



LAWS OF ALASKA

1980

Source

Chapter No.

HCSSB 104(Judiciary) am H

12

AN ACT

Relating to the judiciary; establishing a court of appeals; amending the jurisdiction of the supreme court, the superior court, and the district court; clarifying and amending the sentence appeal and other appellate jurisdiction of the superior court; changing the qualifications of justices and judges; providing that justices and judges may serve as delegates to constitutional conventions; amending the time period in which the judicial council is to provide information to the public concerning judicial officers standing for retention election; changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1, LINE 20

UNDERLINED MATERIAL INDICATES TEXT THAT IS BEING ADDED TO THE LAW AND BRACKETED MATERIAL IN CAPITAL LETTERS INDICATES DELETIONS FROM THE LAW; COMPLETELY NEW TEXT OR MATERIAL REPEALED AND RE-ENACTED IS IDENTIFIED IN THE INTRODUCTORY LINE OF EACH BILL SECTION.

Approved by the Governor: March 21, 1980
Actual Effective Date: March 22, 1980

AN ACT

Relating to the judiciary; establishing a court of appeals; amending the jurisdiction of the supreme court, the superior court, and the district court; clarifying and amending the sentence appeal and other appellate jurisdiction of the superior court; changing the qualifications of justices and judges; providing that justices and judges may serve as delegates to constitutional conventions; amending the time period in which the judicial council is to provide information to the public concerning judicial officers standing for retention election; changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules; and providing for an effective date.

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

CHAPTER 07. THE COURT OF APPEALS.

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

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

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

Chapter 12

(3) children's court matters under AS 47.10.010(a)(1) including waiver of children's court jurisdiction over a minor under AS 47.10;

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

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

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

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

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

Chapter 12

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

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

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

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

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

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

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

Chapter 12

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

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

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

Chapter 12

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

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

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

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

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

Chapter 12

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

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

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

(c) A decision of the superior court on an appeal from an administrative agency decision may be appealed to the supreme court as a matter of right.

(d) The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

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

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

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

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

Chapter 12

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

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

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

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

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

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

- (1) sitting as a judge in a state or territorial court;
- (2) being actually engaged in advising and representing clients in matters of law;
- (3) rendering legal services to an agency, branch, or department of a civil government within the United States or a state or territory of the United States, in an elective, appointive or employed capacity;
- (4) serving as a professor, associate professor, or assistant

Chapter 12

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

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

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

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

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

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

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

Chapter 12

but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. 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. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive, as further provided by this section. The state has no right to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE], except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 [180] days or more was excessive and the superior court in the exercise of this jurisdiction has the power to reduce [MODIFY] the sentence [APPEALED FROM UPWARD OR DOWNWARD]. 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. 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.

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

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

Chapter 12

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

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

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

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

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

Chapter 12

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

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

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

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

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

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

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

Chapter 12

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

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

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

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the superior court. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 90 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY]. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground it is too lenient. 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

1 opinion.

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

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

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

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

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

4 Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS,
5 THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme
6 court, the commissioner shall serve and execute all process issued by
7 the court of appeals, the superior court and the district courts, attend
8 to and wait upon grand and petit juries, maintain order, attend the
9 sessions of the courts, and exercise the power and perform the duties
0 concerning all matters within the jurisdiction of the courts as may be
1 assigned to him. The commissioner is the executive officer of the court
2 of appeals, the superior court and district courts.

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

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

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

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

Chapter 12

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

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

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

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

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

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

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

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

Chapter 12

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

Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS.

At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is \$100.

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

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

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

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

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

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

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

Chapter 12

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

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

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

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

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

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

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

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

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

Chapter 12

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

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

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

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

4 (d) A sentence of imprisonment lawfully imposed by the district
5 court for a term or for aggregate terms exceeding 90 days may be ap-
6 pealed to the superior court by the defendant on the ground that the
7 sentence is excessive. By appealing a sentence under this section, the
8 defendant waives the right to plead that by a revision of the sentence
9 resulting from the appeal he has been twice placed in jeopardy for the
0 same offense. A sentence of imprisonment lawfully imposed by the dis-
1 trict court may be appealed to the superior court by the state on the
2 ground that the sentence is too lenient; however, when a sentence is
3 appealed by the state, the court may not increase the sentence but may
4 express its approval or disapproval of the sentence and its reasons in a
5 written opinion.

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

Chapter 12

1978

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

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

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

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

* Sec. 37. 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.

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

* Sec. 39. This Act takes effect immediately in accordance with AS 01.070(c).