

Original sponsors: Osterback and Snider

Offered: 2/3/78
Referred: Finance

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 573

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Commercial Fishing Loan Act; and
7 providing for an effective date."

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

9 * Section 1. AS 16.10.310(a)(1)(A) is amended to read:

10 (A) individual commercial fishermen who have been state
11 residents for a continuous period of five years immediately pre-
12 ceding the date of application for a loan under secs. 300 - 370 of
13 this chapter and have had a crewmember or commercial fishing
14 license under AS 16.05.480 or a permit under ch. 43 of this title
15 for any three of the past five years, and who actively participated
16 in the fishery during that period, for the repair, restoration or
17 upgrading of existing vessels and gear, for the purchase of entry
18 permits and gear, and for the construction and purchase of vessels;
19 and

20 * Sec. 2. AS 16.10.310(a)(1) is amended by adding a new subparagraph to
21 read:

22 (C) corporations, partnerships, or joint ventures, 100
23 per cent of which are owned by individual commercial fishermen who
24 have been state residents for a continuous period of five years
25 immediately preceding the date of application for a loan under
26 secs. 300 - 370 of this chapter and have had a crewmember or com-
27 mercial fishing license under AS 16.05.480 or a permit under ch. 43
28 of this title for any three of the past five years, and who actively
29 participated in the fishery during that period, for the repair,

1 restoration or upgrading of existing vessels and gear, for the
2 purchase of gear, and for the construction and purchase of vessels.

3 * Sec. 3. AS 16.10.320 is amended to read:

4 Sec. 16.10.320. LIMITATIONS ON LOANS. A commercial fishing loan
5 may not exceed \$500,000 [\$150,000]. A loan may not run longer than 15
6 years or bear interest exceeding seven per cent, and it shall be secured
7 by a first lien and appropriate security agreements, except that a lien
8 in favor of the state is not required for loans guaranteed fully by the
9 federal government under the Federal Ship Financing Act of 1972 (46
10 U.S.C. secs. 1271-1279b; 86 Stat. 909), as amended. In the case of a
11 security agreement given to secure a loan made under secs. 300 - 370 of
12 this chapter and covering a vessel documented under the laws of the
13 United States and so long as the Ship Mortgage Act of 1920 (46 U.S.C.
14 secs. 911-984; 41 Stat. 1000), as amended, and the Shipping Act of 1916
15 (46 U.S.C. secs 801-842; 39 Stat. 728), as amended, remain ambiguous
16 with respect to whether or not a state or state agency qualifies as a
17 citizen of the United States for purposes of those Acts, the first lien
18 requirement of this section may be satisfied by the recordation and
19 endorsement of a first preferred ship mortgage under the Ship Mortgage
20 Act of 1920, and by perfection of a security interest under the Uniform
21 Commercial Code - Secured Transactions (AS 45.05.690 - 45.05.794), if
22 the approval of the Secretary of Commerce is obtained under 46 U.S.C.
23 sec. 839 for the transfer to the department of the interest in a vessel
24 documented under the laws of the United States. In the case of a secur-
25 ity agreement given to secure a loan made under secs. 300 - 370 of this
26 chapter and covering a vessel documented under the laws of the United
27 States, the first lien requirement of this section may also be satisfied
28 by use of a trust deed and bond issue under it, if the trustee is a
29 citizen of the United States and obtains a first preferred ship mortgage

1 on the vessel under the Ship Mortgage Act of 1920, and the approval of
2 the Secretary of Commerce is obtained under 46 U.S.C. secs. 839 and 961
3 for the transfer of the bond or bonds to the department if the trustee
4 is not a trustee approved by the Secretary of Commerce under 46 U.S.C.
5 secs. 808, 835 and 961. Loans may not exceed 75 per cent of the ap-
6 praised value of the collateral used to secure the loan.

7 * Sec. 4. AS 16.10.320 is amended by adding a new subsection to read:

8 (b) No more than one commercial fishing loan may be made to a
9 person for the purchase, construction, repair or upgrading of a fishing
10 vessel or its gear. A loan to an associate of the borrower is con-
11 sidered to be a loan to the borrower. For the purposes of this section,
12 "associate of the borrower" means

13 (1) a corporation or other organization of which the borrower
14 is an officer, director or partner, or is, directly or indirectly, the
15 beneficial owner of 10 per cent or more of any class of equity securi-
16 ties;

17 (2) a person who is, directly or indirectly, the beneficial
18 owner of 10 per cent or more of any class of equity securities of the
19 borrower;

20 (3) a trust or other estate in which the borrower has a sub-
21 stantial beneficial interest or as to which the borrower serves as
22 trustee or in a similar fiduciary capacity;

23 (4) a relative or spouse of the borrower or a relative of the
24 spouse, who has the same home as the borrower;

25 (5) a person directly or indirectly controlling, controlled
26 by, or under common control with, the borrower.

27 * Sec. 5. AS 16.10 is amended by adding new sections to read:

28 Sec. 16.10.333. LOANS FOR PURCHASE OF ALASKA LIMITED ENTRY PER-
29 MITS. (a) Loans under secs. 300 - 370 of this chapter may be made to

1 an individual commercial fisherman for the purchase of a limited entry
2 permit upon certification by the commission that the fisherman is a
3 person who qualifies as a transferee for the permit under ch. 43 of this
4 title and the regulations adopted by the commission.

5 (b) Upon approval by the commissioner, the permit to be purchased
6 may be pledged as security for a loan under (a) of this section, if

7 (1) the certificate for the pledged permit lists the commis-
8 sioner as the legal owner of the permit;

9 (2) the certificate for the pledged permit lists the debtor
10 as the equitable owner of the permit;

11 (3) all annual permit cards issued under the pledged permit
12 list the name of the debtor;

13 (4) all obligations and responsibilities of a permit owner
14 are assumed by the debtor;

15 (5) co-signers or other sureties for performance under the
16 note are not vested with any rights in the pledged permit and their
17 obligation is limited to satisfaction of the note and payment of costs
18 directly incurred by the department in administering the loan.

19 (c) The commissioner is not liable for any act or omission re-
20 sulting from permit ownership nor will that act or omission affect his
21 title to the permit or his rights under it.

22 (d) Upon satisfaction of the note by the debtor, the commissioner
23 shall certify to the commission that the note has been satisfied.

24 (e) Upon certification as provided in (d) of this section, the
25 commission shall amend the permit certificate to list the debtor as the
26 legal owner.

27 Sec. 16.10.335. DEFAULT AND FORECLOSURE. (a) If the debtor
28 defaults upon a note for which a limited entry permit has been pledged
29 as security under sec. 333 of this chapter, the commissioner shall

1 provide the debtor, by registered or certified mail sent to his last
2 known address on file with the commissioner, with a notice of default
3 which includes

4 (1) a description of the security given for the note includ-
5 ing the number assigned to the pledged permit by the commission;

6 (2) the date upon which the default occurred;

7 (3) the amount of arrearages as of the date of the notice,
8 the total amount remaining on the note less unearned interest, and the
9 amount of daily interest;

10 (4) a statement that the debtor may, within 15 days of the
11 postmark date of the notice, request a hearing at which he may submit
12 evidence showing he has not defaulted;

13 (5) a statement that the note may be reinstated if brought
14 current within 60 days from the postmark date of the notice;

15 (6) a statement that the note may be paid in full less un-
16 earned interest within 90 days from the postmark date of the notice;

17 (7) the place where reinstatement or payment in full may be
18 made; and

19 (8) a notice in at least 10-point bold type stating: "IM-
20 PORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE
21 SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND
22 THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

23 (b) Upon the debtor's failure to reinstate or satisfy the note
24 within the time specified in (a) of this section, his equitable interest
25 is terminated by operation of law without further notice. Any entry
26 permit cards issued to him under the permit shall be cancelled immedi-
27 ately upon receipt by the commission of a certificate of termination
28 containing a copy of the notice required by (a) of this section issued
29 by the commissioner.

1 Sec. 16.10.337. DEFICIENCIES AND TRANSFER OF ENTRY PERMITS AFTER
2 FORECLOSURE. (a) Upon a foreclosure on an entry permit as provided in
3 sec. 335 of this chapter, the commissioner shall offer the commission a
4 right of first refusal if the permit is subject to a buy-back program
5 under AS 16.43.290 - 16.43.330 at a price equal to the amount outstand-
6 ing on the note plus any costs the department directly incurred in
7 administering the loan.

8 (b) If the commission does not exercise its right of first refusal
9 within 30 days after it receives the offer, or if the permit is not
10 subject to a buy-back program under AS 16.43.290 - 16.43.330, the de-
11 partment shall promptly notify the debtor of this fact. The debtor has
12 30 days from the postmark date of the notice to nominate a person quali-
13 fied to assume the note. The person nominated must qualify under the
14 requirements of sec. 333(a) of this chapter. If qualified, he may
15 assume all rights and liabilities of the original debtor.

16 (c) If the debtor is unable to nominate a qualified person to
17 assume the note under (b) of this section, the permit must be made
18 available to a qualified person, chosen as provided in this section, who
19 must assume the note subject to all rights and liabilities of the ori-
20 ginal debtor. The commission shall provide the commissioner with a list
21 of persons chosen by lottery who qualify as transferees of entry permits
22 under ch. 43 of this title and regulations adopted by the commission and
23 who have met the residency and commercial fishing participation require-
24 ments of sec. 310(a) of this chapter. The commissioner then shall
25 determine, in order of presentation, any remaining qualifications. The
26 commissioner shall allow the first applicant meeting all qualifications
27 to assume the note.

28 (d) Nothing in this section affects the right of the commissioner
29 to institute legal action for a deficiency resulting from a default on a

1 note given under sec. 333 of this chapter. In addition to any defi-
2 ciency, the debtor is liable for the costs of administering the note and
3 for costs and attorney fees.

4 Sec. 16.10.339. REGULATIONS. The commission, with the approval of
5 the department, shall adopt regulations to implement secs. 333 - 337 of
6 this chapter.

7 * Sec. 6. AS 16.10.360 is amended by adding new paragraphs to read:

8 (3) "commission" means the Commercial Fisheries Entry Commis-
9 sion;

10 (4) "debtor" means an individual commercial fisherman who
11 either initially contracts for a loan under secs. 333 - 337 of this
12 chapter or assumes a loan as provided in those sections.

13 * Sec. 7. AS 16.43.150(g) is amended to read:

14 (g) Except as provided in AS 16.10.333 - 16.10.337, an [AN] entry
15 permit may not be:

16 (1) pledged, mortgaged, leased, or encumbered in any way;

17 (2) transferred with any retained right of repossession or
18 foreclosure; or

19 (3) attached, distrained, or sold on execution of judgment or
20 under any other process or order of any court.

21 * Sec. 8. AS 16.43.170(a) is amended to read:

22 (a) Except as provided in AS 16.10.333 - 16.10.337, entry [ENTRY]
23 permits and interim-use permits are transferable only through the com-
24 mission as provided in this section and sec. 180 of this chapter and
25 under regulations adopted by the commission.

26 * Sec. 9. This Act takes effect July 1, 1978.

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