

CS FOR SENATE BILL NO. 124(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 3/18/05

Referred: Finance

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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

1 the **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);**

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; and**

7 **(5) any applicable fishery sales, use, or severance taxes imposed by**
8 **a municipality in the state.**

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

12 **(1) applicant has paid in full, including interest and penalties, the**
13 **following:**

14 **(A) taxes levied under this title; and**

15 **(B) any assessments under AS 16.51;**

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

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

20 **(B) an administrative penalty that is final under**
21 **AS 18.60.093 or 18.60.097; and**

22 **(3) department has not received a copy of a final judgment**
23 **obtained against the applicant for unpaid fishery sales, use, or severance taxes**
24 **imposed by a municipality in the state.**

25 (c) Instead of a license issued under (a) of this section, the department may
26 issue a direct marketing fisheries business license to a licensed commercial fisherman
27 who processes fishery resources caught using a vessel that does not exceed 65 feet in
28 overall length and is owned or leased by the commercial fisherman. The licensee may
29 place into commerce in the state and outside of the state processed or unprocessed
30 fishery resources caught using the vessel described in the license. Fishery resources
31 that are caught using the vessel and owned by the licensee from the time of harvest

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

23 * **Sec. 2.** AS 43.75.055 is amended by adding a new subsection to read:

24 (g) Real property, a surety bond, or other security being used to secure
 25 payment of the tax for the year preceding the application year, may also be used to
 26 secure payment of the estimated tax for the application year if the security is
 27 acceptable to the department and the applicant has not failed to pay a tax under this
 28 chapter in a timely manner during any of the three years preceding the application
 29 year.

30 * **Sec. 3.** AS 44.25.040 is repealed and reenacted to read:

31 **Sec. 44.25.040. Security for certain obligations.** (a) A person applying for a

1 license as a fish processor or primary fish buyer shall file with the commissioner of
2 revenue a performance bond, conditioned upon the promise to pay the following:

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

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

7 (3) contributions imposed under AS 23.20 (Alaska Employment
8 Security Act).

9 (b) A fish processor that processes more than 30,000 pounds of fish a year and
10 a primary fish buyer shall file a performance bond with the commissioner in the
11 amount specified in this subsection. The amount of the bond is \$10,000 unless, during
12 the five years preceding the application, one of the following has occurred:

13 (1) a final judgment in excess of \$10,000 was awarded against the
14 bond required under this section; if the final judgment against the bond was in excess
15 of \$10,000 but less than \$50,000, the amount of the bond is increased to a total of
16 \$50,000; if the final judgment against the bond was \$50,000 or more, the amount of
17 the bond is increased to a total of \$100,000;

18 (2) the commissioner has determined that a fish processor or primary
19 fish buyer has engaged in the business of fish processor or primary fish buyer in the
20 state while not in compliance with this section and has not yet satisfied a final
21 judgment entered against the processor or fish buyer for payment for labor furnished
22 to, or raw fishery resources purchased by, the processor or fish buyer; if the fish
23 processor or primary fish buyer has engaged in the business of a fish processor or
24 primary fish buyer while not in compliance with this section and has not yet satisfied a
25 final judgment for payment for labor furnished to, or raw fishery resources purchased
26 by the processor or fish buyer, the amount of the bond is increased to a total of
27 \$100,000; or

28 (3) the commissioner has determined under (i) of this section that a
29 claim against the bond filed by the Department of Labor and Workforce Development
30 under (h) of this section met the requirements in (h) of this section; if the amount of
31 the claim was in excess of \$10,000 but was less than \$50,000, the amount of the bond

1 is increased to a total of \$50,000; if the amount of the claim was \$50,000 or more, the
2 amount of the bond is increased to a total of \$100,000; an increase in bond amount
3 under this paragraph may not be imposed until 45 days after the commissioner
4 determines under (i) of this section that the claim of the Department of Labor and
5 Workforce Development met the requirements in (h) of this section.

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

10 (1) a final judgment in excess of \$2,000 was awarded against the bond
11 required under this section; if the final judgment against the bond was in excess of
12 \$2,000 but less than \$10,000, the amount of the bond is increased to a total of
13 \$10,000; if the final judgment against the bond was \$10,000 or more, the amount of
14 the bond is increased to a total of \$20,000;

15 (2) the commissioner has determined that a fish processor has engaged
16 in the business of a fish processor in the state while not in compliance with this section
17 and has not yet satisfied a final judgment entered against the processor for payment for
18 labor furnished to, or raw fishery resources purchased by, the processor; if the fish
19 processor has engaged in the business of a fish processor while not in compliance with
20 this section and has not yet satisfied a final judgment for payment of labor furnished
21 to, or raw fishery resources purchased by the processor, the amount of the bond is
22 increased to a total of \$20,000; or

23 (3) the commissioner has determined under (i) of this section that a
24 claim against the bond filed by the Department of Labor and Workforce Development
25 under (h) of this section met the requirements in (h) of this section; if the amount of
26 the claim was in excess of \$2,000 but was less than \$10,000, the amount of the bond is
27 increased to a total of \$10,000; if the amount of the claim was \$10,000 or more, the
28 amount of the bond is increased to a total of \$20,000; an increase in bond amount
29 under this paragraph may not be imposed until 45 days after the commissioner
30 determines under (i) of this section that the claim of the Department of Labor and
31 Workforce Development met the requirements in (h) of this section.

1 (d) If a fish processor who has filed a performance bond under (c) of this
 2 section processes more than 30,000 pounds of fish in a year, the processor shall,
 3 within seven days after the day on which the 30,000 pound threshold is exceeded,
 4 notify the commissioner and comply with (b) of this section. If a processor who has
 5 filed a performance bond under (c) of this section processes more than 30,000 pounds
 6 of fish in a year, and does not comply with (b) of this section within seven days after
 7 the date on which the 30,000 pound threshold is exceeded, the processor shall suspend
 8 processing fish until a bond has been filed under (b) of this section.

9 (e) A fish processor or primary fish buyer may use only a surety bond, cash
 10 deposit, or other negotiable security as a performance bond under this section. The
 11 surety must be satisfactory in the determination of the commissioner. The use of other
 12 negotiable security as a performance bond must be in a form acceptable to the
 13 commissioner. The commissioner shall waive the filing of a performance bond under
 14 this section if the fish processor or primary fish buyer

15 (1) has more than \$10,000 in lienable real property located in the state
 16 and provides proof of the property in a form satisfactory to the commissioner;

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

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

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

25 (g) A claim against a fish processor or primary fish buyer for failing to pay an
 26 employee for wages or contractual benefits owed or for failing to pay an independent
 27 registered fisherman for the price of raw fishery resource purchased from the
 28 fisherman may be brought upon the bond filed under this section in the superior court
 29 of the judicial district in which the work was done or in any judicial district in the state
 30 in which jurisdiction may be obtained. If an action is brought upon the bond, a copy
 31 of the complaint shall be served by registered or certified mail upon the commissioner

1 at the time the suit is filed. The commissioner shall transmit a copy of the complaint
 2 and any judgment to the surety or holder of the negotiable security. If a judgment is
 3 entered against cash deposited with the commissioner, the commissioner, upon receipt
 4 of a certified copy of a final judgment, shall pay the judgment from the amount of the
 5 deposit. The commissioner shall maintain a record, available for public inspection, of
 6 all suits commenced under this subsection.

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

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

13 (2) did not pay the amount specified in the notice of assessment within
 14 30 days after receiving the notice of assessment or, if the assessment was contested
 15 under AS 23.20.220, within 30 days after receiving the department's final decision
 16 under AS 23.20.220(c); and

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

21 (i) If the commissioner determines that the Department of Labor and
 22 Workforce Development has met the claim requirements in (h) of this section, the
 23 commissioner shall forward the claim and supporting documents to the surety or
 24 holder of the negotiable security. If the fish processor or primary fish buyer has
 25 deposited cash with the commissioner, the commissioner shall pay the claim of the
 26 Department of Labor and Workforce Development from the amount of the deposit. If
 27 the commissioner determines that the Department of Labor and Workforce
 28 Development has not met the claim requirements in (h) of this section, the
 29 commissioner shall provide the Department of Labor and Workforce Development
 30 with written notice of the deficiency of its claim.

31 (j) If a performance bond is insufficient to satisfy all claims filed against it

1 under this section, claims brought against the bond under (g) of this section have
 2 priority over a claim filed against the bond under (h) of this section. The Department
 3 of Labor and Workforce Development shall return to the commissioner money
 4 received from a claim filed against a fish processor's or primary fish buyer's
 5 performance bond under (h) of this section if an employee or fisherman obtains a final
 6 judgment under (g) of this section against that processor's or fish buyer's bond and the

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

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

11 (k) The term of a performance bond expires two years after the fish processor
 12 or fish buyer is no longer licensed in this state, except that if, during that two-year
 13 period, a claim has been asserted against the bond, the term of the bond is five years.
 14 If the surety on the bond wishes to cancel the bond, the surety may do so by giving the
 15 commissioner written notice of intention to cancel. The cancellation is effective 30
 16 days after the notice is delivered to the commissioner.

17 * **Sec. 4.** AS 44.25.042 is amended by adding a new subsection to read:

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

23 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).