

**CS FOR HOUSE BILL NO. 22(FSH)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

**BY THE HOUSE SPECIAL COMMITTEE ON FISHERIES**

**Offered: 5/16/03**

**Referred: Resources, Finance**

**Sponsor(s): REPRESENTATIVE WEYHRAUCH**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to brokers of commercial fishing permits, quota shares, and**  
2 **commercial fishing vessels; to the transfer of commercial fishing permits; amending**  
3 **Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate**  
4 **Procedure; and providing for an effective date."**

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

6 **\* Section 1.** AS 08.01.010 is amended by adding a new paragraph to read:

7 (38) regulation of brokers of commercial fishing permits, quota shares,  
8 and commercial fishing vessels under AS 16.10.570 - 16.10.589.

9 **\* Sec. 2.** AS 08.01.050(a) is amended by adding a new paragraph to read:

10 (22) licensing of brokers of commercial fishing permits, quota shares,  
11 and commercial fishing vessels under AS 16.10.570 - 16.10.589.

12 **\* Sec. 3.** AS 08.01.087(a) is amended to read:

13 (a) The department may, upon its own motion, conduct investigations to

14 (1) determine whether a person has violated a provision of this chapter

1 or a regulation adopted under **this chapter** [IT], or a provision of **AS 16.10.570 -**  
 2 **16.10.589 or a regulation adopted under AS 16.10.570 - 16.10.589, or a provision**  
 3 **of AS 43.70, or a provision of this title or regulation adopted under this title dealing**  
 4 with an occupation or board listed in AS 08.01.010; or

5 (2) secure information useful in the administration of this chapter.

6 \* **Sec. 4.** AS 08.01.087(b) is amended to read:

7 (b) If it appears to the commissioner that a person has engaged in or is about  
 8 to engage in an act or practice in violation of a provision of this chapter or a regulation  
 9 adopted under **this chapter** [IT], or a provision of **AS 16.10.570 - 16.10.589 or a**  
 10 **regulation adopted under AS 16.10.570 - 16.10.589, or a provision of** AS 43.70, or  
 11 a provision of this title or regulation adopted under this title dealing with an  
 12 occupation or board listed in AS 08.01.010, the commissioner may, if the  
 13 commissioner considers it in the public interest, and after notification of a proposed  
 14 order or action by telephone, telegraph, or facsimile to all board members, if a board  
 15 regulates the act or practice involved, unless a majority of the members of the board  
 16 object within 10 days,

17 (1) issue an order directing the person to stop the act or practice;  
 18 however, reasonable notice of and an opportunity for a hearing must first be given to  
 19 the person, except that the commissioner may issue a temporary order before a hearing  
 20 is held; a temporary order remains in effect until a final order affirming, modifying, or  
 21 reversing the temporary order is issued or until 15 days after the person receives the  
 22 notice and has not requested a hearing by that time; a temporary order becomes final if  
 23 the person to whom the notice is addressed does not request a hearing within 15 days  
 24 after receiving the notice; the commissioner or the commissioner's designee shall be  
 25 the hearing officer at the hearing and shall issue a final order within 10 days after the  
 26 hearing;

27 (2) bring an action in the superior court to enjoin the acts or practices  
 28 and to enforce compliance with this chapter, a regulation adopted under **this chapter**  
 29 [IT], an order issued under **this chapter** [IT], or with a provision of this title or  
 30 regulation adopted under this title dealing with business licenses or an occupation or  
 31 board listed in AS 08.01.010;

1 (3) examine or have examined the books and records of a person  
 2 whose business activities require a business license or licensure by a board listed in  
 3 AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may  
 4 require the person to pay the reasonable costs of the examination; and

5 (4) issue subpoenas for the attendance of witnesses, and the production  
 6 of books, records, and other documents.

7 \* **Sec. 5.** AS 08.01.102 is amended to read:

8 **Sec. 08.01.102. Citation for unlicensed practice or activity.** The  
 9 department may issue a citation for a violation of a license requirement under this  
 10 chapter, AS 16.10.570 - 16.10.589, or AS 43.70 if there is probable cause to believe a  
 11 person has practiced a profession or engaged in business for which a license is  
 12 required without holding the license. Each day a violation continues after a citation  
 13 for the violation has been issued constitutes a separate violation.

14 \* **Sec. 6.** AS 16.10 is amended by adding new sections to read:

15 **Article 11. Commercial Fishing Permit, Quota Share, and Vessel Brokers.**

16 **Sec. 16.10.570. Broker license.** (a) A person may not, for compensation,  
 17 broker the transfer of a commercial fishing permit, a quota share, or a commercial  
 18 fishing vessel on behalf of a buyer, seller, lessor, lessee, transferor, transferee, holder,  
 19 or owner of the permit, quota share, or vessel unless the person holds a license issued  
 20 by the Department of Community and Economic Development to act as a broker of  
 21 commercial fishing permits, quota shares, and commercial fishing vessels.

22 (b) If a broker receives money on behalf of a party to a transaction for which a  
 23 broker license is required under this section, the broker shall deposit the money in a  
 24 escrow account pending completion or termination of the transaction and distribution  
 25 of the money in accordance with the agreement with the parties to the transaction. If  
 26 the broker receives a document, property, or item of value other than money on behalf  
 27 of a party to a transaction, the broker shall hold and keep safe the document, property,  
 28 or item pending completion or termination of the transaction and distribution of the  
 29 money in accordance with the agreement with the parties to the transaction.

30 (c) An applicant for a broker license under (a) of this section shall file an  
 31 application and an application fee established by the department by regulation with the

1 department.

2 (d) The department shall prescribe and furnish the form of application for a  
3 broker license. The application must contain

4 (1) the name of the applicant and the name of the business under which  
5 the applicant operates;

6 (2) the address of the main office of the applicant; and

7 (3) other information the department requires.

8 (e) The department shall approve an application for a broker license under this  
9 section if the applicant satisfies the requirements of (c) and (d) of this section.

10 (f) A broker shall renew the license required under (a) of this section every  
11 two calendar years by filing a request for renewal and a renewal fee with the  
12 department.

13 **Sec. 16.10.580. Claims against broker.** (a) In an action for damages arising  
14 from the performance of the duties of a broker licensed under AS 16.10.570 -  
15 16.10.589, a violation of AS 16.10.570 - 16.10.589, or of regulations adopted under  
16 AS 16.10.570 - 16.10.589, is negligence per se if the violation is a proximate cause of  
17 the loss to the claimant.

18 (b) A person aggrieved by the actions of a broker licensed under AS 16.10.570  
19 - 16.10.589 is entitled to full actual attorney fees and costs incurred in bringing an  
20 action for damages, if the person is the prevailing party in the action.

21 **Sec. 16.10.585. Penalty.** (a) A person who knowingly violates AS 16.10.570  
22 - 16.10.589 is guilty of a class A misdemeanor.

23 (b) In this section, "knowingly" has the meaning given in AS 11.81.900.

24 **Sec. 16.10.589. Definitions.** In AS 16.10.570 - 16.10.589,

25 (1) "broker," when used as a verb, means to act as an intermediary or  
26 negotiator between a buyer, seller, lessor, lessee, transferor, transferee, holder, or  
27 owner of a commercial fishing permit, quota share, or commercial fishing vessel;

28 (2) "commercial fishing permit" means an entry permit, vessel permit,  
29 license, or other authorization issued by the state or federal government that is a legal  
30 prerequisite for a person or commercial fishing vessel to engage in commercial fishing  
31 or in processing of a commercial fishing resource;

1 (3) "commercial fishing vessel" means a vessel used or to be used for  
 2 commercial fishing activities for which a vessel license is required under  
 3 AS 16.05.490;

4 (4) "department" means the Department of Community and Economic  
 5 Development;

6 (5) "escrow account" means a federally insured account held at a  
 7 financial institution in the name of the depositor and an escrow agent that is returnable  
 8 to the depositor or paid to a third person on the fulfillment of escrow conditions;

9 (6) "quota share" has the meaning given in AS 16.10.360;

10 (7) "transfer" means purchase, sale, lease, or other transfer.

11 \* **Sec. 7.** AS 16.43.100 is amended by adding a new subsection to read:

12 (c) The commission may not transfer an entry permit or vessel permit under  
 13 this chapter unless

14 (1) the parties to the transfer disclose to the commission whether the  
 15 transfer is being brokered by a broker and, if so, then provide the name of the broker  
 16 to the commission; and

17 (2) if the transfer is being brokered by a broker, the broker provides  
 18 proof of a valid broker license under AS 16.10.570 and provides a sworn statement  
 19 that money for the transfer for which application is being made has been deposited  
 20 into an escrow account.

21 \* **Sec. 8.** AS 25.27.244(s)(2) is amended to read:

22 (2) "license"

23 (A) means, except as provided in (B) of this paragraph, a  
 24 license, certificate, permit, registration, or other authorization that, at the time  
 25 of issuance, will be valid for more than 150 days and that may be acquired  
 26 from a state agency to perform an occupation, including the following:

27 (i) license relating to boxing or wrestling under  
 28 AS 05.10;

29 (ii) authorization to perform an occupation regulated  
 30 under AS 08 or AS 16.10.570 - 16.10. 589;

31 (iii) teacher certificate under AS 14.20;

1 (iv) authorization under AS 18.08 to perform  
2 emergency medical services;

3 (v) asbestos worker certification under AS 18.31;

4 (vi) boiler operator's license under AS 18.60.395;

5 (vii) certificate of fitness under AS 18.62;

6 (viii) hazardous painting certification under AS 18.63;

7 (ix) security guard license under AS 18.65.400 -  
8 18.65.490;

9 (x) license relating to insurance under AS 21.27;

10 (xi) employment agency permit under AS 23.15.330 -  
11 23.15.520;

12 (xii) registration as a broker-dealer, an agent, a state  
13 investment adviser, or an investment adviser representative under  
14 AS 45.55.030;

15 (xiii) certification as a pesticide applicator under  
16 AS 46.03.320;

17 (xiv) certification as a storage tank worker or contractor  
18 under AS 46.03.375;

19 (xv) certification as a water and wastewater works  
20 operator under AS 46.30; and

21 (xvi) commercial crewmember fishing license under  
22 AS 16.05.480 other than an entry permit or interim-use permit under  
23 AS 16.43;

24 (B) does not include

25 (i) a vessel license issued under AS 16.05.490 or  
26 16.05.530;

27 (ii) a license issued under AS 14.37 or AS 47.35;

28 (iii) a business license issued under AS 43.70;

29 (iv) an entry permit or interim-use permit issued under  
30 AS 16.43; or

31 (v) a driver's license issued under AS 28.15;

1     \* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3           INDIRECT COURT RULE CHANGE. (a) The provisions of AS 16.10.580(b),  
4 added by sec. 6 of this Act, have the effect of amending Rule 82, Alaska Rules of Civil  
5 Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by providing for the award of  
6 full actual attorney fees to a person aggrieved by actions of a broker licensed under  
7 AS 16.10.570 - 16.10.589.

8           (b) AS 16.10.580(b), added by sec. 6 of this Act, takes effect only if (a) of this section  
9 receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution  
10 of the State of Alaska.

11     \* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13           IMPLEMENTATION. The Department of Community and Economic Development  
14 shall issue the initial licenses for brokers of commercial fishing permits, quota shares, and  
15 commercial fishing vessels for calendar years 2004 and 2005 to qualified applicants before  
16 January 1, 2004.

17     \* **Sec. 11.** AS 16.10.570(a), added by sec. 6 of this Act, and sec. 7 of this Act take effect  
18 January 1, 2004.

19     \* **Sec. 12.** Except as provided in sec. 11 of this Act, this Act takes effect immediately under  
20 AS 01.10.070(c).