File No. S-2566), P.2d (1989).*

Sec. 28.15.166. Administrative review of revocation. (a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of

actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

(e) Notwithstanding AS 28.05.141(b), the hearing under this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless

(1) a district court judge or a magistrate has been designated as a hearing officer in the matter by the commissioner; or

(2) the department and the person agree that the hearing is to be held elsewhere.

(f) A review under this section shall be held before a hearing officer designated by the commissioner. Upon the consent of the administrative director of the state court system, the commissioner may designate a district court judge or a magistrate to serve as the hearing officer. The hearing officer shall have authority to

(1) administer oaths and affirmations;

(2) examine witnesses and take testimony;

(3) receive relevant evidence;

(4) issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;

(5) regulate the course and conduct of the hearing;

(6) make a final ruling on the issue.

(g) The hearing under this section shall be limited to the issues of whether the arresting officer had reasonable grounds to believe that the person was driving a motor vehicle while intoxicated and whether

(1) the person refused to submit to a chemical test under AS 28.35.031(a) after being advised that refusal would result in the suspension, revocation, or denial of the person's license or nonresident privilege to drive and that refusal is a misdemeanor; or

(2) the chemical test authorized under AS 28.35.031(a) and administered to the person produced a result described in AS 28.35.030(a)(2).

(h) The determination of the hearing officer may be based upon the sworn report of a law enforcement officer. The law enforcement officer need not be present at the hearing unless either the person requesting the hearing or the hearing officer requests in writing before the hearing that the officer be present. In the course of the hearing it becomes apparent that the testimony of the law enforcement officer is necessary to enable the hearing officer to resolve disputed issues of fact, the hearing may be continued to allow the attendance of the law enforcement officer.

(i) Testimony given by the person at the hearing is not admissible against the person in a criminal trial unless the person's testimony at the trial is inconsistent with that given at the hearing.

(j) If the issues set out in (g) of this section are determined in the affirmative by a preponderance of the evidence, the hearing officer

shall sustain the action of the department. If one or more of the issues is determined in the negative, the department's action shall be rescinded.

(k) If the action of the department in revoking a nonresident's privilege to drive a motor vehicle is not administratively contested by the nonresident driver or if the departmental action is sustained by the hearing officer, the department shall give written notice of action taken to the motor vehicle administrator of the state of the person's residence and to any state in which that person has a driver's license.

(l) A hearing officer revoking a driver's license because a chemical test administered to the person produced a result described in AS 28.35.030(a)(2) may grant limited license privileges if the person has not been previously convicted within the preceding 10 years of an offense (A) described in AS 28.15.181(a)(5) or (8); or (B) under a law or ordinance in another jurisdiction with elements substantially similar to an offense described in AS 28.15.181(a)(5) or (8). The privileges may be granted for for the final 60 days during which the license is revoked if the hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the the person to earn a livelihood without excessive danger to the public. A hearing officer may not grant limited license privileges when revoking a driver's license because the person refused to submit to a chemical test.

(m) Notwithstanding AS 28.05.141(d), within 30 days of the issuance of the final determination of the department, a person aggrieved by the determination may file an appeal in superior court for judicial review of the hearing officer's determination. The judicial review shall be on the record, without taking additional testimony. The court may reverse the department's determination if the court finds that the department misinterpreted the law, acted in an arbitrary and capricious manner, or made a determination unsupported by the evidence in the record.

(n) The filing of an appeal under (m) of this section does not automatically stay the department's revocation order. The court may grant a stay of the order only upon a motion and hearing, and upon a finding that there is a reasonable probability that the petitioner will prevail on the merits and that the petitioner will suffer irreparable harm if the order is not stayed. (§ 3 ch 77 SLA 1983)

NOTES TO DECISIONS

Due process considerations. -- Since the same procedural safeguards apply in civil driver's license revocation proceedings for driving while intoxicated as apply in criminal prosecutions for that offense, due process requires consideration of the

margin of error inherent in the breath testing procedure used. *Barcott v. State, Dep't of Pub. Safety*, 741 P.2d 226 (Alaska 1987).

Collateral estoppel effect of ruling in criminal proceedings. -- Where de-

defendant in criminal driving while intoxicated proceedings did not testify at a suppression hearing on the question of the legality of the stop, the suppression ruling that the officer's stop was legal should have had no collateral estoppel effect against the defendant in a civil driver's license revocation proceeding. The hearing officer was correct to examine the stop issue de novo, and the superior court incorrectly invoked collateral estoppel in refusing to review this aspect of the hearing officer's decision. *Miller v. State, Dep't of Pub. Safety*, 761 P.2d 117 (Alaska 1988).

Standard of review of supreme court. — The supreme court uses the same standard as set out in subsection (a) for judicial review by the superior court, since it conducts independent review. *Miller v. State, Dep't of Pub. Safety*, 761 P.2d 117 (Alaska 1988).

The state's failure to preserve a videotape of field sobriety tests taken one hour after arrest violates the due process rights of an accused at an administrative license revocation hearing where the accused is entitled to challenge whether the

arresting officer had reasonable grounds at the time of arrest to believe that the suspect was driving while intoxicated. *Thorne v. Department of Pub. Safety, Sup. Ct. Op. No. 3445 (File No. S-2566)*, P.2d (1989).

The state's failure to preserve a videotape of field sobriety tests taken one hour after arrest did not violate defendant's right to confront and cross-examine the witnesses against him, where the officer who conducted the tests appeared at defendant's license revocation review hearing and was subjected to vigorous cross-examination by defendant's attorney. *Thorne v. Department of Pub. Safety, Sup. Ct. Op. No. 3445 (File No. S-2566)* P.2d 1989.

Applied in *Champion v. Department of Pub. Safety*, 721 P.2d 131 (Alaska 1986); *Barcott v. State, Dep't of Pub. Safety*, 741 P.2d 226 (Alaska 1987).

Quoted in *State, Dep't of Pub. Safety v. Conley*, 754 P.2d 232 (Alaska 1988).

Cited in *Tulowitzke v. State, Dep't of Pub. Safety*, 743 P.2d 368 (Alaska 1987).

Sec. 28.15.170. Cancellation. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.171. Suspending privileges of a person licensed in another jurisdiction; reporting convictions, suspensions, and revocations. (a) The privilege of driving a motor vehicle on a highway or vehicular way or area of this state given to a person licensed in another jurisdiction is subject to suspension, revocation, or limitation by the department or a court in the same manner and for the same reasons as a driver's license issued under this chapter.

(b) The department may, upon receiving the record of a conviction of a person licensed in another jurisdiction for a vehicle, driver, or traffic offense in this state, or upon suspending or revoking the person's driving privilege, forward a copy of the record or suspension or revocation to the motor vehicle administrator for the jurisdiction in which the person convicted is licensed. (§ 19 ch 178 SLA 1978; am § 13 ch 60 SLA 1986)

Effect of amendments. — The 1986 amendment in subsection (a) substituted a comma for "or" following "suspension"

and inserted ", or limitation" and "or a court."

Sec. 22.10.020. Jurisdiction of the superior court. (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including probate and guardianship of minors and incompetents. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court.

(b) The jurisdiction of the superior court extends over the whole of the state.

(c) The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court.

(d) The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

(e) An appeal to the superior court is a matter of right, but an appeal from a subordinate court may not be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive. The state has no right to appeal in criminal cases, except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient.

(f) An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to reduce the sentence. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(g) In case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. The declaration has the force and effect of a final judgment or decree and is reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against an adverse party whose rights have been determined by the judgment.

(h) The superior court, in an action for divorce, separation, or child support, affecting inalienable stock in a corporation organized under 43 U.S.C. 1601 — 1628 (Alaska Native Claims Settlement Act), may

order the stock transferred to the spouse, a child, or a guardian or custodian for a child, but may not order it sold on the open market or transferred to other persons.

(i) The superior court is the court of original jurisdiction over all causes of action arising under the provisions of AS 18.80. A person who is injured or aggrieved by an act, practice, or policy which is prohibited under AS 18.80 may apply to the superior court for relief. The person aggrieved or injured may maintain an action on behalf of that person or on behalf of a class consisting of all persons who are aggrieved or injured by the act, practice, or policy giving rise to the action. In an action brought under this subsection, the court may grant relief as to any act, practice, or policy of the defendant which is prohibited by AS 18.80, regardless of whether each act, practice, or policy, with respect to which relief is granted, directly affects the plaintiff, so long as a class or members of a class of which the plaintiff is a member are or may be aggrieved or injured by the act, practice, or policy. The court may enjoin any act, practice, or policy which is illegal under AS 18.80 and may order any other relief, including the payment of money, that is appropriate. (§ 17(1) (2) ch 50 SLA 1959; am § 2 ch 117 SLA 1969; am § 1 ch 240 SLA 1970; am § 3 ch 70 SLA 1972; am § 8 ch 12 SLA 1980; am § 78 ch 6 SLA 1984; am § 2 ch 17 SLA 1985)

Revisor's notes. — Chapter 50 SLA 1959 implemented the constitution by providing for the establishment of the supreme and superior court system under the constitution. It was designed to accomplish the transfer of judicial functions within the three-year transition period contemplated by the Statehood Act, P.L. 85-508, of July 7, 1958, with provision being made for a more rapid transfer if the President sooner ended the jurisdiction of the territorial courts by executive order.

In November, 1959, eight superior court judges were appointed. On February 20, 1960, the President signed Executive Order No. 10,867, which ended the jurisdiction of the District Court for the Territory of Alaska and proclaimed that the United States District Court for the District of Alaska was prepared to assume the functions imposed upon it. Section 31(1) ch 50 SLA 1959 provided that causes might be commenced, filed, and determined in the state courts in each judicial district from the appointment of one or more judges for the district. Although by the terms of § 31(2) the jurisdiction of the state courts was to be nonexclusive until January 3, 1962, the effect of the executive order was

to give them the exclusive jurisdiction which they would in any event receive on that date.

Cross references. — For intervention by the State Commission for Human Rights in an action brought under AS 22.10.020(c), see AS 18.80.145. For appeal of sentences of imprisonment to court of appeals, see AS 22.07.020(b). For appeal from district court to superior court in criminal actions, see AS 22.15.240(b).

Effect of amendments. — The 1934 amendment rewrote this section.

The 1985 amendment added the last sentence of subsection (a).

Editor's notes. — Section 37, ch. 12, SLA 1980 provides: "Sections 8, 15 and 31 of this Act have the effect of changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that a sentence of 90 days or more imposed by the district court may be appealed."

Section 12, ch. 17, SLA 1985 provides that the 1985 amendment to (a) of this section applies only to cases filed on or after July 1, 1985.

(c) The number of district judges or magistrates within each judicial district may be increased or decreased by rule of the supreme court. (§ 2 ch 184 SLA 1959; am § 2 ch 24 SLA 1966; am § 3 ch 137 SLA 1984)

Effect of amendments. — The 1984 amendment in subsection (a) increased the number of district judges in the Third

Judicial District from 4 to 12 and in the Fourth Judicial District from 2 to 4.

NOTES TO DECISIONS

Jurisdictional boundaries. — See same catchline in note to AS 22.15.010.

The legislature's intent in creating the office of magistrate was to meet the immediate requirements of justice in the less populated areas of the state. *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Magistrates are "judges of other courts" within the meaning of Alaska Const., art. IV, § 4. *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Application of subsection (c). — Subsection (c) of this section could not provide the basis for deciding the presiding superior court judge's authority to move a district court judge from one place to another since subsection (c) creates power in the supreme court, not the presiding judge; and no permissible delegation of power to that judge was found in this case. *Hornaday v. Rowland*, Sup. Ct. Op. No. 2761 (File No. 7810), 674 P.2d 1333 (1983).

Sec. 22.15.030. Civil jurisdiction. (a) The district court has jurisdiction of civil cases, including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170, as follows:

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

(2) for the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed \$35,000;

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$35,000;

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

(5) for establishing the fact of death of any person in the manner prescribed in AS 09.55.020 — 09.55.060;

(6) for the recovery of the possession of premises in the manner provided under AS 09.45.070 — 09.45.160 when the value of the arrears and damage to the property does not exceed \$35,000;

(7) for the foreclosure of a lien when the amount in controversy does not exceed \$35,000;

(8) for the recovery of money or damages in motor vehicle tort cases when the amount claim. exclusive of costs, interest, and attorney fees does not exceed \$35,000;

(9) over civil actions for taking utility service and for damages to or interference with a utility line filed under AS 42.20.030;

(10) over cases involving injunctive relief for domestic violence under AS 25.35.010 and 25.35.020.

(b) Insofar as the civil jurisdiction of the district courts and the superior court is the same, the jurisdiction is concurrent. Except for a petition for injunctive relief under AS 25.35.010 or 25.35.020, an action that falls within the concurrent jurisdiction of the superior court and the district court may not be filed in the superior court, except as provided by rules of the supreme court. (§ 3 ch 184 SLA 1959; am § 8 ch 110 SLA 1967; am § 1 ch 163 SLA 1968; am §§ 1 — 5 ch 38 SLA 1971; am §§ 1, 2 ch 36 SLA 1972; am § 24 ch 94 SLA 1980; am § 55 ch 59 SLA 1982; am § 3 ch 17 SLA 1985; am § 7 ch 38 SLA 1987)

Effect of amendments. — The 1985 amendment in subsection (a) substituted "\$25,000" for "\$10,000, except as provided in (10) of this subsection" at the end of paragraph (1), "\$25,000" for "\$10,000" at the end of paragraphs (2), (3), and (6) through (8), designated former paragraph (8) as present paragraph (6) and former paragraphs (9) through (11) as present paragraphs (7) through (9), and added paragraph (10); and in subsection (b) substituted "the" for "such" preceding "jurisdiction" in the first sentence and added the second sentence.

The 1987 amendment in subsection (a) in the introductory language substituted "including foreign judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170" for "and proceedings," deleted "of the property or" following "when the value" in paragraph (6), and substituted "\$35,000" for "\$25,000" throughout the section.

Editor's notes. — Section 12, ch 17, SLA 1985 provides that the 1985 amendment to (b) of this section applies only to cases filed on or after July 1, 1985.

NOTES TO DECISIONS

Limited jurisdiction. — District courts in Alaska are limited to jurisdiction in civil matters to cases involving amounts under \$3,000 [now \$35,000]. *Pennington v. Snow*, Sup. Ct. Op. No. 625 (File No. 1101), 271 P.2d 370 (1954).

District court is a creature of the statute creating it. *Ex parte Oates*, 8 Alaska 319 (1931), rev'd on other grounds sub nom. *United States v. Oates*, 61 F.2d 536 (9th Cir. 1932).

And its powers must be exercised within limits conferred by law. — The jurisdiction and authority of a district court continues only so long as it confines the exercise of its powers within the limits conferred by law. *Ex parte Oates*, 8 Alaska 319 (1931), rev'd on other grounds sub nom. *United States v. Oates*, 61 F.2d 536 (9th Cir. 1932).

No intendments or presumptions will be indulged in favor of jurisdiction of a district court. *Ex parte Oates*, 8 Alaska 319 (1931), rev'd on other grounds sub nom. *United States v. Oates*, 61 F.2d 536 (9th Cir. 1932).

Jurisdiction cannot be conferred by consent of parties. — Consent of parties

cannot confer upon a district court a jurisdiction or a power to act upon subjects which are not submitted to its judgment by the law. *Myers v. Swineford*, 1 Alaska 10 (1888).

Nor ousted by counterclaim in excess of jurisdictional amount. — A defendant cannot oust the jurisdiction of a district court by pleading a counterclaim which exceeds the amount for which judgment can be obtained in such court. *Bennett v. Forrest*, 69 F. 421 (D. Alaska 1895).

Whole proceeding void in absence of jurisdiction. — If a court of limited jurisdiction assumes to act in a case over which the law does not give it authority, the whole proceeding, from the issuing of the writ to the rendition of judgment, is void. *Myers v. Swineford*, 1 Alaska 10 (1888).

The record of a district court is always open to attack in a *habeas corpus* proceeding, and when thus challenged, such court must justify its official acts at any and every stage of the proceedings, by showing that it acted within its jurisdiction. *Ex parte Oates*, 8 Alaska 319

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act relating to appeal of administrative action against a driver's license BRU: Trial Courts
 Sponsor: Judiciary Committee Components: _____
 Requestor: Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: Arthur H. Snowden, II, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/27/90
 Date: 02/27/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

BILL NO: SB 499

DATE: February 28, 1990

TITLE: Appeal of driver's license
revocation

CONTACT: Bill Brown
465-4335

DEPARTMENT OF
PUBLIC SAFETY

Currently, appeals of administrative revocations of a person's driver's license following an arrest for DWI are filed in the Superior Court, and appeals of administrative actions taken by the Division of Motor Vehicles (DMV) for any other reason are filed in the District Court. This bill would provide for uniformity in that all appeals from an administrative action by the Division of Motor Vehicles would be filed in Superior Court. The bill also clarifies that the judicial review of all administrative actions taken by the Division of Motor Vehicles would be on the record, whereas some are now De Novo (that is, the motorist can ask for a completely new hearing on the matter).

Currently some members of the public appear to be confused about where an appeal should properly be filed. This bill clarifies that point by specifying that all appeals of DMV actions are to be filed in the Superior Court.

The Department of Public Safety supports this bill.



Arthur English
Commissioner

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Public Safety
 Title: Appeal from driver's license
revocation BRU: Motor Vehicles
 Sponsor: Judiciary Committee Component: _____
 Requestor: Senate Transportation

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Bill Brown
 Division: Motor Vehicles

Phone: 465-4335
 Date: 02-26-90

Approved by Commissioner: Arthur English
 Agency: Department of Public Safety

Date: 2-28-90
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2/26/90