

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6351 SENATE JUDICIARY

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The first issue is whether the administrative penalty provisions are similar to criminal proceedings, thereby creating the right to a jury trial. The Alaska Supreme Court, in Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970), held that individuals subject to criminal prosecutions are entitled to a jury trial and the Court defined criminal prosecutions broadly as "any offense the direct penalty for which may be incarceration in a jail or penal institution . . . includ[ing] offenses which, even if incarceration is not a possible punishment, still connote criminal conduct in the traditional sense of the term." Id. at 402. The Court noted that "[a] heavy enough fine might also indicate criminality because it can be taken as a gauge of the ethical and social judgments of the community." Id. at n. 29.

The Supreme Court specifically excluded from the category of those "criminal" prosecutions requiring jury trials the revocation of licenses pursuant to administrative proceedings because lawful criteria other than criminality are a proper concern in protecting public welfare and safety. The Court's rationale is that the basis of revocation or suspension in such instances is not that one has committed a criminal offense, but that the individual is not fit to be licensed, apart from considerations of only guilt or innocence of crime. The Court further excluded from its holding those "legal measures which can be considered regulatory rather than criminal in thrust, so long as incarceration is not one of the possible modes of punishment." Id.

In determining whether the penalty imposed is akin to a criminal proceeding triggering the right to a jury trial, the court does not necessarily look to the size of the fine or the risk of loss, but rather to whether the penalties under consideration serve to brand the defendant with the same stigma as a misdemeanor conviction. Beran v. State, 705 P.2d 1280, 1284 n. 4 (Alaska App. 1985). For example, in Alaska Public Defender Agency v. Superior Court, 584 P.2d 1106, 1110 (Alaska 1978), the Court held that prosecution for a violation of a city ordinance against "harassment" punishable by a \$500 fine did not constitute a criminal proceeding because the fine alone did not connote criminality in the constitutional sense. Moreover, in State v. O'Neill Investigations, Inc., 609 P.2d 520 (Alaska 1980), the Court held that a \$5,000 civil penalty for each count of unfair methods of competition and unfair trade practices did not constitute criminal penalties. The Court noted that "[t]he use of civil monetary penalties, woven into the fabric of many regulatory statutes as a sanction for non-compliance, has become commonplace." Id. at 526. Analyzing the penalty under the Baker v. City of Fairbanks test, two Supreme Court justices wrote in their concurrence:

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"Furthermore, the argument that a penalty of \$5,000 per violation indicates criminality deserves consideration. However, the reason that the court has used contemporary social values and heaviness of the authorized penalty as measures of criminality is that they are a gauge of the community ethical and social judgment of persons who commit the wrongful act. In turn, the reason for determining the community's judgment of such persons is that the extent and nature of that judgment helps one predict the severity of collateral consequences which may be suffered by the defendant. Baker, 471 P.2d at 395. In discussing potential collateral consequences of conviction under the ordinance in Baker, we noted that "one convicted under this ordinance might suffer severe disabilities in obtaining future employment or in having heaped upon him a certain amount of social opprobrium."

The collateral consequences of finding that a debt collection agency or other business has committed "unfair trade practices in the conduct of trade or commerce" are not of this nature.

Id. at 538.

Consequently, while assessment of civil penalties against an environmental polluter may very well subject that person to community disfavor, this is not the type of collateral consequences envisioned in Baker and its progeny. The administrative penalty provision is civil and regulatory to encourage compliance rather than to punish as in a criminal proceeding. Thus, no right to a jury trial is required.

This interpretation is supported by federal law as well. The United States Supreme Court, in construing the U.S. Constitution, has concluded that civil penalties of up to \$50,000 per offense under the oil spill provisions of the Clean Water Act are not criminal in nature. United States v. Ward, 448 U.S. 240 (1980). Under the federal test, where the legislature "has indicated an intention to establish a civil penalty, [the court] inquires[s] further whether the civil statutory scheme is so punitive either in purpose or effect as to negate that intention." Id. at 248-49. The court noted that the oil discharge prohibition was a strict liability offense and that separate criminal provisions required proof of scienter. The court concluded that the civil penalties were not criminal in nature, and therefore, did not trigger constitutionally mandated criminal proceedings.

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Id. at 254. The same is true for the administrative penalty provision of Section 4 of HB 409.

The second issue you posed is whether the fact that the administrative determination to impose an administrative penalty is not reviewable de novo on appeal to the superior court deprives a person of his/her right to a jury trial in a civil suit under the Alaska Constitution. Article I section 16 of the Alaska Constitution provides that "[i]n civil cases where the amount in controversy exceeds two hundred and fifty dollars, the right of trial by a jury of twelve is preserved to the same extent as it existed at common law." This provision is modeled after the guarantee in the Seventh Amendment to the U.S. Constitution. See Shope v. Sims, 658, P.2d 1336 (Alaska 1983).

In Atlas Roofing Co., Inc. v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977), the U.S. Supreme Court held that "when Congress creates new statutory public rights, it may assign their adjudication to an administrative agency with which a jury trial would be incompatible, without violating the Seventh Amendment." Id. at 455. This case involved administratively assessed penalties for violations of OSHA workplace safety regulations.

In an earlier case, NLRB v. Jones & Laughlin Steel Corporation, 301 U.S. 1 (1937), the U.S. Supreme Court upheld a provision of the National Labor Relations Act empowering the Board to make findings of fact that were conclusive on review and to issue orders concerning challenged labor practices. The Court overruled defendant's Seventh Amendment objections, stating: "the instant case is not a suit at law or in the nature of a suit. The proceeding is one unknown to the common law. It is a statutory proceeding." Id. at 8.

As one commentator has noted, these decisions represent the Court's recognition that the legislature may put certain decisions in the hands of administrative agencies because "in some instances complex problems [are] not easily comprehended by laypeople [and] should be decided by a specialized group of experts; to inject a jury into that process would seriously impair its utility and effectiveness." J. Friedenthal, M. Kane & A. Miller, Civil Procedure 499 (1985).

As a result, since many of the environmental statutes found in Title 46 did not exist at common law, the legislature may constitutionally vest their enforcement in administrative agencies without providing for a jury trial.

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If you have any further questions, or if we can be of further assistance, please contact us.

Very truly yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL



Michele D. Brown
Breck C. Tostevin
Assistant Attorneys General

MDB/640.tv

cc: Jeff Bush
John McDonagh

SB 497

SECTIONAL ANALYSIS

The following is a sectional analysis of AGO draft legislation which strengthens DEC's authority in the areas of access, administrative penalties, environmental audits, and compliance orders.

Sections 1. Section 1 revises DEC's present general access authority to specifically include the right to copy records. The revisions also clarify the present access provision's scope. Note that this general access provision continues the present section's requirement that DEC obtain consent for the access from the owner or occupier of the premises.

Section 2. Section 2 authorizes DEC to obtain access to "pervasively regulated facilities" without the owner's or occupier's consent. Constitutional law provides that a lessened expectation of privacy exists for facilities and activities which are pervasively regulated, and section 2 takes advantage of this reduced standard to increase DEC's access authority.

Section 3. Section 3 defines "pervasively regulated facility" as a facility where the operations affect a significant public interest and are comprehensively regulated by DEC.

Section 4. Section 4 is a technical amendment.

Section 5. Section 5 authorizes DEC to assess administrative penalties for violations of DEC statutes, regulations, orders, or permits. The administrative penalty amount may not exceed \$25,000 per day for each violation. Section 5 also provides for an administrative hearing and for judicial review of the hearing decision.

Section 6. Section 6 authorizes DEC, in an enforcement action, to require a person to conduct an environmental audit and to submit an environmental audit report to DEC.

Section 7. Section 7 authorizes DEC to impose a mandatory compliance order upon persons who violate DEC's statutes, regulations, orders, or permits. Section 7 also provides for an administrative hearing and for judicial review of the hearing decision.

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1275 (File No. 2505), 550 P.2d 1268 (1976).

The original reason for the type of jurisdictional limitation as in paragraph (1) was to prevent the complex and intricate questions which frequently arise in a title dispute from being decided by a court presided over by a person who was not learned in the law. As applied to the district courts of this state, however, the distinction is an anachronism, since a district court judge must be licensed to practice law in Alaska. Nevertheless, the jurisdictional limitation remains. *Stephens v. Hammersley*, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Repeal of paragraph (1) not implied from enactment of AS 22.15.030(a)(7). — AS 22.15.030(a)(7), authorizing actions for foreclosure of liens under \$10,000 (now \$35,000) in district courts, was enacted subsequent to paragraph (1) prohibiting actions in district court where title to real property is at issue. But repeal of paragraph (1) will not be implied since the two provisions can be reconciled by holding that lien foreclosures under \$10,000 (now \$35,000), including those on real property, are permissible as long as title to real property is not in question. *Stephens v. Hammersley*, Sup. Ct. Op. No. 1275 (File No. 2505), 550 P.2d 1268 (1976).

Issue of title must appear on trial from the evidence. — A magistrate [now judge] not only has the right, but the duty, to enter upon the trial of a cause for which there otherwise is jurisdiction, notwithstanding an issue of title is made by the pleadings, and, unless it appears on the trial from the evidence that the title to land is actually in dispute, to proceed to try the cause out and render judgment. *Blue v. Green*, 7 Alaska 47 (1923).

Forcible entry and detainer action. — Where plaintiff attempted in a forcible entry and detainer action to litigate the merits of defendant's title, defendant's motion to dismiss the action should have been granted pursuant to AS 09.45.150 and this section. *Johnson v. Robinson*, Sup. Ct. Op. No. 2452 (File No. 5948), 637 P.2d 1051 (1981).

Suing for money after disaffirmance of fraudulently induced contract. —

Where the plaintiff sued for moneys paid by him on a contract which he alleged he was induced to enter into through misrepresentations and fraud of the defendant, and plaintiff disaffirmed the contract by reason of such misrepresentations and fraud, this was an action at law, and it was the duty of the court to have entertained such action. *Blue v. Green*, 7 Alaska 47 (1923).

Plaintiff seeking equitable relief. — If the plaintiff is seeking equitable relief, then a motion to dismiss can properly be laid before the magistrate [now judge] for want of jurisdiction to entertain the action. *Blue v. Green*, 7 Alaska 47 (1923).

District court lacks jurisdiction to hear parole eligibility complaints. — The legislature did not intend to empower the district court to hear complaints regarding eligibility for parole. *Bishop v. Municipality of Anchorage*, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

District court lacked jurisdiction to decide challenges to parole board's interpretation of AS 33.15.180 [now repealed] and to the constitutionality of the section as interpreted; such challenges must be brought in the superior court. *Bishop v. Municipality of Anchorage*, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

Or Criminal Rule 35(c) proceedings. — The district court lacks jurisdiction over Alaska R. Crim. P. 35(c) proceedings. *Bishop v. Municipality of Anchorage*, Ct. App. Op. No. 392 (File No. A-169), 685 P.2d 103 (1984).

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

Quoted in *Anchorage Helicopter Serv., Inc. v. Anchorage Westward Hotel*, Sup. Ct. Op. No. 361 (File No. 628), 417 P.2d 903 (1966).

Cited in *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979).

Sec. 22.15.060. Criminal jurisdiction. (a) The district court has jurisdiction of the following crimes:

- (1) a misdemeanor unless otherwise provided in this chapter;
- (2) a violation of an ordinance of a political subdivision.

(b) Insofar as the criminal jurisdiction of the district courts and the superior court is the same, such jurisdiction is concurrent. (§ 5 ch 184 SLA 1959)

NOTES TO DECISIONS

Where defendant was first charged in the district court and then, for the same offense, in the superior court, it was held that there was no need to establish in Alaska the rule that the matter must be tried in the court first obtaining jurisdiction. *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).

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

The district judge is continuously involved with legal problems of a wide variety as indicated by the statutory jurisdiction of the district court, and the nature of the 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 Brewer*, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

Applied in *State v. Pete*, Sup. Ct. Op. No. 372 (File No. 673), 420 P.2d 338 (1966); *Oxereok v. State*, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Quoted in *State v. City of Anchorage*, Sup. Ct. Op. No. 932 (File No. 1743), 513 P.2d 1104 (1973).

Stated in *City of Fairbanks v. Schrock*, Sup. Ct. Op. No. 567 (File No. 1032), 457 P.2d 242 (1969).

Cited in *State v. Browder*, Sup. Ct. Op. No. 699 (File No. 1323), 486 P.2d 925 (1971); *Buckalew v. Holloway*, Sup. Ct. Op. No. 1988 (File No. 4058), 604 P.2d 240 (1979); *Rollins v. State ex rel. Municipality of Anchorage*, Ct. App. Op. No. 769 (File No. A-1928), P.2d (1988).

Sec. 22.15.070. Extent of jurisdiction. The civil jurisdiction and the criminal jurisdiction of the district court of the State of Alaska extend over the entire state. (§ 6(1) ch 184 SLA 1959; am § 3 ch 36 SLA 1972)

NOTES TO DECISIONS

This section expressly confers state-wide jurisdiction upon the district courts. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Distinction between jurisdiction and venue. — This section and AS 22.15.080 establish a distinction between jurisdiction and venue. "Jurisdiction" connotes the inherent power of a court to hear and

adjudicate the subject matter in a given case, while "venue" designates the particular place or locality in which a court having such jurisdiction may in the first instance properly hear and determine the case. *Leege v. Strand*, Sup. Ct. Op. No. 157 (File No. 301), 384 P.2d 665 (1963).

Cited in *Pete v. State*, Sup. Ct. Op. No. 137 (File No. 290), 379 P.2d 625 (1963).

Sec. 22.15.080. Change of venue. The court in which an action is pending shall change the place of trial of the action from one place to another place in the same judicial district or to a designated place in another judicial district when the court finds any of the following:

- (1) there is reason to believe that an impartial trial cannot be had;
- (2) the convenience of witnesses and the ends of justice would be promoted by the change;

entence is not subject to modification thereafter pursuant to this rule. *Gabrieloff v. State*, Op. No. 533, 758 P2d 128 (Alaska App. 1988).

Superior court did not have authority under this rule, which allows the court to modify a sentence in light of changed circumstances, to order the release of a sentenced prisoner to attend a seasonal potlatch for a period of four days, absent evidence that the potlatch directly related to any basic sentencing goal or that the sentencing goal of rehabilitation would be defeated if the prisoner failed to attend the potlatch. *State v. Ambrose*, Op. No. 840, 758 P2d 1035 (Alaska App. 1988).

The trial court has discretion to consider a person's rehabilitation while incarcerated in evaluating an application for reduction of sentence pursuant to Criminal Rule 35(a). *Fowler v. Alaska*, Op. No. 891, 766 P2d 588 (Alaska App. 1988).

The prerequisites to relief under Criminal Rule 35(b) are: (1) some change in conditions or circumstances affecting the defendant must occur after the original sentence is imposed; (2) the change must relate to the purposes of the original sentence; and (3) the nature of the subsequent change in conditions or circumstances must be significant as to defeat or substantially frustrate implementation of the sentencing goal or objective. *Mitchell v. State*, Op. No. 894, 767 P2d 203 (Alaska App. 1988).

A trial court has no power to impose a sentence, pursuant to Criminal Rule 35(b), which it would not have been permitted to impose at initial sentencing. *Mitchell v. State*, Op. No. 894, 767 P2d 203 (Alaska App. 1988).

Prisoner's contention that his original sentence was excessive and that he had been rehabilitated during his period of imprisonment were factors properly addressed in a sentence appeal or in an application under Criminal Rule 35(a), but not a motion under Criminal Rule 35(b). *Mitchell v. State*, Op. No. 894, 767 P2d 203 (Alaska App. 1988).

B. Specific Grounds

Where change in defendant's testimony would be considered newly discovered evidence only by concluding that he had lied at trial hearing, it did not provide grounds for reducing sentence. *Davis v. State*, Op. No. 1453, 566 P2d 640 (Alaska 1977).

The imposition by the superior court of a ten-year sentence with five years suspended upon an eighteen-year-old who committed a series of burglaries was not clearly mistaken. *Winslow v. State*, Op. No. 1757, 587 P2d 738 (Alaska 1978).

IV. Procedure

Where a magistrate revoked a suspended sentence without authority the supreme court remanded the case in order that a reduction of sentence could be considered in accordance with Cr. R. 35(a). *Pete v. State*, Op. No. 137, 379 P2d 625 (Alaska 1962).

A sentence is imposed at the time it is first announced upon the record by the court. *State v. Trunuel*, Op. No. 1260, 549 P2d 550 (Alaska 1976).

Rule 35(b) proceeding is separate from original criminal proceeding, is governed by civil procedure, results in a final judgment and may be appealed by either state or applicant. *State v. Hannagan*, Op. No. 1374, 379 P2d 1059 (Alaska 1977).

When a criminal appeal has been dismissed, though no mandate has been issued, the appellant may seek relief in superior court under Criminal Rule 35(a). *Singletary v. State*, Op. No. 1711, 583 P2d 847 (Alaska 1978).

Criminal Rule 35(a) is not the appropriate procedural vehicle to seek relief as to conditions within custodial institutions or the civil rights of inmates. *Rust v. State*, Op. No. 1668, 584 P2d 38 (Alaska 1978).

Defendant's request that he be given credit for time spent in jail for parole violation arising out of same conduct for which he was convicted of crime in question should have been considered a request for discretionary relief under this rule, and while trial court

was not obligated to provide credit for that period of incarceration, it clearly had discretion to do so. *Hawley v. State*, Op. No. 112, 648 P2d 1035 (Alaska App. 1982).

Presence of defendant at a hearing attacking the sentence was not mandatory where there were no substantial issues of fact as to the events in which the petitioner participated. *Rivett v. State*, Op. No. 249, 395 P2d 264 (Alaska 1964).

It is discretionary with the trial court whether to hold an evidentiary hearing, hear oral argument, or require the defendant's presence in connection with decision on a Rule 35(a) application. *Fowler v. State*, Op. No. 891, 766 P2d 588 (Alaska App. 1988).

Criminal Rule 35(b) does not permit the trial court to refer a case to a three-judge sentencing panel based upon a nonstatutory mitigating factor (institutional rehabilitation) arising after the defendant has served a significant part of his sentence. *Fowler v. State*, Op. No. 891, 766 P2d 588 (Alaska App. 1988).

Since prisoner's motion for modification of sentence under Criminal Rule 35(b) did not state a prima facie case, for modification under the standards adopted in *State v. Ambrose*, Op. No. 840, 758 P2d 639 (Alaska App. 1988), the trial court did not abuse its discretion in denying the motion without a hearing. *Mitchell v. State*, Op. No. 894, 767 P2d 203 (Alaska App. 1989).

V. Time Limits

Where motion to modify sentence was filed two years after sentence was imposed, trial court did not abuse discretion in refusing to relax rule imposing 60-day limitation on such motions. *Taylor v. State*, Op. No. 1436, 564 P2d 1219 (Alaska 1977).

Where defendant's counsel had a bona fide belief that a motion for reduction or modification of sentence had been timely filed, defendant had requested such a motion and tried to learn if it had been filed, within prescribed period, and defendant was imprisoned in institution that could not afford him treatment for alcoholism, to fail to relax the 60-day limit of Criminal Rule 35(a) pursuant to Rule 53 would work an injustice. *Wheeles v. State*, Op. No. 3046, 566 P2d 1013 (Alaska 1977).

Superior Court is without authority to modify sentence absent a timely motion under this rule. *Szeratics v. State*, Op. No. 1525, 572 P2d 63 (Alaska 1977).

The filing of a supplemental application for correction of sentence did not terminate the running of the time for filing an appeal from the denial of the original application for correction of sentence. *Abraham v. State*, Op. No. 1747, 585 P2d 526 (Alaska 1978).

By relaxing the rule, to permit a late sentence appeal because it was unclear whether counsel for defendant had failed him in not making a timely appeal, the court did not relax Rule 35(a) so as to allow defendant to take advantage of that rule in a manner which would not be available to an ordinary criminal defendant who appeals in a timely fashion. *Davis v. State*, Op. No. 2101, 612 P2d 49 (Alaska 1980).

The time limitations in this rule are subject to the trial court's power to relax rules in the interest of justice. *Mitchell v. State*, Op. No. 894, 767 P2d 203 (Alaska App. 1988).

A motion to modify a sentence which is not brought within the 120-day time limitation prescribed in Criminal Rule 35(a) is governed by the narrower prerequisites of Criminal Rule 35(b). *Mitchell v. State*, Op. No. 894, 767 P2d 203 (Alaska App. 1988).

Rule 35.1. Post Conviction Procedure.

(a) Scope. Any person who has been convicted of, or sentenced for, a crime and who claims:

(1) that the conviction or the sentence was in violation of the constitution of the United States or the constitution or laws of Alaska;

(2) that the court was without jurisdiction to impose sentence;

(3) that the sentence imposed exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law;

(4) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(5) that his sentence has expired, his probation, parole or conditional release have been unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding, or remedy; or

(7) that there has been a significant change in law, whether substantive or procedural, applied in the process leading to applicant's conviction or sentence, when sufficient reasons exist to allow retroactive application of the changed legal standards; may institute a proceeding under this rule to secure relief.

(b) Not a Substitute for Remedies in Trial Court — Replaces All Other Remedies for Challenging the Validity of a Sentence. This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction. It is intended to provide a standard procedure for accomplishing the objectives of all of the constitutional, statutory or common law writs.

(c) Commencement of Proceedings — Filing — Service. A proceeding is commenced by filing an application with the clerk of the court in which the conviction occurred. Application forms will be furnished by the clerk of court. An application may be filed at any time. The clerk shall open a new file for the application, promptly bring it to the attention of the court and give a copy to the district attorney.

(d) Application — Contents. The application shall (1) identify the proceedings in which the applicant was convicted, (2) state the date shown in the clerk's certificate of distribution on the judgment complained of, (3) state the sentence complained of and the date of sentencing, (4) specifically set forth the grounds upon which the application is based, and (5) clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be under oath. Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from his conviction or sentence. Argument,

and discussion of authorities are unnecessary. Applications which are incomplete shall be returned to the applicant for completion.

(e) Indigent Applicant. If the applicant is indigent, filing fees, transcript and other court costs shall be borne by the state. Where the court determines that the application shall not be summarily disposed of on the pleadings and record pursuant to subdivision (f) of this rule, but that the issues raised by the application require an evidentiary hearing, counsel shall be appointed to assist indigent applicants.

(f) Pleadings and Judgment on Pleadings.

(1) Within 30 days after the filing of the application, or within such further time as the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall consider substance and disregard defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application.

(2) When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and its reasons for so doing. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record shall not be made when a material issue of fact exists.

(3) The court may grant a motion by either party for summary disposition of the application when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

(g) Hearing — Evidence — Order. The application shall be heard in, and before any judge of, the court in which the conviction took place. An electronic recording of the proceeding shall be made. All rules and statutes applicable in civil proceedings, including pre-trial and discovery procedures, are available to the parties. The court may receive proof by affidavits, depositions, oral testimony, or other

evidence. The court may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. The order made by the court is a final judgment.

h) Waiver of or Failure to Assert Claims. All grounds for relief available to an applicant under this rule must be raised in his original, supplemented or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

(Added by SCO 822, effective August 1, 1987)

Annotations

Uses

- I. In General
- II. Vacation of Conviction
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 - A. In General
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I. In General

Appellate Rule 46 was invoked where strict adherence to the 40-day time limit for appeal under Criminal Rule 35 would have precluded consideration of appellant's contentions that his conditions of imprisonment deprived him of his right to rehabilitation and reformation and to be free of cruel and unusual punishment. *Abraham v. State*, Op. No. 1747, 585 P2d 526 (Alaska 1978).

Postconviction relief proceeding is not another trial; it is separate from the original criminal proceeding and is governed primarily by rules of civil procedure. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

The Criminal Rules promulgated by the Alaska Supreme Court are part of the general "laws" of Alaska as the term is used in this rule. *Price v. State*, Op. No. 100, 647 P2d 611 (Alaska App. 1982).

An attorney, appointed to represent an indigent in bringing his first application for post-conviction relief based on alleged ineffective assistance of counsel, was not permitted to withdraw on the basis that there were no nontrivial issues to be presented to the court where the indigent was unwilling to forego the application; the court, rather than counsel, had to determine the merits of petitioner's contention. *Hertz v. State*, Op. No. 806, 755 P2d 406 (Alaska App. 1988).

II. Vacation of Conviction

A. In General

At a fact hearing upon a postconviction petition which alleged that petitioner was coerced by appointed trial counsel to enter a guilty plea and also alleged that trial counsel had given the petitioner false assurance regarding probation, specific findings must be made in the record as to as many of the following matters that may be applicable in addition to others possibly raised, namely the court's jurisdiction, the adequacy of petitioner's representation, intelligent waiver of counsel if there was such, questions of suppression of evidence or knowing use of perjured testimony, use of involuntary confessions, competency of petitioner to understand the proceedings and statutory range of sentence. *Thompson v. State*, Op. No. 334, 412 P2d 628 (Alaska 1966).

Order denying petition to vacate on ground that plea of guilty was coerced by threats and promises of probation officer was reversed and remanded directing the court below to place the probation officer under oath, to afford full opportunity for cross-examination at a full fact hearing on petitioner's charges, to weigh the testimony and to file written findings and decision. *Nichols v. State*, Op. No. 398, 425 P2d 247 (Alaska 1967).

If the record of a postconviction hearing is silent with regard to an issue and the witnesses are unable to remember, the State has not failed to substantiate its case. Instead, the prisoner has failed in his collateral attack on the judgment of conviction. *Merrill v. State*, Op. No. 568, 457 P2d 231 (Alaska 1969).

To secure relief in a habeas corpus proceeding, the petitioner has the burden of alleging and proving by a preponderance of the evidence all facts necessary to overturn the prior judgment of conviction. *Merrill v. State*, Op. No. 568, 457 P2d 231 (Alaska 1969).

Where the counsel for a prisoner seeking postconviction relief is unable to find witnesses having information to substantiate a jury-tampering claim, the trial court may dismiss the claim. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

A defendant is precluded from raising on application for postconviction relief the contention that the jury was improperly constituted where no challenge to the composition of the jury panel was made at the trial. *Fajerlak v. State*, Op. No. 1761, 520 P2d 795 (Alaska 1974).

A genuine issue of material fact, precluding summary disposition of an application for postconviction relief, is presented where it is alleged that the district attorney, by resort to threats and intimidation, prevented potential defense witnesses from testifying. *Fajerlak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

Vacation of conviction for failure to comply with Criminal Rule 11 will only be granted when noncompliance affected substantial rights of defendant. *Lewis v. State*, Op. No. 1447, 565 P2d 846 (Alaska 1977).

A defendant seeking to set aside a conviction on grounds of newly discovered evidence must prove by a preponderance of the evidence those facts which entitle him to have the conviction set aside. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Defendant has the burden of proving by a preponderance of the evidence that newly discovered evidence would be likely to change the result of the trial, that is, that the evidence would be sufficient to create a reasonable doubt as to his guilt. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Defendant had burden of proving by a preponderance of the evidence that newly discovered evidence of diminished capacity would be sufficient to create a reasonable doubt in a new trial. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

B. Specific Grounds

Conviction set aside under this rule and case remanded for new trial, because trial court's exclusion from evidence of tape recorded inconsistent statements of state witness had resulted in keeping from jury relevant and important facts on the trustworthiness of crucial testimony even though witness had admitted making the statements. *Bentley v. State*, Op. No. 270, 397 P2d 976 (Alaska 1965).

Motion to vacate judgment of conviction under this provision based on the ground that plea of guilty made in 1952 was not voluntary in the meaning of federal criminal rule 11, was properly denied where records showed that the petitioner had discussed the plea with counsel of his own choice and that the judge had made a determination that the plea was not improvidently made. *Oughton v. State*, Op. No. 377, 420 P2d 452 (Alaska 1966).

Record of postconviction hearing on remand disclosed sufficient basis for superior court's finding that appellant's change of plea to guilty was made voluntarily and with understanding of the nature of the charge. *Thompson v. State*, Op. No. 408, 426 P2d 995 (Alaska 1967).

The allegations of a petitioner for postconviction relief that he had taken drugs some 12 hours prior to time he changed his plea to guilty and that at the time he appeared in court to enter his change of plea he was under the influence of drugs, and thus rendered incompetent, were sufficient to require an evidentiary hearing. Despite the apparent regularity of the competency hearing, the change of plea and the sentencing proceedings, the possibility still exists that the petitioner did not knowingly and understandingly plead to the offense as charged. *Widermyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

Where a prisoner seeking postconviction relief refuses to waive the attorney-client privilege so that his trial counsel can testify on the question of the adequacy of representation, and the prisoner thus forestalls further inquiry into such ground for relief, the claim of inadequate representation by trial counsel is deemed to have been abandoned. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

A defendant is not deprived of a public trial merely because a newspaper reporter is unable to enter the building in which the courtroom is located, where such exclusion is unintentional, is for less than one hour and takes place at a time after submission of the case to the jury, while the jury is listening to a replay of certain recorded testimony. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

Proof that the State intimidated potential material defense witnesses and prevented them from testifying requires the granting of a new trial. A defendant, seeking postconviction relief, will not have to demonstrate prejudice. *Fajeriak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

Where a defendant successfully proves on application for postconviction relief that his confidential communications with his attorney were electronically monitored, he ordinarily must be granted a new trial, even without demonstrating that he was prejudiced by such action. *Fajeriak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

After conviction as accomplice to burglary not in a dwelling and malicious destruction of property, evidence of diminished capacity was admissible to negate showing by state that defendant had knowledge of the criminal enterprise and that defendant specifically intended, by his conduct, to aid, abet, assist or participate in the criminal enterprise. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

Where attorney did not inform his client of the possibility of a diminished capacity defense, but did himself consider it in preparing for trial, his failure to explain the possible defense did not render his legal assistance ineffective when the chances of acquittal or conviction on a lesser offense due to the use of the diminished capacity defense were improbable. *Larson v. State*, Op. No. 2128, 614 P2d 776 (Alaska 1980).

In order to obtain postconviction relief for ineffective assistance of counsel, defendant must first show that his lawyer's skill fell below that of a lawyer with ordinary training and skill in the criminal law, and second, that the lawyer's defective performance contributed in some way to defendant's conviction. *Larson v. State*, Op. No. 2128, 614 P2d 776 (Alaska 1980).

In attempting to eliminate consideration of the nature of the offense from its consideration of relevant factors at sentencing, the superior court committed reversible error. *Kelly v. State*, Op. No. 2268, 622 P2d 432 (Alaska 1981).

III. Procedure

A. In General

A petitioner seeking postconviction relief on the grounds that she was transported out of the state for purposes of out-of-state incarceration prior to the expiration of the ten-day period within which she is required to file a notice of appeal, should attempt to show what impact her physical removal from the state has had on her ability to file a timely notice of appeal. She should further show what attempt she has made during the period between the imposition of sentence and the alleged removal from the state to engage services of trial counsel. *Pore v. State*, Op. No. 537, 452 P2d 433 (Alaska 1969).

An appeal from the denial of a petition for writ of habeas corpus is characterized as one from the denial of a motion for postconviction relief. *Knaub v. State*, Op. No. 489, 443 P2d 44 (Alaska 1968).

If the trial court determines conclusively that a petitioner is entitled to no postconviction relief after an examination of the files and records of a case, it may properly deny the petition without hearing. *Knaub v. State*, Op. No. 489, 443 P2d 44 (Alaska 1968).

A trial judge in acting upon a motion for postconviction relief is entitled to rely upon his recollection of the proceedings during the trial. *Knaub v. State*, Op. No. 489, 443 P2d 44 (Alaska 1968).

It is not necessary to hold an evidentiary hearing concerning an alleged deprivation of the right to appeal where petitioner alleges she requested her trial defense counsel to file an appeal from her conviction, but fails to indicate time, location, manner and circumstances under which she had requested her counsel to make such appeal. *Pore v. State*, Op. No. 537, 452 P2d 433 (Alaska 1969).

The determination that a petition for postconviction relief alleging the deprivation of the right to appeal does not require the holding of an evidentiary hearing does not preclude the petitioner from making a second application for postconviction relief and presenting evidence supporting the assertion, first presented on appeal from a denial of the first postconviction motion, that she was transported out of the state for purposes of out-of-state incarceration prior to the expiration of the ten-day period within which she was required to file her notice of appeal. *Pore v. State*, Op. No. 537, 452 P2d 433 (Alaska 1969).

If the trial court can determine conclusively that the petitioner is not entitled to postconviction relief after examining the files and records of the case, it may properly deny the petition without hearing. *Widermyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

Post-conviction relief is an appropriate vehicle for the effectuation of the right of appeal where counsel has failed to file a timely notice of appeal. *McCracken v. State*, Op. No. 677, 482 P2d 269 (Alaska 1971).

Where a convicted defendant presents important questions of substantive criminal law never before decided in the state, the court will consider the merits of the issues, even though the petitioner had not asserted his claims in prior motions. *Mead v. State*, Op. No. 731, 489 P2d 738 (Alaska 1971).

If an applicant for postconviction relief is represented by counsel in the first application, there will be no presumption in his favor in a second application, and he will incur the burden of showing sufficient reason for any failure to raise grounds for relief in the first application. *Thompson v. State*, Op. No. 792, 496 P2d 651 (Alaska 1972).

Indigent prisoners seeking relief under this rule must be provided with counsel at the time their application is filed. *Dunnelly v. State*, Op. No. 965, 516 P2d 396 (Alaska 1973).

Generally, a petitioner for postconviction relief has a right to represent himself without counsel in criminal proceedings. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

The right to self-representation on a petition for postconviction relief is not absolute. In order to prevent a perversion of the judicial process, the trial judge should first ascertain whether a prisoner is capable of presenting his allegations in a rational and coherent manner before allowing him to proceed pro se, and the trial judge

should satisfy himself that the prisoner understands precisely what he is giving up by declining assistance of counsel. The advantages of legal representation should be explained to the prisoner in some detail, and in the event of an evidentiary hearing at which the prisoner is present he should be given the option of having legal counsel available for consultation. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

Where a petitioner for postconviction relief desires to represent himself, the trial judge should determine whether the prisoner is willing to conduct himself with at least a modicum of courtroom decorum, but the hearing judge must bear in mind that prisoners are not experienced trial lawyers, and are not practiced in the formalities of courtroom etiquette. *McCracken v. State*, Op. No. 986, 518 P2d 85 (Alaska 1974).

Where pleadings filed by a petitioner seeking postconviction relief demonstrate a certain knowledge of the merits of his allegations, and indicate at least to some extent that he might have the ability to represent himself, his rights might best be vindicated by an order permitting him to represent himself with the assistance of counsel from the public defender's office appointed by the court. If it should be determined that the prisoner's presence would be necessary at a hearing, a more thorough inquiry into the propriety of permitting him to represent himself could be undertaken at that time. *McCracken v. State*, Op. No. 985, 518 P2d 85 (Alaska 1974).

Even though postconviction applications are assigned to the original trial judge, he is not chargeable with knowledge of the entire original trial record, where the transcript and record is extremely lengthy and the trial took place several years earlier. Portions of the record relied on for postconviction relief should be specifically reheated to the judge. *Fajeriak v. State*, Op. No. 1021, 520 P2d 795 (Alaska 1974).

All post conviction challenges other than by direct appeal or motion after trial must be initiated in the trial court in which the conviction occurred. *McKinnon v. State*, Op. No. 1075, 526 P2d 18 (Alaska 1974).

A sentence is imposed at the time it is first announced upon the record by the court. *State v. Trunnel*, Op. No. 1260, 549 P2d 550 (Alaska 1976).

Rule 35(b) proceeding is separate from original criminal proceeding, is governed by civil procedure, results in a final judgment and may be appealed by either state or applicant. *State v. Hannagan*, Op. No. 1374, 559 P2d 1059 (Alaska 1977).

When a criminal appeal has been dismissed, though no mandate has been issued, the appellant may seek relief in superior court under Criminal Rule 35(a). *Singletary v. State*, Op. No. 1711, 583 P2d 847 (Alaska 1978).

Criminal Rule 35(a) is not the appropriate procedural vehicle to seek relief from conditions within custodial institutions or the civil rights of inmates. *Russ v. State*, Op. No. 1668, 584 P2d 38 (Alaska 1978).

An appeal from denial of a supplemental application for correction of sentence presents only the question of whether the denial of reconsideration of the original application was proper and does not bring up for review the decision denying the original application for correction of sentence. *Abraham v. State*, Op. No. 1747, 585 P2d 526 (Alaska 1978).

The provisions of Criminal Rule 35(g)(2) [now 35(h)(2)] are applicable only to postconviction proceedings under Criminal Rule 35(b) and are not applicable to requests for relief under Criminal Rule 35(a). *Winslow v. State*, Op. No. 1767, 587 P2d 738 (Alaska 1978).

Where defendant in probation revocation proceeding did not file motion for postconviction relief on form provided by court, or file the motion in the court where the original conviction occurred, he did substantially comply with requirements of Criminal Rule 35 by filing separate "Motion to Dismiss Probation Revocation Proceeding, or in the Alternative, to Strike Felony Conviction" and by sending copy of the motion to judge who presided in the original

case, where judge by special arrangement ruled on the motion while in the jurisdiction where probation revocation hearing was held. *Holtan v. State*, Op. No. 1967, 602 P2d 1228 (Alaska 1979).

Postconviction relief proceeding is not another trial, it is separate from the original criminal proceeding and is governed primarily by rules of civil procedure. *Hensel v. State*, Op. No. 1983, 604 P2d 222 (Alaska 1979).

An error need not be of constitutional magnitude in order to be attacked under this rule. *Price v. State*, Op. No. 100, 647 P2d 611 (Alaska App. 1982).

Errors in jury instructions which render a criminal trial fundamentally unfair warrant relief under this rule. *Price v. State*, Op. No. 100, 647 P2d 611 (Alaska App. 1982).

Defendant's failure to object at trial to jury instruction forfeited his right to challenge the instruction in a postconviction proceeding where the instruction did not significantly change the law so as to excuse a timely failure to object, and defendant did not show either good cause for failing to object or substantial prejudice. *Marrone v. State*, Op. No. 156, 653 P2d 672 (Alaska App. 1982).

Trial court is not obligated to dismiss an application for postconviction relief sua sponte even if it is convinced it has the merit. *Hampton v. Houston*, Op. No. 155, 653 P2d 1058 (Alaska App. 1982).

Trial court erred in ruling on pro se appellant's motion for postconviction relief without a knowing, intelligent and voluntary waiver of counsel by appellant and without determining whether or not appellant was competent to represent himself. *Hampton v. Houston*, Op. No. 155, 653 P2d 1058 (Alaska App. 1982).

Summarily dismissing defendant's motion for postconviction relief which alleged ineffective assistance of counsel, without advance notice to defendant indicating the court's intention to dismiss the motion or its reasons for the proposed dismissal, was reversible error, even though the motion itself did not establish a prima facie case of ineffective assistance of counsel. *Wood v. Endell*, Op. No. 488, 702 P2d 248 (Alaska App. 1985).

In post-conviction relief actions, particularly in cases involving pro se applicants who are incarcerated and do not have ready access to court documents, the court's discretion to relax technical pleading requirements should be liberally exercised. *State v. Jones*, Op. No. 832, 759 P2d 558 (Alaska App. 1988).

B. Hearing on Motion

On his first application to vacate or set aside sentence and to withdraw plea of guilty on ground of coercion, an indigent prisoner had a constitutional right to have counsel appointed by the court to represent him at such hearing. *Nichols v. State*, Op. No. 398, 425 P2d 247 (Alaska 1967).

The allegations of a prisoner for postconviction relief that he had taken drugs some 12 hours prior to time he changed his plea to guilty and that at the time he appeared in court to enter his change of plea he was under the influence of drugs, and thus rendered incompetent, were sufficient to require an evidentiary hearing. Despite the apparent regularity of the competency hearing, the change of plea and the sentencing proceedings, the possibility still exists that the petitioner did not knowingly and understandingly plead to the offense as charged. *Widernyre v. State*, Op. No. 540, 452 P2d 885 (Alaska 1969).

A prisoner seeking postconviction relief is not denied a fair determination of his motion merely because he is not present in person at hearings on the motion. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1973).

In a postconviction proceeding, the attorney who has served as trial counsel for the defendant properly refuses to testify on the question of the adequacy of his representation, in the absence of a waiver of the attorney-client privilege. *Flores v. State*, Op. No. 642, 475 P2d 37 (Alaska 1970).

Normally, whether to produce the prisoner is a decision left to the discretion of the court, but where the defendant's own testimony would be an essential prerequisite to proper adjudication of

an issue raised on application for postconviction relief, the defendant should be permitted to testify. *Fajertak v. State*, Op. No. 1021 520 P2d 193 (Alaska 1974).

Where the court elects to consider a petition for postconviction relief summarily, it must give advance warning of its decision to the parties in a written order spelling out in some detail its reasons for concluding that the petition warrants summary disposition. *Hampton v. Huston*, Op. No. 153 653 P2d 1058 (Alaska App. 1982).

C. On Review

Where appellant claimed that he was coerced into a plea of guilty by court appointed counsel who had also given him alleged false assurances of probation, and upon a postconviction petition under this rule the trial court had found that these charges were unsubstantiated basing its finding upon matter not contained in the record, the case was remanded to the trial court for further proceedings to create a record upon appropriate and specific findings. *Thompson v. State*, Op. No. 334 412 P2d 628 (Alaska 1966).

The rule contemplates that the sentencing court should be mutually called upon to review the sentence. *State v. Pete*, Op. No. 372 420 P2d 338 (Alaska 1966).

The sole question before a reviewing court when confronted with an order denying, without hearing, a motion for postconviction relief is whether the petitioner in his application for relief made such a showing as to require a hearing. *Wildermyre v. State*, Op. No. 540 452 P2d 885 (Alaska 1969).

On an appeal from a motion attacking a sentence, the factual findings of the lower court are judged by the same criterion as findings made in a judge-tried civil case. *Merrill v. State*, Op. No. 568 457 P2d 231 (Alaska 1969).

Where the defendant does not move for an evidentiary hearing or base his motion for a new trial on misconduct by the bailiff, the issue of whether the trial court erred in failing to grant him an evidentiary hearing concerning an allegedly improper statement made by the bailiff to the jury during the course of their deliberations is not properly before the Supreme Court. The defendant is not precluded from raising the issue in a future proceeding on a motion for a new trial or through other means seeking postconviction relief. *Howard v. State*, Op. No. 754 491 P2d 154 (Alaska 1971).

Trial court's finding that new evidence, if presented at a new trial, would probably not create a reasonable doubt as to defendant's guilt will be upheld unless such finding constitutes an abuse of discretion. *Hensel v. State*, Op. No. 1983 604 P2d 222 (Alaska 1979).

Standard for review of trial court's denial of motion for postconviction relief is one of abuse of discretion. *Hensel v. State*, Op. No. 1983 604 P2d 222 (Alaska 1979).

An appellant should not be able to raise issues on appeal from the denial of an application for postconviction relief that he would have been barred from raising on direct appeal from his original conviction. *Marrone v. State*, Op. No. 156 653 P2d 672 (Alaska App. 1982).

Ad hoc procedural course followed by the trial court departed markedly from the orderly procedure for the expeditious disposition of non-meritorious applications for post-conviction relief contemplated by this rule, depriving the state of a fair opportunity to contest defendant's application for post-conviction relief and requiring reversal of the trial court order setting aside defendant's convictions. *State v. Jones*, Op. No. 832 759 P2d 558 (Alaska App. 1988).

IV. Time Limits

Appellate Rule 46 was invoked where strict adherence to the 40-day time limit for appeal under Criminal Rule 35 would have prevented consideration of appellant's contentions that his conditions of imprisonment deprived him of his right to rehabilitation and reformation and to be free of cruel and unusual punishment. *Abraham v. State*, Op. No. 1747 585 P2d 526 (Alaska 1978).

A person moving to withdraw a guilty plea under Criminal Rule 32(d) and moving for postconviction relief under Criminal Rule

35(b) need not show that the former motion was made with "due diligence". *Swensen v. Municipality of Anchorage*, Op. No. 2179 610 P2d 874 (Alaska 1980).

Rule 35.2. Discharge and Set-Aside of Conviction.

(a) Where the court has suspended imposition of sentence, the defendant has completed the probationary term without imposition of sentence and no petition to revoke probation is pending, the court shall discharge the defendant from probation. At the time discharge is entered, which shall occur 30 days after defendant's probationary term has expired, or at such later time as the court for cause may direct, the court shall consider whether the conviction should be set-aside. If the court determines that the conviction should be set-aside, it shall issue a certificate to that effect to the defendant. If the court determines that the conviction should not be set-aside, it shall set forth with specificity its reasons for that decision.

(b) The court shall notify the state at least 20 days prior to the expiration of defendant's probationary term that the court will consider whether to discharge the defendant from probation and to set aside the defendant's conviction. In the event any party opposes discharge or set-aside of the conviction, that party shall file a motion with appropriate support not less than 20 days prior to the time discharge is to be entered pursuant to paragraph (a). The defendant must be served with a copy of any such motion and have an opportunity to respond. A copy of the motion also must be mailed to defendant's last attorney of record. Any party, or the court on its own motion, may set the matter for hearing.

(c) In the event that no party has filed a motion opposing set-aside of the conviction, the court may refuse to set-aside the conviction only after affording the defendant notice and an opportunity to be heard. Notice must be served on the defendant and a copy mailed to defendant's last attorney of record.

(Added by SCO 901 effective January 15, 1989)

Rule 36. Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time and after such notice, if any, as the court orders.

(Adopted by SCO 4 October 4, 1959)

Annotations

Cases

The issue whether a superior court has power to forfeit an aircraft as condition of probation for unlawful possession and transportation of contraband by an airplane is not timely raised by appeal taken after a February 1973 order which amends an August 1972

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Alaska Court System
 Title: An Act amending the jurisdiction of the district court... post conviction rollof BRU: Trial Courts
 Sponsor: Judiciary Committee Components: _____
 Requestor: _____

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						
----------------	--	--	--	--	--	--

REVENUE						
----------------	--	--	--	--	--	--

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: 02/21/90
 Date: 02/21/90

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

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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:

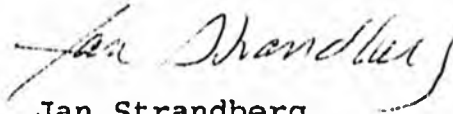
The purpose of SB 499 is to conform the Department of Motor Vehicle driver's license revocation appeal procedure to the procedure followed by other DMV and non-DMV administrative appeals.

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, re-wrote 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						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

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-
---------	-----	-----	-----	-----	-----	-----

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
 Page 1 of 1

MB
2/26/90

S B

501

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the retail sale of pull-tabs, tickets, and cards
Sponsor: Senate Finance
Requestor: Senate L&C

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) The bill authorizes a person other than a permittee or operator to sell the pull-tabs, tickets, and cards necessary to conduct a charitable gaming activity under AS 05.15.100 provided the person is authorized by a written contract with the permittee or operator. The bill requires the department to be notified within five days of commencement of sales by a person other than a permittee or operator. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: 3/23/90

Approved by Commissioner: Larry Mercurieff Date: 3/1/90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- 6387D-1/22790b

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to the retail sale of pull-tabs, tickets, and cards.
 Sponsor: Senate Finance
 Requestor: Senate L&C

Agency Affected: Commerce & Econ. Dev.
 BRU: Occupational Licensing
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	50.3	50.3	50.3	50.3	50.3	50.3
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	9.9					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.2	62.3	62.3	62.3	62.3	62.3
CAPITAL	0	0	0	0	0	0
REVENUE	100.0	100.0	100.0	100.0	100.0	100.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER *	72.2	62.3	62.3	62.3	62.3	62.3
TOTAL	72.2	62.3	62.3	62.3	62.3	62.3

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

(SEE ATTACHED)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 3/26/90
 Approved by Commissioner: Larry Mercurieff Commissioner Date: 3/26/90
 Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

* Funding Source is General Fund/Program Receipts

CONTINUATION OF FISCAL NOTE ANALYSIS
CSSB 501 (L&C)

The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.

Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.

The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.

The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state.

The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.

With a vendor registration fee of \$50, we estimate that regulation of vendors will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors).

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the retail sale of pull-tabs, tickets, and cards
Sponsor: Senate Finance
Requestor: Senate L&C

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary) The bill authorizes a person other than a permittee or operator to sell the pull-tabs, tickets, and cards necessary to conduct a charitable gaming activity under AS 05.15.100 provided the person is authorized by a written contract with the permittee or operator. The bill requires the department to be notified within five days of commencement of sales by a person other than a permittee or operator. (CONTINUED)

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
Division: Occupational Licensing Date: 3/23/90

Approved by Commissioner: Larry Mercurieff Date: 3/11/90
Agency: Department of Commerce & Economic Development

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
63870-1/22790b

CONTINUATION OF FISCAL NOTE ANALYSIS - SB 501

Current resources for the gaming program are inadequate to fully regulate charitable gaming in the state. There are over 1,000 gaming permittees, operators, and distributors authorized to conduct gaming activities in an industry which generates millions of dollars each year.

If the gaming program is to regulate gaming activities by persons other than a permittee or operator (conceivably another 2,000 individuals) and beef up its enforcement over current gaming activities, additional staff resources are definitely needed. In the Division of Occupational Licensing's original FY 91 budget request and its budget amendments, the division has requested funding for a total of six positions, only four of which are new (the other two are taken from permanent part-time to permanent full-time). The positions include: two PFT Investigators, one PPT Licensing Examiner, one PPT Clerk Typist, one PPT Data Processing Clerk, and one PFT Attorney. The zero fiscal note attached to SB 501 assumes authorization of the division's budget request.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the retail sale of pull-tabs, tickets, and cards.
Sponsor: Senate Finance
Requestor: Senate L&C

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	50.3	50.3	50.3	50.3	50.3	50.3
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	9.9					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	72.2	62.3	62.3	62.3	62.3	62.3
CAPITAL	0	0	0	0	0	0
REVENUE	100.0	100.0	100.0	100.0	100.0	100.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER *	72.2	62.3	62.3	62.3	62.3	62.3
TOTAL	72.2	62.3	62.3	62.3	62.3	62.3

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

(SEE ATTACHED)

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
Division: Occupational Licensing Date: 3/26/90

Approved by Commissioner: Larry Mercurieff, Commissioner Date: 3/26/90
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

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

* Funding Source is General Fund/Program Receipts

CONTINUATION OF FISCAL NOTE ANALYSIS
CSSB 501 (L&C)

The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.

Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.

The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.

The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state.

The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.

With a vendor registration fee of \$50, we estimate that regulation of vendors will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors).

1.	POSITION TITLE INVESTIGATOR III				RANGE/STEP 18A	BARG. UNIT GGU	PAGE/LINE	GOV.	APPROV.	DISAPP
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION:					
4.	TYPE OF EXPENDITURE				The bill authorizes a person other than a permittee or operator to sell the pull-tabs necessary to conduct a charitable gaming activity under AS 05.15.100 provided the vendor is registered with the department and complies with the provisions of the bill.					
	1		2		Charitable gaming activity in Alaska is a rapidly growing industry and the enforcement of the Gaming Reform Act of 1988 is becoming more difficult in light of increased gaming activity. Presently, the number of gaming investigators (just two) is inadequate to support statewide enforcement of the gaming program and gaming enforcement is therefore not as timely and as efficient as necessary to fully protect the playing public or the permitted charitable organizations.					
	PERSONAL SERVICES				The recognition of vendors in SB 501, as well as our ability under SB 501 to take enforcement action in the face of vendor noncompliance, will increase the investigatory burden. (Until now, the division has taken complaints regarding vendor actions but has had no authority to take action to correct or otherwise enforce compliance.) We are therefore submitting a fiscal note requesting funding for an additional investigator.					
5.	Salary		37.3		The new vendor registration will affect a significant number of businesses and charitable organizations throughout the state. We have seen unlawful activity within the gaming industry. The investigator position requested by this fiscal note will greatly assist the division in beefing-up its current gaming enforcement and will promote compliance with gaming laws in the state					
6.	Benefits		13.0		The \$72.2 required includes \$8.0 in travel, to fund the cost of widespread travel to various communities, and a one-time equipment charge of \$9.9.					
7.	Supplemental Benefits				With a vendor registration fee of \$50, we estimate that regulation of vendor will bring in approximately \$100.0 in program receipts (\$50 x 2,000 vendors)					
8.	Fixed Benefits									
9.	TOTAL PERSONAL SERVICES		01		72.2					
10.	Travel		02		8.0					
11.	Contractual		03		3.0					
12.	Commodities		04		1.0					
13.	Equipment		05		9.9					
14.	Other									
15.	TOTAL COST				72.2					
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004								
19.		I-A Receipts 1005								
20.		Program Receipts 1028			72.2					
21.		Other								
FOR B&M USE ONLY KEY NUMBER										

REQUEST FOR
NEW POSITION
LGJOBS/SB501FN

AGENCY Commerce and Economic Development
BRU Occupational Licensing
COMPONENT Investigations

FY 91

Page 3 of 3
Revised Date _____

Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-110
 Juneau, Alaska 99811-0809

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.053(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator <i>Edward A Willey</i>	License Number <i>0189-0004</i>	Year <i>1989</i>	DATE RECEIPT STAMP
Mailing Address <i>1060 Aspen</i>	Contact Person <i>Edward A Willey</i>		
City, State, Zip Code <i>Fairbanks, Ak 99709</i>	Daytime Telephone No. <i>907-451-6865</i>		

GAMING ACTIVITY SUMMARY	1989 Permit Number	Column 1 GROSS RECEIPTS (from Schedule A, col. A, line 11)	Column 2 ADJUSTED GROSS (from Schedule A, col. D, line 11)	Column 3 NET PROCEEDS PAID (from Schedule A, col. F, line 11)	
PERMIT HOLDER					
<i>North Pole Rotary</i>	<i>89-0533</i>	<i>446,648.79</i>	<i>102,889.79</i>	<i>16,301.49</i>	<i>1690</i>
<i>Fairbanks District Hockey</i>	<i>89-862</i>	<i>483,846.31</i>	<i>117,263.81</i>	<i>18,168.26</i>	<i>1690</i>
<i>Alaska Gold King</i>	<i>89-0195</i>	<i>707,099.97</i>	<i>167,558.22</i>	<i>26,896.73</i>	<i>1690</i>
<i>Festival Fairbanks</i>	<i>89-0170</i>	<i>391,969.38</i>	<i>99,341.28</i>	<i>15,832.47</i>	<i>1690</i>
<i>Fairbanks Youth Soccer</i>	<i>89-0497</i>	<i>724,074.66</i>	<i>163,614.70</i>	<i>26,187.72</i>	<i>1690</i>
<i>North Star Dance Foundation</i>	<i>89-0028</i>	<i>113,643.58</i>	<i>25,736.58</i>	<i>5,482.61</i>	<i>2290</i>
<i>Univ. Alaska Karate Club</i>	<i>89-0516</i>	<i>254,404.06</i>	<i>65,208.56</i>	<i>9,679.29</i>	<i>1590</i>
<i>Univ. Alaska Judo Club</i>	<i>89-0118</i>	<i>1,166,234.43</i>	<i>283,062.43</i>	<i>43,674.18</i>	<i>1590</i>
<i>Experts Unlimited</i>	<i>89-0723</i>	<i>451,532.00</i>	<i>98,208.50</i>	<i>25,812.12</i>	<i>1690</i>
<i>Northstar Fun Handlers</i>	<i>89-0520</i>	<i>218,272.44</i>	<i>61,688.94</i>	<i>9,870.40</i>	<i>1690</i>
<i>Coastline Humane Society</i>	<i>89-0813</i>	<i>65,371.77</i>	<i>12,056.27</i>	<i>1,929.00</i>	<i>1690</i>
<i>Univ. Alaska Youth Football</i>	<i>89-0071</i>	<i>681,082.13</i>	<i>156,150.13</i>	<i>23,993.13</i>	<i>1590</i>
<i>Univ. Alaska Senior Outlets</i>	<i>89-0745</i>	<i>138,314.59</i>	<i>26,029.09</i>	<i>4,164.65</i>	<i>1690</i>
<i>U.S. Coast Guard Chief Petty Officer</i>	<i>89-0117</i>	<i>184,781.29</i>	<i>35,826.29</i>	<i>5,722.13</i>	<i>1690</i>
<i>Univ. Alaska Indian Association</i>	<i>89-0923</i>	<i>88,001.71</i>	<i>17,323.21</i>	<i>2,771.71</i>	<i>1690</i>
<i>Kenai City Schools</i>	<i>89-0643</i>	<i>52,429.97</i>	<i>10,002.97</i>	<i>1,648.47</i>	<i>1690</i>
<i>Ketchikan Senior's Tennis-Asutaba</i>	<i>89-0726</i>	<i>285,943.47</i>	<i>91,334.97</i>	<i>14,667.59</i>	<i>1690</i>
<i>Ketchikan Senior Citizens Center</i>	<i>89-0726</i>	<i>284,792.55</i>	<i>7735.55</i>	<i>0</i>	
<i>St. Ann's of Nome</i>	<i>89-0382</i>	<i>277,771.71</i>	<i>57,770.21</i>	<i>9,067.27</i>	<i>1690</i>
<i>Alaska Native Sisterhood</i>	<i>89-0758</i>	<i>377,314.97</i>	<i>81,701.47</i>	<i>13,020.94</i>	<i>1690</i>
<i>Alaska Native Sisterhood</i>	<i>89-0820</i>	<i>34,178.02</i>	<i>8,167.52</i>	<i>1,670.20</i>	<i>2090</i>
<i>Women in Love Homes</i>	<i>89-0339</i>	<i>318,724.94</i>	<i>76,471.44</i>	<i>12,634.46</i>	<i>1790</i>
<i>Ketchikan Killis Whales</i>	<i>89-0760</i>	<i>140,667.19</i>	<i>65,561.19</i>	<i>11,525.23</i>	<i>1890</i>
<i>Friends of Kahai</i>	<i>89-0873</i>	<i>401,741.08</i>	<i>106,451.23</i>	<i>15,790.51</i>	<i>1590</i>
<i>Ketchikan Youth Football</i>	<i>89-962</i>	<i>414,559.75</i>	<i>95,893.25</i>	<i>14,448.05</i>	<i>1590</i>
<i>Ketchikan Youth Services</i>	<i>89-0566</i>	<i>518,255.91</i>	<i>118,097.41</i>	<i>18,877.37</i>	<i>1690</i>
SUMMARY		TOTAL COLUMN 1 <i>9,521,662.67</i>	TOTAL COLUMN 2 <i>2,150,685.21</i>	TOTAL COLUMN 3 <i>339,997.08</i>	

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Lois M Willey</i>	Printed Name <i>Lois M Willey</i>	Title <i>Bookkeeper</i>	Date <i>2/26/90</i>
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Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box 0-LIC
 Juneau, Alaska 99811-0800

Games of Chance and Contests of Skill

DUE DATE: FEBRUARY 28, 1990

1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator ALASKA BINGO MGN.	License Number 0L89-0007	Year 1989	DATE RECEIPT STAMP
Mailing Address 3707 WOODLAND DR., SUITE 4	Contact Person SUE GRIFFIN		
City, State, Zip Code ANCHORAGE, AK 99517	Daytime Telephone No. 907) 243-3559		

GAMING ACTIVITY SUMMARY	1989 Permit Number	Column 1 GROSS RECEIPTS (from Schedule A, col. A, line 11)	Column 2 ADJUSTED GROSS (from Schedule A, col. D, line 11)	Column 3 NET PROCEEDS PAID (from Schedule A, col. F, line 11)
PERMIT HOLDER				
AFL-CIO	0664	759814	149813	40810
SPENARD LIONS	0686	666132	133446	36745
ARCA	0456	874338	164246	45544
BARREER FREE	0837	482679	102145	31744
AK DANCE THEATRE	0581	841478	162358	40957
MISS AK PAGEANT	0682	784051	156771	41470
AK LABORERS #341	0126	804390	157229	42229
AK LABORERS TRAIN SCHOOL	0426	824827	165240	43839
AK CENTER FOR THE ENVIRONMENT	0502	817684	161096	43096
AWAIC	0437	860251	165870	43566
MABEL T CAVERLY Sr. Cht.	0508	906257	173450	46046
MAT SU CRIME STOPPERS	0225	673398	137915	40618
COOK INLET Housing Authority	0812	259836	58236	21939
St. VINCENT de PAUL Society	0926	318727	68745	25043
BARTLETT HIGH BOOSTER CLUB	0946	306328	66793	25492
DEMOCRATIC PARTY of AK	0193	636377	118855	25958
ALASKA HEALTH Project	0080	654178	119248	24050
HOLY FAMILY CATHEDRAL	0613	615805	116060	24559
Susitna Girl Scouts	0598	644072	125226	25328
REPUBLICAN PARTY of AK	0585	620254	114960	23561
CHUGIAK BOYS BASKETBALL	0149	586482	108527	20928
AFGE #121	0650	634378	115227	21183
AFGE #3296	0722	567546	103548	19850
KNIGHTS of COLUMBUS	0563	612907	114954	22156
ANCH. SPORTS ASSOC.	0061	536420	102252	19555
DISTRICT 11 DEMOCRATS	0433	587561	117812	21267
CRISIS INC.	0891	84208	13135	1235
SUMMARY		TOTAL COLUMN 1 16,960,378	TOTAL COLUMN 2 3,293,157	TOTAL COLUMN 3 818,768

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Sue Griffin</i>	Printed Name SUE GRIFFIN	Title OWNER/OP.	Date 1-29-90
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Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-LIC
 Juneau, Alaska 99811-0800

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS: A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator <i>Shizue Ruebel</i>	License Number <i>0L890012</i>	Year <i>1989</i>	DATE RECEIPT STAMP
Mailing Address <i>1533 Bridgewater</i>	Contact Person <i>Shizue Ruebel</i>		
City, State, Zip Code <i>Fairbanks, AK 99704</i>	Daytime Telephone No. <i>452-7436</i>		

GAMING ACTIVITY SUMMARY		1989 Permit Number	Column 1 GROSS RECEIPTS <small>(from Schedule A, col. A, line 11)</small>	Column 2 ADJUSTED GROSS <small>(from Schedule A, col. D, line 11)</small>	Column 3 NET PROCEEDS PAID <small>(from Schedule A, col. F, line 11)</small>
PERMIT HOLDER					
<i>Alaska State Game</i>		<i>89-0577</i>	<i>243,443.00</i>	<i>43,064.50</i>	<i>16,068.24</i>
SUMMARY			TOTAL COLUMN 1 <i>243,443.00</i>	TOTAL COLUMN 2 <i>43,064.50</i>	TOTAL COLUMN 3 <i>16,068.24</i>

SIGNATURE: This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Shizue C. Ruebel</i>	Printed Name <i>SHIZUE A. RUEBEL</i>	Title <i>Operator</i>	Date <i>Jan 30 1990</i>
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Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-LIC
 Juneau, Alaska 99811-0900

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator DWIGHT McBRIDE	License Number 89-- 0008	Year 1989	DATE RECEIPT STAMP
Mailing Address 215 Plaza Port West	Contact Person Dwight McBride		
City, State, Zip Code Ketchikan, AK 99901	Daytime Telephone No. 225-5623		

GAMING ACTIVITY SUMMARY		1989 Permit Number	Column 1 GROSS RECEIPTS <small>(from Schedule A, col. A, line 11)</small>	Column 2 ADJUSTED GROSS <small>(from Schedule A, col. B, line 11)</small>	Column 3 NET PROCEEDS PAID <small>(from Schedule A, col. F, line 11)</small>
PERMIT HOLDER					
Ketchikan Rod & Gun Club		89-0753	94,661	20,810	3,122
Rainbird Community Broadcasting Co.		89-0514	384,661	174,821	20,223
Ketchikan All-City Halloween Comm.		89-0912	719,555	159,463	23,919
Ketchikan Little League		89-0451	653,421	155,051	23,258
VFW Post 4352		89-0208	578,876	130,100	19,516
SUMMARY			TOTAL COLUMN 1 2,631,174	TOTAL COLUMN 2 600,245	TOTAL COLUMN 3 90,038

SIGNATURE. This report must be signed by the operator or operator's agent.
 I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Karl E Steward</i>	Printed Name Karl Steward	Title Accountant	Date 2-25-90
------------------------------------	-------------------------------------	----------------------------	------------------------

Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-LIC
 Juneau, Alaska 99811-0800

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator <i>Rippie Town Opera</i>	License Number <i>89-0009</i>	Year <i>1989</i>	STATE OF ALASKA DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT FEB 9 1990 DIV. OF OCCUPATIONAL LICENSING
Mailing Address <i>PO Box 90493</i>	Contact Person <i>Steve Cooper</i>		
City, State, Zip Code <i>Anch. AK 99509</i>	Daytime Telephone No. <i>907-561-1866</i>		

GAMING ACTIVITY SUMMARY		1989 Permit Number	Column 1 GROSS RECEIPTS <small>(from Schedule A, col. A, line 11)</small>	Column 2 ADJUSTED GROSS <small>(from Schedule A, col. D, line 11)</small>	Column 3 NET PROCEEDS PAID <small>(from Schedule A, col. F, line 11)</small>
PERMIT HOLDER					
<i>Pythian Sisters Friendship # 2</i>		<i>89-0459</i>	<i>424,661.50</i>	<i>104,840.99</i>	<i>10,032.73</i>
SUMMARY			TOTAL COLUMN 1 <i>424,661.50</i>	TOTAL COLUMN 2 <i>104,840.99</i>	TOTAL COLUMN 3 <i>10,032.73</i>

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Steve E.B. Cooper</i>	Printed Name <i>STEVE "E.B." COOPER</i>	Title <i>Owner</i>	Date <i>1/28/90</i>
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Form OS-1009 (New 1/1989)

Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-LIC
 Juneau, Alaska 99811-0800

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

STATE OF ALASKA
 DEPARTMENT OF COMMERCE
 & ECONOMIC DEVELOPMENT
 RECEIVED STAMP

Operator KENNETH A DOLE	License Number OL 89 0011	Year 1989
Mailing Address P.O. Box 6440	Contact Person KEN DOLE	
City, State, Zip Code KETCHIKAN AK 99901	Daytime Telephone No. 907 225 9461	

JAN 23 REC'D

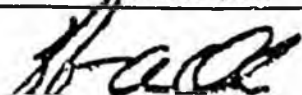
DIVISION OF
 OCCUPATIONAL LICENSING

GAMING ACTIVITY SUMMARY	1989 Permit Number	Column 1 GROSS RECEIPTS (from Schedule A, col. A, line 11)	Column 2 ADJUSTED GROSS (from Schedule A, col. D, line 11)	Column 3 NET PROCEEDS PAID (from Schedule A, col. F, line 11)
PERMIT HOLDER KETCHIKAN VISITORS BUREAU	890048	15,500.00	< 9,500.00 >	< 10602.13 >
SUMMARY		TOTAL COLUMN 1 15500.00	TOTAL COLUMN 2 < 9500.00 >	TOTAL COLUMN 3 < 10602.13 >

Paid

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature 	Printed Name Kenneth A. Dole	Title	Date 1/23/89
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Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-LIC
 Juneau, Alaska 99811-0800

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator Peter D. Kraemer	License Number OL89-0006	Year 1989	DATE RECEIPT STAMP
Mailing Address 6510 Lakeway Dr	Contact Person Peter Kraemer		
City, State, Zip Code Anchorage, Ak. 99502	Daytime Telephone No. 243-4472		

GAMING ACTIVITY SUMMARY		1989 Permit Number	Column 1 GROSS RECEIPTS (From Schedule A, col. A, line 11)	Column 2 ADJUSTED GROSS (From Schedule A, col. D, line 11)	Column 3 NET PROCEEDS PAID (From Schedule A, col. F, line 11)
PERMIT HOLDER					
VAC	Visual Arts Center of Alaska	89-0076	208,980.00	31,259.00	4,994.00
ASHA	Alaska state Homebuilders Assoc	89-0992	120,349.00	16,749.00	2,749.00
ATTHIA	Anchorage Tribes of Tlingit & Haida Indians of Alaska	89-0964	279,746.00	43,981.00	6,046.00
AVA	AmVets Post #2 Auxillary	89-0281	199,905.00	34,036.50	4,378.00
AARC	Anchorage Amateur Radio Club	89-0191	414,763.50	70,235.00	10,860.80
ELB	E.L. Bartlett School	89-0539	204,267.50	36,942.00	5,826.50
PIPE	Anchorage Area PIPE Trade joint Apprentices Comm.	89-0671	166,138.00	30,310.00	3,875.00
AV	AmVets Post #2	89-0283	806,990.50	128,944.50	14,671.26
PLUM	Plumbers & Steamfitters 367	89-0672	836,299.50	134,858.00	16,377.93
PL1140	Painters Local 1140	89-0148	536,300.50	85,892.00	12,568.02
PATT	Painters Apprenticeship & Training Trust	89-0144	455,696.50	67,161.00	10,934.45
WPT	Work Preservation Trust	89-0146	361,671.50	56,069.50	10,013.97
SUMMARY			TOTAL COLUMN 1 4,591,107.50	TOTAL COLUMN 2 736,437.50	TOTAL COLUMN 3 103,294.93

SIGNATURE: This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Peter D. Kraemer</i>	Printed Name Peter D. Kraemer	Title Operator	Date 2/24/90
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Return to:
 Alaska Department of Commerce
 and Economic Development
 Division of Occupational Licensing
 P.O. Box D-LIC
 Juneau, Alaska 99811-0800

Games of Chance and Contests of Skill
1989 OPERATOR ANNUAL REPORT
 Authority: AS 05.15.083(b)

DUE DATE: FEBRUARY 28, 1990

REQUIRED ATTACHMENTS. A completed Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator Emerald Isle Pull-Tabs	License Number 0L89-0010	Year 1989	DATE RECEIPT STAMP
Mailing Address 59 College Road, #213	Contact Person Ruth Shannon		
City, State, Zip Code Fairbanks, Alaska 99701	Daytime Telephone No. (907) 479-7397		

GAMING ACTIVITY SUMMARY	1989 Permit Number	Column 1 GROSS RECEIPTS <small>(from Schedule A, col. A, line 11)</small>	Column 2 ADJUSTED GROSS <small>(from Schedule A, col. D, line 11)</small>	Column 3 NET PROCEEDS PAID <small>(from Schedule A, col. F, line 11)</small>
PERMIT HOLDER				
Midnight Sun Lions, Inc. District 49B, Lions Foundation, Incorporated	89-0314	426,947	95,954	14,393
	89-0746	250,248	53,482	8,022
SUMMARY		TOTAL COLUMN 1 677,195	TOTAL COLUMN 2 149,436	TOTAL COLUMN 3 22,415

SIGNATURE. This report must be signed by the operator or operator's agent.
 I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Ruth Shannon</i>	Printed Name Ruth Shannon	Title Operator	Date 2-23-90
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Return Parts 1 and 2 to:
Alaska Department of Revenue
Income and Excise Audit Division
P.O. Box 8A
Juneau, Alaska 99811-0400

Games of Chance and Contests of Skill
OPERATOR ANNUAL REPORT
Authority: AS 05.15.083 (b)

DUE DATE: FEBRUARY 28

REQUIRED ATTACHMENTS. A completed copy of the Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator Alaska Bingo Management	Licenses Number 88-0007	Year 1988	RECEIVED MAR 3 1989 DEPARTMENT OF REVENUE STATE OF ALASKA
Mailing Address 3707 Woodland Drive Suite 4	Contact Person Sue Griffin		
City, State, Zip Code Anchorage, Alaska 99517	Daytime Telephone No. 907-243-3559		

NOTE:
Months Played in 88 -

MONTHS PLAYED IN 88 -	GAMING ACTIVITY SUMMARY	Column 1 NET PROCEEDS (from Schedule A, Col. F, line 11)	Column 2 ADJUSTED GROSS (from Schedule A, Col. D, line 11)	Column 3 ANNUAL PERCENT (Divide Col. 1 by Col. 2. Express answer to two decimal places.)	Column 4 GROSS RECEIPTS (from Schedule A, Col. A, line 11)	Column 5 OFFICE USE ONLY
	PERMIT HOLDER					
12	AFL-CIO	17560	125080	.14	696186	
2	A F G E #3296	2663	18463	.14	116054	
11	AK CIR for the Environ	20400	119920	.17	673535	
11	AK Dance Theatre	16788	108008	.16	665580	
12	A R C A	21641	127261	.17	780652	
9	A W A I C	18772	88672	.21	487521	
7	Big Bros/Big Sisters	4401	72361	.06	418472	
12	Barrier Free	20066	129246	.16	716883	
10	Democratic Pty of AK	8852	96682	.09	585289	
3	Dist 5 Democrats	2077	32477	.06	179687	
	Dist 11 Democrats	18503	79703	.23	441800	
	A F G E # 121	7531	92825	.08	566869	
6	I B E W #1547	3008	41608	.07	258390	
2	Mabel T. Caverly Ctr	12020	38620	.31	230649	
5	Mat-Su Baseball	2805	37215	.08	216313	
10	Miss AK Pageant	16180	96200	.17	556208	
1	Plumbers & Steamfitter	383	9583	.04	60380	
6	Republican Pty of AK	8067	70607	.11	399943	
2	Dist 12 Republicans	1594	21594	.07	112395	
9	Special Olympics	9761	87281	.11	542254	
8	Sperard Lions	19086	86586	.22	484168	
11	Susitna Girl Scouts	9493	109137	.09	660448	
11	Alaska Health Project	9679	97845	.10	600035	
4	Anchorage Sports Assoc	12533	49473	.25	244912	
4	Alaska Jaycees	1230	32834	.04	217554	
9	Knights of Columbus	6535	77559	.08	476184	
10	Alaska Laborer's #341	18818	101018	.19	584488	
	SUMMARY		TOTAL COLUMN 2		TOTAL COLUMN 4	

Cont. Page 2

Cont. Page 2

COL 2 + COL 4

ANNUAL PERCENT OF GROSS RECEIPTS REPORTED AS ADJUSTED GROSS.....

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Sue Griffin</i>	Printed Name SUE GRIFFIN	Title Owner	Date 2-28-89
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Return Parts 1 and 2 to:
 Alaska Department of Revenue
 Income and Excise Audit Division
 P.O. Box 5A
 Juneau, Alaska 99811-0400

RECEIVED

Department of Chance and Contests of Skill
OPERATOR ANNUAL REPORT

DUE DATE: FEBRUARY 28

MAR 1 - 1989 Authority: AS 05.15.083 (b)

REQUIRED ATTACHMENTS: A completed copy of the Internal Revenue Service Form W-2 for each person employed by the operator during the year must be provided with this report.

Operator BINGO SAMS	License Number OL88-0004	Year 1988	Revenue Date Receipt Stamp
Mailing Address 2504 Eide St. Ste. # 19	Contact Person Jay H. Hunison Jr.		
City, State, Zip Code Anchorage, Alaska 99503	Daytime Telephone No 272-7599		

GAMING ACTIVITY SUMMARY	Column 1 NET PROCEEDS (from Schedule A, Col. F, line 11)	Column 2 ADJUSTED GROSS (from Schedule A, Col. D, line 11)	Column 3 ANNUAL PERCENT (Divide Col. 1 by Col. 2. Express answer to two decimal places.)	Column 4 GROSS RECEIPTS (from Schedule A, Col. A, line 11)	Column 5 OFFICE USE ONLY
PERMIT HOLDER					
Akeela House	10,683.61	39,719.61	26.90%	190,698.00	
Alaska Miners	9,702.54	33,302.54	29.13%	128,922.00	
Consumer Credit	9,468.92	33,750.92	28.05%	216,858.00	
Diabetes	21,498.89	80,598.72	26.67%	313,202.00	
Iditarod	11,662.34	47,898.34	24.34%	186,242.00	
Sweet Adelines	13,707.33	50,498.33	27.14%	202,197.00	
	76,723.62				
SUMMARY		TOTAL COLUMN 2 285,768.46		TOTAL COLUMN 4 1,238,119.00	

COL 2 ÷ COL 4
23.08%

ANNUAL PERCENT OF GROSS RECEIPTS REPORTED AS ADJUSTED GROSS.....

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Jay H. Hunison Jr.</i>	Printed Name Jay H. Hunison Jr.	Title OWNER	Date 2-27-89
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Form 04-000 (Rev. 1987)

CPA IS JOE WHITLOCK OF WHITLOCK & CARLSON 561-1034

Return Parts 1 and 2 to:
Alaska Department of Revenue
Income and Excise Audit Division
P.O. Box 8A
Juneau, Alaska 99811-0400

**Games of Chance and Contests of Skill
OPERATOR ANNUAL REPORT**
Authority: AS 05.15.083 (b)

DUE DATE: FEBRUARY 28

REQUIRED ATTACHMENTS. A completed copy of the Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator Peter D. Kraemer	License Number 88-0001	Year 1988	RECEIVED MAY 18 1989 DEPARTMENT OF REVENUE STATE OF ALASKA JUNEAU
Mailing Address 6510 Lakeway Dr	Contact Person Peter Kraemer		
City, State, Zip Code Anchorage, Ak. 99502	Daytime Telephone No. 243-2789		

GAMING ACTIVITY SUMMARY	Column 1 NET PROCEEDS (from Schedule A, Col. F, line 11)	Column 2 ADJUSTED GROSS (from Schedule A, Col. D, line 11)	Column 3 ANNUAL PERCENT (Divide Col. 1 by Col. 2, Express answer to two decimal places.)	Column 4 GROSS RECEIPTS (from Schedule A, Col. A, line 11)	Column 5 OFFICE USE ONLY
PERMIT HOLDER					
E.L. Bartlett School (ELB)	\$1,254.00	\$7,526.50	.1666	\$23,317.50	
University Swim Club (USC)	\$1,323.50	\$7,833.50	.1689	\$27,538.50	
HUMBERS LOCAL 367 (HLM)	\$4,845.13	\$31,024.63	.1561	\$190,699.00	
Anch. Area PIPE Appr. Comm. (PIPE)	\$1,934.00	\$12,986.50	.1489	\$44,898.00	
Anchorage Amateur Radio Club (AARC)	\$1,115.50	\$8,115.50	.1374	\$27,457.50	
Painters Local 1140 (PL1140)	\$6,964.07	\$44,434.57	.1567	\$259,808.25	
Painters & Appr. Train. Trust (PATT)	\$11,163.03	\$52,119.03	.2141	\$318,050.50	
Work Preservation Trust (WPT)	\$7,391.08	\$46,231.08	.1598	\$250,783.50	
Am Vets Post #2 Aux. (AVA)	\$1,131.25	\$7,386.25	.1531	\$23,105.25	
Am Vets Post #2 (AV)	\$5,113.89	\$32,178.89	.1589	\$182,165.00	
RECEIVED					
MAY 02 1989					
Department of Audit Anchorage CO SUMMARY	42235.45	TOTAL COLUMN 2 \$249,836.45		TOTAL COLUMN 4 \$1,347,823.00	

COL 2 + COL 4

ANNUAL PERCENT OF GROSS RECEIPTS REPORTED AS ADJUSTED GROSS.....

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>Peter D. Kraemer</i>	Printed Name Peter D. Kraemer	Title Owner	Date 4/30/89
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Return Parts 1 and 2 to:
 Alaska Department of Revenue
 Income and Excise Audit Division
 P.O. Box 5A
 Juneau, Alaska 99811-0400

**Games of Chance and Contests of Skill
 OPERATOR ANNUAL REPORT**
 Authority: AS 05.15.083 (b)

DUE DATE: FEBRUARY 28

REQUIRED ATTACHMENTS. A completed copy of the Internal Revenue Service Form W-2 for each person employed by the operator during the year must be included with this report.

Operator <i>James Harman Rippie World</i>	License Number <i>0L88-002</i>	Year <i>1988</i>	Revenue Date Receipt Stamp RECEIVED MAR 16 1989 DEPARTMENT OF REVENUE STATE OF ALASKA
Mailing Address <i>P.O. Box 232091</i>	Contact Person <i>James Harman</i>		
City, State, Zip Code <i>Anchorage, Ak. 99503-2091</i>	Daytime Telephone No. <i>279-6601</i>		

GAMING ACTIVITY SUMMARY	Column 1	Column 2	Column 3	Column 4	Column 5
	NET PROCEEDS (from Schedule A, Col. F, line 11)	ADJUSTED GROSS (from Schedule A, Col. D, line 11)	ANNUAL PERCENT (Divide Col. 1 by Col. 2. Express answer to two decimal places.)	GROSS RECEIPTS (from Schedule A, Col. A, line 11)	OFFICE USE ONLY
PERMIT HOLDER <i>Shancei Chc</i>	<i>29,790.50</i>	<i>86,388.50</i>	<i>0.34</i>	<i>368,619.00</i>	
SUMMARY	<i>29790.50</i>	TOTAL COLUMN 2 <i>86,388.50</i>		TOTAL COLUMN 4 <i>368,619.00</i>	

COL 2 + COL 4

ANNUAL PERCENT OF GROSS RECEIPTS REPORTED AS ADJUSTED GROSS.....

SIGNATURE. This report must be signed by the operator or operator's agent.

I declare under penalty of unsworn falsification that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true and complete.

Signature <i>James M. Harman</i>	Printed Name <i>JAMES M. HARMAN</i>	Title <i>Operator</i>	Date <i>3/15/89</i>
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PERMITTEE/OPERATOR RELATIONSHIP

Pull-Tab Net Proceeds

Comparable Analysis

CURRENT LAW

(For purposes of discussion, the chart below is based on a gross handle of \$1,000.00, i.e., 1,000 pull-tabs sold at \$1.00 each.)

	Prize Payout 55%	Prize Payout 75%	Prize Payout 85%
Gross Receipts	\$1,000.00	\$1,000.00	\$1,000.00
Prize Payout	<u>[550.00]</u>	<u>[750.00]</u>	<u>[850.00]</u>
<u>IDEAL NET</u>	450.00	250.00	150.00
<u>1/ Operator Gross Profit</u> (limited to 85% of AGI)	<u>382.50</u>	<u>212.50</u>	<u>127.50</u>
<u>2/ NET PROCEEDS TO PERMITTEE</u> (minimum required return)	<u>\$ 57.50</u>	<u>\$ 37.50</u>	<u>\$ 22.50</u>

Footnotes:

- 1/ Current Law - provides the operator must report an adjusted gross of 15% and pay at least 15% of the adjusted gross to the permittee.
AS 05.15.128(1) and (2)
- 2/ Adjusted Gross Income is defined as the gross income less the prizes awarded and any state, federal and municipal income taxes paid or owed.
AS 05.15.210(1)

PERMITTEE/VENDOR RELATIONSHIP

Pull-Tab Net Proceeds

Comparable Analysis

PROPOSED AMENDMENT RE: VENDOR COMPENSATION

(For purposes of discussion, the chart below is based on a gross handle of \$1,000.00, i.e., 1,000 pull-tabs sold at \$1.00 each.)

	Prize Payout 55%	Prize Payout 75%	Prize Payout 85%
Gross Receipts	\$1,000.00	\$1,000.00	\$1,000.00
Prize Payout	<u>[550.00]</u>	<u>[750.00]</u>	<u>[850.00]</u>
<u>IDEAL NET</u>	450.00	250.00	150.00
1/ <u>Vendor Compensation</u> (maximum 30% of ideal net) Proposed: Sec. 9, AS 05.15.188(i)	<u>135.00</u>	<u>75.00</u>	<u>45.00</u>
2/ <u>GROSS PROCEEDS TO PERMITTEE</u> (as required)	<u>\$ 315.00</u>	<u>\$ 175.00</u>	<u>\$ 105.00</u>

Footnotes:

- 1/ CS-SB-501
Section 9, AS 05.15.188(i): If a permittee contracts with the vendor, the contract must provide that the permittee will receive no less than 70% of the ideal net.
- 2/ Permittee gross revenue is reduced by the cost of pull-tabs (approximately \$.02 each) and the 3% pull-tab tax (computed on ideal net) to arrive at Permittee Net Proceeds.

Example Utilizes 75% Prize Payout

Gross Proceeds to Permittee	175.00
Cost of Tabs (\$.02 x 1,000)	[20.00]
Tax (3% x \$250.00)	<u>[7.50]</u>
NET PROCEEDS	<u>\$ 147.50</u>

PERMITTEE (40%)/OPERATOR (60%) RELATIONSHIP

Pull-Tab Net Proceeds

Comparable Analysis

PROPOSED AMENDMENT RE: OPERATOR MUST PAY 40% OF IDEAL NET TO THE PERMITTEE

(For purposes of discussion, the chart below is based on a gross handle of \$1,000.00, i.e., 1,000 pull-tabs sold at \$1.00 each.)

	Prize Payout 55%	Prize Payout 75%	Prize Payout 85%
Gross Receipts	\$1,000.00	\$1,000.00	\$1,000.00
Prize Payout	<u>[550.00]</u>	<u>[750.00]</u>	<u>[850.00]</u>
<u>IDEAL NET</u>	450.00	250.00	150.00
<u>Operators Gross Profit</u> (limited to 60% of ideal net) Proposed: Sec. 3, AS 05.15.115(b) and Sec. 5, AS 05.15.128(a)	<u>270.00</u>	<u>150.00</u>	<u>90.00</u>
<u>NET PROCEEDS TO PERMITTEE</u> (as required)	<u>\$ 180.00</u>	<u>\$ 100.00</u>	<u>\$ 60.00</u>

PERMITTEE (40%) AND OPERATOR/VENDOR (60%) RELATIONSHIP

Pull-Tab Net Proceeds

Comparable Analysis

PROPOSED AMENDMENTS

(For purposes of discussion, the chart below is based on a gross handle of \$1,000.00, i.e., 1,000 pull-tabs sold at \$1.00 each.)

	Prize Payout 55%	Prize Payout 75%	Prize Payout 85%
Gross Receipts	\$1,000.00	\$1,000.00	\$1,000.00
Prize Payout	<u>[550.00]</u>	<u>[750.00]</u>	<u>[850.00]</u>
<u>IDEAL NET</u>	450.00	250.00	150.00
<u>Operators Gross Profit</u> (limited to 60% of ideal net) Proposed: Sec. 3, AS 05.15.115(b)	<u>270.00</u>	<u>150.00</u>	<u>90.00</u>
<u>Vendors Compensation</u>	?	?	?
<u>Operators Adjusted Profit</u>	?	?	?
<u>NET PROCEEDS TO PERMITTEE</u> (as required)	<u>\$ 180.00</u>	<u>\$ 100.00</u>	<u>\$ 60.00</u>

Senate Bill 501: "An Act relating to the retail sale of pull-tabs, tickets, and cards for charitable gaming activities."

The department was given responsibility for administration of the Alaska Gaming Reform Act in July of 1989. Since that time, the department has been actively engaged bringing stability and equality of enforcement to the charitable gaming industry.

One of the areas of concern to the department has been the so-called "third party vendor" issue. Presently, across the state, both permittees and operators have turned to vendors (e.g., retail outlets, bars, restaurants) to sell pull-tabs on their behalf. The department has found no specific statutory authorization for these vendor sales. As a result, the department gave notice late last year of its belief that legislation was needed if vendor sales were to be allowed.

Of major concern to the department has been the unregulated nature of vendor sales. The concerns discussed below have prompted our belief that if vendor participation in charitable gaming is to be authorized by the Legislature, then it must be strictly regulated.

1. Competition for prime vendor locations has increased the amount of compensation charged permittees by vendors to the detriment of the charities (some vendors are now asking and getting in excess of 50% of pull-tab proceeds). Limits must be placed on the amount of allowable vendor compensation in order to both eliminate "bidding" for locations by permit holders and ensure that an acceptable share of gaming proceeds is returned to those nonprofit organizations issued gaming permits. Most other states do limit the amount of compensation a vendor can charge.
2. There is no penalty or regulation presently in place that penalizes the unscrupulous vendor. We have become increasingly aware of cases where vendors have failed to pay permittees any share of the proceeds from the sale of pull-tabs. Under the present gaming law, there is no protection for the permittee in such cases. The permittee must sue the vendor to collect the gaming proceeds due the permittee.
3. Vendors have shouldered responsibility for ordering and purchasing pull-tabs from pull-tab distributors, bypassing the permittee. As a result, permittees have lost accountability for the pull-tab sales conducted under the auspices of their permits. We have investigated cases in which a permittee was unaware of pull-tab purchases made by its vendor. In addition, we recently had a case in which a vendor continued to order pull-tabs from a distributor after the permittee had removed its permit from the vendor's premises because the distributor was unaware of the permittee's action to end its relationship with that vendor.

Not surprisingly then, the department approaches a review of SB 501 with the consequences of unregulated vendor activity at the forefront of its thoughts. From that perspective, SB 501 clearly lacks the kind of specific regulatory language needed to provide justifiable controls over this very active area of charitable gaming and would curtail our ability to properly administer the program.

In addition, we question the bill because its language is so broad that the bill, however unintentionally, considerably expands the list of persons who could become involved in charitable gaming in this state.

If the title of a bill is any indication of its scope, then SB 501's title suggests it only addresses the "retail" sale of pull-tabs, tickets, and cards. However, no limitation to retail businesses is actually found in the proposed new section. Indeed, it simply says "a person," other than a permittee or an operator, may sell pull-tabs or other gaming tickets and cards. Under state law the word "person" is quite broad and encompasses any and all corporations, businesses, associations, partnerships, natural persons, etc., regardless of residency.

Thus, under the proposed language of SB 501, there would be no reason, for instance, for anyone to become licensed as an operator: they could simply function as a sales vendor. Also, organizations denied a charitable gaming permit because, for example, they did not meet the criteria for a permit could simply opt instead to sell gaming pull-tabs, tickets, or cards for those nonprofit organizations that did have a permit. Under this scenario, such organizations could charge the permittee a percentage of the proceeds for their sales efforts equal to or more than the permittee might receive (which is already happening), thus, thoroughly defeating the intent of the Gaming Reform Act.

This bill, as presently written, would effectively do away with any justification for calling the activities we presently authorize in the state as "charitable" gaming activities. While we do not believe this was the intent of the drafters of this legislation, the department cannot support the bill in its present form for these reasons.

The department understands, however, that there is broad permittee and operator support for recognition of a vendor class. Certainly, the testimony the department heard in mid-December regarding its position on vendor sales made it very clear that eliminating or severely restricting the vendor class would drastically reduce the gaming proceeds presently collected by organizations granted charitable gaming permits.

Given that a vendor bill has been introduced, and assuming that the broad support evidenced for this issue means that some legislative recognition of a vendor class is forthcoming, the department has attached to this position paper draft language that reflects the department's perspective on the issue of vendor sales.

Most importantly, please note that the department's proposed language limits vendor sales to the sale of pull-tabs.

To allow vendors to get into the business of selling more than pull-tabs will effectively guarantee the additional proliferation of gaming activities in bars, restaurants, retail stores, and "gaming parlors" in malls or other storefronts throughout Alaska.

At this point in time, permittees and operators have only expressed a desire to see pull-tab sales by vendors authorized. We see no need to greatly expand the role of vendor sales in this state by including vendor sales for any and all games beyond those vendor sales already recognized and authorized under AS 05.15 (i.e., for ice classics).


The department's proposals include:

1. vendor registration by the permittee or operator;
2. issuance of an endorsement to a permittee's or operator's license that authorizes a vendor to sell pull-tabs on behalf of the permittee or operator;
3. a cap of 30% of ideal net on the amount that a vendor can charge a permittee or operator to compensate the vendor for selling pull-tabs on their behalf;
4. the requirement that the vendor pay the agreed upon amount of profit to the permittee or operator at the time of delivery of a pull-tab series to the vendor for sale;
5. payment into the charitable gaming surety fund by the registered vendor;
6. the requirement that a vendor and permittee or operator enter into a written contract;
7. the provision that only a permittee or operator may supply pull-tabs to a vendor;
8. a provision prohibiting an employee of a vendor from purchasing a pull-tab from any series sold by the vendor;
9. a prohibition that the owner or manager of a vendor who is also a member of permittee organization or a municipal officer may not enter into a contract to sell pull-tabs on behalf of that organization or municipality for compensation;
10. provisions to clarify that a distributor may not deal directly with a vendor; and

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Page Four

We believe that a bill that contains the provisions outlined above will meet the department's concerns for the proper regulation of a vendor class while also maintaining primary responsibility for the state's charitable gaming activity with the licensed permittee and operator.

We urge your consideration of the attached language. A bill which included language substantially similar to that found in the attached draft and which covered the areas described above would at least address the department's concerns sufficiently for the department to go on record as unopposed to legislative recognition of vendor sales.



Larry Mercurieff, Commissioner
Date: 3/1/90

LM/RPB/dgl6388D
22790b

Original sponsor(s): Finance Committee

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 501 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act licensing and regulating pull-tab vendors;
7 prohibiting certain conduct by charitable gaming
8 licensees and permittees and their agents; relating
9 to charitable gaming awards, contracts between opera-
10 tors and permittees, and to the enforcement of chari-
11 table gaming laws; and providing for an effective
12 date."

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

14 * Section 1. AS 05.15.060 is amended to read:

15 Sec. 05.15.060. REGULATIONS. The department shall adopt regula-
16 tions under the Administrative Procedure Act (AS 44.62) necessary to
17 carry out this chapter covering, but not limited to,

18 (1) the issuance, renewal, and revocation of permits, [AND]
19 licenses, and vendor registrations;

20 (2) a method of ascertaining net proceeds, the determina-
21 tion of items of expense that may be incurred or paid, and the limita-
22 tion of the amount of the items of expense to prevent the proceeds
23 from the activity permitted from being diverted to noncharitable,
24 noneducational, nonreligious, or profit-making organizations, individ-
25 uals, or groups;

26 (3) the immediate revocation of permits, [AND] licenses,
27 and vendor registrations authorized under this chapter if this chapter
28 or regulations adopted under it are violated;

29 (4) the requiring of detailed, sworn, financial reports of

1 operations from permittees and licensees including detailed statements
2 of receipts and payments;

3 (5) the investigation of permittees, licensees, registered
4 vendors, and their employees, including the fingerprinting of those
5 permittees, licensees, registered vendors, and employees whom the
6 commissioner considers it advisable to fingerprint;

7 (6) exclusion from participation as a permittee, licensee,
8 registered vendor, or employee of a permittee [OR] licensee, or regis-
9 tered vendor, of a person convicted of, in prison for, or on parole
10 for a felony within the preceding five years, or convicted of a crime
11 involving theft or dishonesty or of a violation of a municipal, state,
12 or federal gambling law;

13 (7) the method and manner of conducting authorized activ-
14 ities and awarding of prizes or awards, and the equipment that may be
15 used;

16 (8) the number of activities that may be held, operated, or
17 conducted under a permit during a specified period; however, the
18 department may not allow more than 14 bingo sessions a month and 35
19 bingo games a session to be conducted under a permit;

20 (9) a method of accounting for receipts and disbursements
21 by operators, including the keeping of records and requirements for
22 the deposit of all receipts in a bank;

23 (10) the disposition of funds in possession of a permittee,
24 [OR] a person, municipality, or qualified organization that possesses
25 an operator's license, or a registered vendor at the time a permit,
26 [OR] a license, or a vendor registration is surrendered, revoked, or
27 invalidated;

28 (11) restrictions on the participation by employees of the
29 Department of Fish and Game in salmon classics;

1 (12) the minimum percentage of the ideal net that an opera-
2 tor conducting a pull-tab game on behalf of a permittee must by
3 contract agree to return to the permittee;

4 (13) other matters the commissioner considers necessary to
5 carry out this chapter or protect the best interest of the public.

6 * Sec. 2. AS 05.15.070 is amended to read:

7 Sec. 05.15.070. EXAMINATION OF BOOKS AND RECORDS. The commis-
8 sioner may examine or have examined the books and records of a per-
9 mittee, an operator, a registered vendor, or a person licensed to
10 manufacture or to distribute pull-tab games in the state. The commis-
11 sioner may issue subpoenas for the attendance of witnesses and the
12 production of books, records, and other documents.

13 * Sec. 3. AS 05.15.115(b) is amended to read:

14 (b) The contract between an authorizing permittee and an opera-
15 tor must include the amount and form of compensation to be paid to the
16 operator, the term of the contract, the activities to be conducted by
17 the operator on behalf of the permittee, the location where the activ-
18 ities are to be conducted, the name and address of the member in
19 charge, and other provisions the department may require. If the
20 contract is for the conduct of a pull-tab game, it must include a
21 provision that the operator will return to the permittee at least the
22 percentage of the ideal net required under regulations issued by the
23 department.

24 * Sec. 4. AS 05.15.124 is amended to read:

25 Sec. 05.15.124. MUNICIPAL REGULATION OF OPERATORS. A municipi-
26 pality may by ordinance prohibit an operator or a vendor from conduct-
27 ing activities under this chapter within the municipality.

28 * Sec. 5. AS 05.15.128(a) is amended to read:

29 (a) The department shall revoke the license of an operator who

1 does not

2 (1) report an adjusted gross income of at least 15 percent
3 of gross income for two consecutive quarters based on the total opera-
4 tion of the operator; [OR]

5 (2) pay to each authorizing permittee for two consecutive
6 quarters at least 15 percent of the adjusted gross income, as de-
7 termined under (1) of this subsection, received from activities other
8 than pull-tab games conducted on behalf of the authorizing permittee;
9 or

10 (3) pay to each authorizing permittee for two consecutive
11 quarters a percentage of the ideal net received from pull-tab games
12 conducted on behalf of the authorizing permittee that is equal to or
13 greater than the percentage required under regulations adopted by the
14 department.

15 * Sec. 6. AS 05.15.170 is repealed and reenacted to read:

16 Sec. 05.15.170. SUSPENSION OR REVOCATION OF PERMIT, LICENSE, OR
17 VENDOR REGISTRATION. (a) The commission may suspend or revoke a
18 permit, license, or vendor registration, after giving notice to and an
19 opportunity to be heard by the permittee, licensee, or vendor, if the
20 permittee, licensee, or vendor

21 (1) violates or fails to comply with a requirement of this
22 chapter or of a regulation adopted under this chapter;

23 (2) breaches a contractual agreement with a permittee,
24 licensee, or registered vendor;

25 (3) is convicted of a felony, of a crime involving theft or
26 dishonesty, or of a violation of a municipal, state, or federal gam-
27 bling law; for the purposes of this paragraph, a permittee, licensee,
28 or registered vendor that is not a natural person is considered con-
29 victed if an owner or manager of the permittee, licensee, or vendor is

1 convicted; or

2 (4) knowingly submits false information to the department
3 or, in the case of a registered vendor, to a permittee or operator
4 when the vendor knows that the false information will be submitted to
5 the department as part of an application for registration.

6 (b) If the department revokes a permit, license, or vendor
7 registration under this section, it may prohibit the permittee, li-
8 censee, or vendor from reapplying for a permit, license, or vendor
9 registration for a period of up to five years.

10 * Sec. 7. AS 05.15.180(g) is amended to read:

11 (g) A permittee [MUNICIPALITY OR A QUALIFIED ORGANIZATION] may
12 award a maximum of \$1,000,000 in prizes each year in activities au-
13 thorized under this chapter; [HOWEVER, IF A MUNICIPALITY OR A QUALI-
14 FIED ORGANIZATION CONTRACTS WITH AN OPERATOR TO CONDUCT ON ITS BEHALF
15 ACTIVITIES AUTHORIZED UNDER THIS CHAPTER, THE MUNICIPALITY OR QUALI-
16 FIED ORGANIZATION MAY AWARD A MAXIMUM OF \$500,000 IN PRIZES EACH
17 YEAR]. In this subsection, "activities authorized under this chapter"
18 means all activities subject to this chapter other than bingo.

19 * Sec. 8. AS 05.15.183 is amended by adding a new subsection to read:

20 (e) A distributor may not

21 (1) take an order for the purchase of a pull-tab series
22 from a vendor;

23 (2) sell a pull-tab series to a vendor; or

24 (3) deliver a pull-tab series to a vendor location.

25 * Sec. 9. AS 05.15.187 is amended by adding a new subsection to read:

26 (h) An owner, manager, or employee of a person holding a permit
27 or license under this chapter, or registered under this chapter as a
28 vendor, may not purchase a pull-tab from any pull-tab series manu-
29 factured, distributed, or sold by the permittee, licensee, or

1 registered vendor.

2 * Sec. 10. AS 05.15 is amended by adding a new section to article 2 to
3 read:

4 Sec. 05.15.188. PULL-TAB SALES BY VENDORS ON BEHALF OF PERMIT-
5 TEES AND OPERATORS; VENDOR REGISTRATION. (a) A permittee or operator
6 may contract with a vendor to sell pull-tabs on behalf of the permit-
7 tee or operator, if the permittee or operator first registers the
8 vendor with the department by applying for registration on a form pre-
9 scribed by the department and by submitting the registration fee of
10 \$50 for each location at which the vendor will sell pull-tabs. If a
11 vendor location is within the boundaries of a municipality, the per-
12 mittee or operator shall, concurrently with applying for registration
13 with the department, submit a copy of the application form to the
14 governing body of the municipality.

15 (b) The department shall approve or disapprove an initial vendor
16 registration request within 10 working days of receipt of the regis-
17 tration form from a permittee or operator.

18 (c) Upon approval of the vendor registration, the department
19 shall issue an endorsement to the permittee's permit or the operator's
20 license that authorizes the conduct of pull-tab sales at that vendor
21 location.

22 (d) The endorsement issued under (c) of this section is an
23 extension of the permittee's or operator's privilege under AS 05.15.-
24 100 to conduct pull-tab sales in this state. A vendor may not sell a
25 pull-tab series until the permit or license containing the endorsement
26 for the new vendor location has been posted by the permittee or opera-
27 tor in the registered vendor establishment. The endorsed permit or
28 license must be clearly visible to the gaming public.

29 (e) A separate endorsement shall be issued for each vendor

1 location. The permittee or operator shall inform the department when
2 a vendor with whom the permittee or operator is contracting changes
3 the physical location at which pull-tabs are sold, and shall return to
4 the department the endorsed permit or license of a vendor that is no
5 longer selling pull-tabs on behalf of the permittee or operator.
6 Failure to inform the department of a change in vendor location, or to
7 return the endorsed permit or license to the department after a vendor
8 change, may constitute grounds for the suspension or revocation of a
9 permittee's permit or an operator's license.

10 (f) At the time that a permittee or operator annually renews its
11 permit or license, it shall also renew the registration of all loca-
12 tions where a vendor is selling pull-tabs on the permittee's or opera-
13 tor's behalf and shall pay a registration fee of \$50 for each vendor
14 location.

15 (g) A permittee or operator that uses a vendor to sell pull-tabs
16 on its behalf shall enter into a written contract with that vendor.
17 The department may inspect this contract. If the contract contains
18 provisions that violate this chapter or the regulations adopted under
19 it, the department may declare the contract void, and may suspend or
20 revoke the registration of the vendor and the license of the operator
21 or the permit of the permittee.

22 (h) A person, other than a permittee's member-in-charge or an
23 operator, may not directly supply a pull-tab series to a registered
24 vendor for sale by that vendor on behalf of the permittee or operator.
25 A vendor may not acquire a series from a licensed distributor.

26 (i) If a permittee contracts with a vendor under (a) of this
27 section, the contract must provide that the permittee shall receive no
28 less than 70 percent of the ideal net.

29 (j) An amount equal to the ideal net less the compensation paid

1 to the vendor shall be paid by the vendor within 30 days of the date
2 that the member in charge or operator delivers a pull-tab series to
3 the vendor for sale. The amount required to be paid by the vendor
4 under this subsection must be paid by check and shall be deposited by
5 the permittee or operator directly into its gaming checking account.

6 (k) A vendor may not enter into a contract with a permittee to
7 sell pull-tabs for compensation if

8 (1) the permittee is a qualified organization, and the
9 owner or manager of the vendor is a member of the governing body of
10 the organization, or is the organization's designated member in charge
11 under AS 05.15.112; or

12 (2) the permittee is a municipality, and the owner or
13 manager of the vendor is an elected official of the municipality or is
14 employed by the municipality in a managerial position.

15 * Sec. 11. AS 05.15.188(g) is repealed and reenacted to read:

16 (g) At the time that a permittee or operator annually renews its
17 permit or license, it shall also renew the registration of all loca-
18 tions where a vendor is selling pull-tabs on the permittee's or opera-
19 tor's behalf and shall pay a registration fee of \$50 for each vendor
20 location. The permittee or operator shall also forward, with each
21 vendor registration renewal, that vendor's annual payment of the
22 assessment to the charitable gaming surety fund.

23 * Sec. 12. AS 05.15.188 is amended by adding a new subsection to read:

24 (m) The vendor registration, required by (a) of this section
25 shall be accompanied by payment of the vendor's assessment to the
26 charitable gaming surety fund under AS 05.15.230. The assessment
27 amount shall be set by the department by regulation and may not exceed
28 \$100. The payment shall be drawn on the checking account of the
29 vendor and may not be paid by the permittee or operator on the

1 vendor's behalf.

2 * Sec. 13. AS 05.15 is amended by adding a new section to read:

3 Sec. 05.15.195. ORDER PROHIBITING ACTION IN VIOLATION OF CHAP-
4 TER. (a) If the commissioner determines that a person has engaged in
5 an act or practice in violation of this chapter or a regulation adopt-
6 ed under this chapter, the commissioner may, after giving reasonable
7 notice to the person and an opportunity for the person to be heard,
8 issue an order prohibiting the violation by the person. The order
9 remains in effect until the person has submitted evidence acceptable
10 to the commissioner showing that the violation has been corrected.

11 (b) If the public interest requires, the commissioner may issue
12 an emergency order prohibiting an act or practice in violation of this
13 chapter or a regulation adopted under this chapter without notice to
14 or an opportunity to be heard by the person affected by the order.
15 The commissioner shall immediately serve the person with a copy of the
16 emergency order. An emergency order expires 60 days after the date it
17 is issued, if the person affected by the order requests a hearing
18 within 15 days of receipt of the order. If the person does not re-
19 quest a hearing within 15 days of receipt of the emergency order, the
20 order becomes permanent. Following a hearing, the commissioner may
21 rescind, modify, or make permanent the emergency order.

22 * Sec. 14. AS 05.15.200(b) is amended to read:

23 (b) A person who, with the intent to mislead a public servant in
24 the performance of the public servant's duty, submits a false state-
25 ment in an application for a permit, license, or vendor registration
26 under this chapter [,] is guilty of unsworn falsification.

27 * Sec. 15. AS 05.15.210 is amended by adding new paragraphs to read:

28 (35) "ideal net" means an amount equal to the total amount
29 of receipts that would be received if every individual pull-tab ticket

1 in a series were sold at face value, less the prizes to be awarded for
2 that series;

3 (36) "permittee" means a municipality or a qualified orga-
4 nization that holds a valid permit under AS 05.15.100;

5 (37) "vendor" means a business whose primary activity is not
6 regulated by this chapter but that is engaged in the sale of pull-tabs
7 on behalf of a permittee or operator, holds a business license under
8 AS 43.70, and is

9 (A) a retail establishment;

10 (B) an eating establishment; or

11 (C) an establishment licensed under AS 04.11.

12 * Sec. 16. Sections 11 and 12 of this Act take effect on the effective
13 date of an Act establishing a charitable gaming surety fund that is enacted
14 by the Sixteenth Alaska State Legislature.

15 * Sec. 17. Except for secs. 11 and 12, this Act takes effect immediate-
16 ly under AS 01.10.070(c).

S B

502

This statute appears to provide a link between the financial responsibility requirements and civil penalties. It could be interpreted to require insurance coverage for the financial responsibility and potential civil penalties to be assessed under AS 46.03.010, et. seq. Therefore, if the penalties which provide for up to five times the civil penalties assessed for non-crude spills are punitive in nature, insurance coverage is required, it is virtually impossible to secure that coverage in the market place. Please clarify for the record, if possible, the insurance requirements for civil penalties.

3. I am advised that the consumer indexing for civil penalties contained in section 13 of CSHB 565 (Res) will make it very difficult for the insurance industry to decide what policy limits are fair and adequate.
4. Section 3 of CSHB 565 (Res) shifts the burden of proof to the spiller to "clear and convincing evidence" to show that the discharged oil did not affect the most sensitive and productive receiving environment for the purposes of assessing the per gallon penalties under section 2 of the bill. This is a dramatic shifting of the burden of proof and would cause underwriters problems.
5. Section 7 provides for a multiplier up to five if a court determines the discharge was caused by certain acts or failure to act. Again, the question is whether these are truly punitive in nature or related to actual damage. If they are punitive, the insurance would not be available because from an insurance standpoint an intentional act is not an accident. Standard insurance policies cover only pollution coverage for "sudden and accidental spills."
6. Previous testimony has indicated that the purpose in raising the per gallon penalties and increasing the multiplier is aimed at prevention. Please note that higher financial responsibility requirements contained in CSHB 567 (Res) also serve this purpose.

7. Please note that current law, AS 46.03.750(b) provides:

"Actions under this section may not be used for punitive purposes, and sums assessed by the court must be compensatory and remedial in nature."

This provision would be repealed by CSHB 565 (Res) and therefore suggests that the civil penalties and the multiplier are "punitive" and thus not insurable risks. On the other hand, if they are remedial or compensatory in nature and thereby an "insurable" risk, is insurance at those levels available on the market place?

Fetro Marine, Crowley Maritime and Delta Western are available to work with the Committee to draft a reasonable bill. As longstanding distributors in the Alaska market place, they wish to work with the Alaska Legislature to maintain a safe and clean environment, yet be able to maintain the ability to deliver products to the Alaskan consumer at reasonable prices.

COMMENTARY ON PROPOSED REVISIONS TO SS FOR SB 502

1. Page 3, lines 7 and 18. Language is added to AS 460.03.758 limiting the maximum penalty to \$500,000,000. This conforms with AS 46.03.759.
2. Page 4, lines 1 to 7. The existing language requiring the court to multiply a penalty by five times if the court finds that "the defendant did not respond in accordance with an approved oil discharge contingency plan" fails to give the court the necessary latitude to determine whether, under the actual circumstances surrounding a discharge, the defendant responded effectively, rather than merely determining whether the defendant followed the letter of the contingency plan. The new language gives the court added guidance before imposing the multiplier to the penalty amount.
3. Page 3, line 23. The language requiring "clear and convincing" evidence of the amount of oil entering each receiving environment is changed to "a preponderance" of evidence. The "preponderance of evidence" standard is used in AS 46.03.759 and AS 46.03.758 should not have a different standard of proof.
4. Page 6, lines 20 to 26. The strikethrough of all of the new language proposed for AS 46.03.758(i) and striking through the deletion of the existing language shown in caps, is to show that no change should be made in existing AS 46.03.758(i). There should not be two penalty proceedings for the same discharge. The department should elect whether it will seek penalties under AS 46.03.758(i) or under AS 46.03.760, but not both.
5. Page 7, line 5. This amendment restores the language in existing AS 46.03.759, which SB 502 proposes to delete, setting a threshold spill amount of 18,000 gallons of crude oil before the full array of penalties, penalty multipliers and court proceedings is activated. Persons spilling less than 18,000 gallons are of course still liable for penalties under AS 46.03.760, but the provisions of 46.03.759 are more properly applied to spills over 18,000 gallons (429 barrels).
6. Page 7, line 17. The 36 hour time period in AS 46.03.759 is changed to 72 hours to conform to the 72 hour period in Section 5 of the bill.
7. Page 8, lines 5 to 11. See comments under item 2, above.
8. Page 8, lines 12 to 26. The strikethrough of all of the new language proposed for AS 46.03.759(d) and striking through the deletion of the existing language shown in caps, is to show that no change should be made in existing AS 46.03.759(d).

There should not be two penalty proceedings for the same discharge. The department should elect whether it will seek penalties under AS 46.03.759 or under AS 46.03.760, but not both.

9. Page 9, lines 7 to 20. The new language in AS 46.03.759(f) mirrors the language in existing AS 46.03.758(q). The purpose of the language is to give a person who discharges oil and who may be facing a tremendous fine, an opportunity to have the court consider information relevant to mitigate imposition of the full penalty.
10. Page 10, lines 14 to 16. The new language setting a lower dollar figure for each day of violation after the first day conforms to the penalty provisions of the Clean Water Act, 33 U.S.C. § 1319.
11. Page 10, lines 22 to 26 and Page 11, lines 1 and 2, lines 13 and 14, and lines 18 and 19. The new language detailing the factors that are relevant to the court's decision regarding the amount of fine to be assessed under AS 46.03.760 conforms with the language in the federal Clean Water Act, 33 U.S.C. § 1319(d).