

**HOUSE BILL NO. 192**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/2/05

Referred: House Special Committee on Fisheries, Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to requirements to obtain and maintain a fisheries business license;  
2 relating to security required of fish processors and primary fish buyers; and providing  
3 for an effective date."

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

5 \* **Section 1.** AS 43.75.020 is amended to read:

6 **Sec. 43.75.020. Application for license.** (a) Application for a license shall  
7 be filed with the department and accompanied by an annual fee of \$25. A separate  
8 annual fee is required for each plant specified in the application covered by the  
9 license. The application must contain the name of the applicant, the line of business to  
10 be licensed, place of business, and other facts that the department prescribes. The  
11 applicant shall state that the applicant, **as a condition of obtaining and maintaining**  
12 **the license,** agrees to pay

13 **(1)** the **taxes levied under this title** [TAX IMPOSED BY  
14 AS 43.75.015 OR 43.75.100], and that the applicant will make a return and pay the

1 taxes [TAX] at the time provided by law;

2 (2) any seafood marketing assessment levied under AS 16.51;

3 (3) contributions imposed under AS 23.20 (Alaska Employment  
4 Security Act); and

5 (4) any administrative penalties assessed under AS 18.60.093 for a  
6 violation of a provision of AS 18.60.010 - 18.60.105.

7 (b) Upon receipt of an [THE] application in proper form under (a) or (c) of  
8 this section, accompanied by the annual fee, the department shall issue the license if  
9 the

10 (1) applicant has paid in full, including interest and penalties, the  
11 following:

12 (A) taxes levied under this title; and

13 (B) any assessments under AS 16.51; and

14 (2) department has not received from the Department of Labor  
15 and Workforce Development notification that the applicant has failed to pay in  
16 full

17 (A) an assessment of delinquent contributions that is final  
18 under AS 23.20.205(c) or 23.20.220(c); or

19 (B) an administrative penalty that is final under  
20 AS 18.60.093 or 18.60.097.

21 (c) Instead of a license issued under (a) of this section, the department may  
22 issue a direct marketing fisheries business license to a licensed commercial fisherman  
23 who processes fishery resources caught using a vessel that does not exceed 65 feet in  
24 overall length and is owned or leased by the commercial fisherman. The licensee may  
25 place into commerce in the state and outside of the state processed or unprocessed  
26 fishery resources caught using the vessel described in the license. Fishery resources  
27 that are caught using the vessel and owned by the licensee from the time of harvest  
28 through sale, as defined by the department by regulation, may be processed by the  
29 licensee on the vessel, at a shore-based facility, or by means of custom processing  
30 services obtained by the licensee. An application for a direct marketing fisheries  
31 business license shall be filed with the department and accompanied by an annual fee

1 of \$25. A separate direct marketing fisheries business license and annual license fee  
 2 are required for each vessel on which processing is performed. The application must  
 3 state the name and address of the applicant, the fisheries resources for which the  
 4 applicant holds a commercial fishing entry permit or interim-use permit or quota  
 5 share, a description of the vessel and each shore-based facility where the applicant will  
 6 process fishery resources, and other information that the department prescribes by  
 7 regulation. The application must state that the applicant, **as a condition of obtaining**  
 8 **and maintaining the license**, agrees to pay the **taxes, assessment, employment**  
 9 **security contributions, and penalties as set out in (a)(1) - (4) of this section** [TAX  
 10 IMPOSED BY AS 43.75.015(d) OR 43.75.100, AND THAT THE APPLICANT  
 11 WILL MAKE A RETURN AND PAY THE TAX AT THE TIME PROVIDED BY  
 12 LAW]. A person who holds a direct marketing fisheries business license may not  
 13 under that license (1) purchase fishery resources for resale or processing for sale; or  
 14 (2) process fishery resources for another licensed commercial fisherman or for a  
 15 fisheries business licensed under this chapter. In this subsection, "licensed  
 16 commercial fisherman" means a natural person who holds a commercial fishing entry  
 17 permit or interim-use permit issued under AS 16.43 or a quota share issued under  
 18 federal law.

19 \* **Sec. 2.** AS 44.25.040 is repealed and reenacted to read:

20 **Sec. 44.25.040. Security for certain obligations.** (a) A person applying for a  
 21 license as a fish processor or primary fish buyer shall file with the commissioner of  
 22 revenue a performance bond, conditioned upon the promise to pay the following:

23 (1) wages owing to all persons employed by the fish processor or  
 24 primary fish buyer, including contractual employee benefits;

25 (2) independent registered commercial fishermen for the price of the  
 26 raw fishery resource purchased from them;

27 (3) contributions imposed under AS 23.20 (Alaska Employment  
 28 Security Act).

29 (b) A fish processor that processes more than 30,000 pounds of fish a year and  
 30 a primary fish buyer shall file a performance bond with the commissioner in the  
 31 amount specified in this subsection. The amount of the bond is \$10,000 unless, during

1 the five years preceding the application, one of the following has occurred:

2 (1) a final judgment in excess of \$10,000 was awarded against the  
3 bond required under this section; if the final judgment against the bond was in excess  
4 of \$10,000 but less than \$50,000, the amount of the bond is increased to a total of  
5 \$50,000; if the final judgment against the bond was \$50,000 or more, the amount of  
6 the bond is increased to a total of \$100,000;

7 (2) the commissioner has determined that a fish processor or primary  
8 fish buyer has engaged in the business of fish processor or primary fish buyer in the  
9 state while not in compliance with this section and has not yet satisfied a final  
10 judgment entered against the processor or fish buyer for payment for labor furnished  
11 to, or raw fishery resources purchased by, the processor or fish buyer, the amount of  
12 the bond is increased to a total of \$100,000; or

13 (3) the commissioner has determined under (i) of this section that a  
14 claim against the bond filed by the Department of Labor and Workforce Development  
15 under (h) of this section met the requirements in (h) of this section; if the amount of  
16 the claim was in excess of \$10,000 but was less than \$50,000, the amount of the bond  
17 is increased to a total of \$50,000; if the amount of the claim was \$50,000 or more, the  
18 amount of the bond is increased to a total of \$100,000; an increase in bond amount  
19 under this paragraph may not be imposed until 45 days after the commissioner  
20 determined under (i) of this section that the Department of Labor and Workforce  
21 Development claim met the requirements in (h) of this section.

22 (c) A fish processor that processes 30,000 pounds or less of fish a year shall  
23 file a performance bond with the commissioner in the amount specified in this  
24 subsection. The amount of the bond is \$2,000 unless, during the preceding five years,  
25 one of the following has occurred:

26 (1) a final judgment in excess of \$2,000 was awarded against the bond  
27 required under this section; if the final judgment against the bond was in excess of  
28 \$2,000 but less than \$10,000, the amount of the bond is increased to a total of  
29 \$10,000; if the final judgment against the bond was \$10,000 or more, the amount of  
30 the bond is increased to a total of \$20,000;

31 (2) the commissioner has determined that a fish processor or primary

1 fish buyer has engaged in the business of fish processor in the state while not in  
 2 compliance with this section, and has not yet satisfied a final judgment entered against  
 3 the processor for payment for labor furnished to, or raw fishery resources purchased  
 4 by, the processor, the amount of the bond is increased to a total of \$20,000; or

5 (3) the commissioner has determined under (i) of this section that a  
 6 claim against the bond filed by the Department of Labor and Workforce Development  
 7 under (h) of this section met the requirements in (h) of this section; if the amount of  
 8 the claim was in excess of \$2,000 but was less than \$10,000, the amount of the bond is  
 9 increased to a total of \$10,000; if the amount of the claim was \$10,000 or more, the  
 10 amount of the bond is increased to a total of \$20,000; an increase in bond amount  
 11 under this paragraph may not be imposed until 45 days after the commissioner  
 12 determined under (i) of this section that the Department of Labor and Workforce  
 13 Development claim met the requirements in (h) of this section.

14 (d) If a fish processor who has filed a performance bond under (c) of this  
 15 section processes more than 30,000 pounds of fish in a year, the processor shall,  
 16 within seven days from the day on which the 30,000 pound threshold is exceeded,  
 17 notify the commissioner and comply with (b) of this section. If a processor who has  
 18 filed a performance bond under (c) of this section processes more than 30,000 pounds  
 19 of fish in a year, and does not comply with (b) of this section within seven days from  
 20 the date on which the 30,000 pound threshold is exceeded, the processor shall suspend  
 21 processing fish until a bond has been filed under (b) of this section.

22 (e) A fish processor or primary fish buyer may use only a surety bond, cash  
 23 deposit, or other negotiable security as a performance bond under this section. The  
 24 surety must be satisfactory in the determination of the commissioner. The use of other  
 25 negotiable security as a performance bond must be in a form acceptable to the  
 26 commissioner. The commissioner may waive the filing of a performance bond under  
 27 this section if the fish processor or primary fish buyer

28 (1) has more than \$10,000 in lienable real property located within the  
 29 state;

30 (2) provides proof of this property in a form satisfactory to the  
 31 commissioner;

1 (3) is not required under (b) or (c) of this section to post a bond in  
2 excess of \$10,000; and

3 (4) within the five years preceding the application under AS 43.75.020,  
4 an employee or fisherman has not obtained a final judgment against the fish processor  
5 or fish buyer's bond under this section.

6 (f) If an applicant for a license as a fish processor or primary fish buyer has  
7 complied with this section, the Department of Revenue may issue that applicant a  
8 license to engage in the business of fish processor or primary fish buyer.

9 (g) A claim against a fish processor or primary fish buyer for failing to pay an  
10 employee for wages or contractual benefits owed, or for failing to pay an independent  
11 registered fisherman for the price of raw fishery resource purchased from the  
12 fisherman, may be brought upon the bond filed under this section in the superior court  
13 of the judicial district in which the work was done or in any judicial district in the state  
14 in which jurisdiction may be obtained. If an action is brought upon the bond, a copy  
15 of the complaint shall be served by registered or certified mail upon the commissioner  
16 at the time the suit is filed. The commissioner shall transmit a copy of the complaint  
17 and any judgment to the surety or holder of the negotiable security. If a judgment is  
18 entered against cash deposited with the commissioner, the commissioner, upon receipt  
19 of a certified copy of a final judgment, shall pay the judgment from the amount of the  
20 deposit. The commissioner shall maintain a record, available for public inspection, of  
21 all suits commenced under this subsection.

22 (h) A claim against a fish processor or primary fish buyer for failing to pay  
23 contributions imposed under AS 23.20 may be brought by the Department of Labor  
24 and Workforce Development against the bond filed under this section by filing a claim  
25 against the bond with the commissioner, along with proof, satisfactory to the  
26 commissioner, that the fish processor or primary fish buyer

27 (1) received a notice of assessment under AS 23.20.205;

28 (2) did not pay the amount specified in the notice of assessment within  
29 30 days after receiving the notice of assessment, or if the assessment was contested  
30 under AS 23.20.220, within 30 days after receiving the department's final decision  
31 under AS 23.20.220(c); and

1                   (3) did not file an appeal of this assessment under AS 23.20.220 or  
2 filed an appeal but did not initiate a proceeding for judicial review under  
3 AS 23.20.445 within 30 days after the department's final decision under  
4 AS 23.20.220(c).

5                   (i) If the commissioner determines that the Department of Labor and  
6 Workforce Development has met the claim requirements in (h) of this section, the  
7 commissioner shall forward the claim and supporting documents to the surety or  
8 holder of the negotiable security. If the fish processor or primary fish buyer has  
9 deposited cash with the commissioner, the commissioner shall pay the Department of  
10 Labor and Workforce Development's claim from the amount of the deposit. If the  
11 commissioner determines that the Department of Labor and Workforce Development  
12 has not met the claim requirements in (h) of this section, the commissioner shall  
13 provide the Department of Labor and Workforce Development with written notice of  
14 the deficiency of its claim.

15                   (j) If a performance bond is insufficient to satisfy all claims filed against it  
16 under this section, claims brought against the bond under (g) of this section have  
17 priority over a claim filed against the bond under (h) of this section. The Department  
18 of Labor and Workforce Development shall return to the commissioner money  
19 received from a claim filed against a fish processor or primary fish buyer's  
20 performance bond under (h) of this section if an employee or fisherman obtains a final  
21 judgment under (g) of this section against that processor or fish buyer's bond and the

22                   (1) processor or fish buyer has not replenished the bond after it was  
23 used to cover the claim filed under (h) of this section; or

24                   (2) final judgment obtained by the employee or fisherman is more than  
25 the amount of the bond available under (b) or (c) of this section.

26                   (k) The term of a performance bond expires two years after the fish processor  
27 or fish buyer is no longer licensed under this section, except that if during that two-  
28 year period a claim has been asserted against the bond, the term of the bond is five  
29 years. If the surety on the bond wishes to cancel the bond, the surety may do so by  
30 giving the commissioner written notice of intention to cancel. The cancellation is  
31 effective 30 days after the notice is delivered to the commissioner.

1     \* **Sec. 3.** AS 44.25.042 is amended by adding a new subsection to read:

2             (h) If the commissioner determines under AS 44.25.040(i) that a claim filed  
3             under AS 44.25.040(h) is sufficient to allow collection against the performance bond  
4             filed under AS 44.25.040, the fish processor or primary fish buyer's license shall be  
5             suspended until the amount of the claim under AS 44.25.040(h) is paid in full and the  
6             performance bond is replenished.

7     \* **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).