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Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

SENATE CS FOR CS FOR HOUSE BILL NO. 376 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act amending the Limited Entry Act; providing for
7 landing permits; and providing for an effective
8 date."

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

10 * Section 1. AS 16.05 is amended by adding a new section to read:

11 Sec. 16.05.675. LANDING PERMITS. (a) A person who does not
12 hold a limited entry permit or interim-use permit issued under AS 16.-
13 43 may not deliver or land fish in the state unless the person

14 (1) has harvested the fish under federal authority in the
15 fishery conservation zone; and

16 (2) has been issued a landing permit by the Commercial
17 Fisheries Entry Commission.

18 (b) The commissioner may by regulation establish eligibility
19 requirements for the issuance of a landing permit.

20 (c) The commissioner may authorize the Commercial Fisheries
21 Entry Commission to issue landing permits for a fishery if the commis-
22 sioner has made a written finding that the issuance of landing permits
23 for that fishery is consistent with state resource conservation and
24 management goals.

25 (d) A landing permit is not transferable.

26 * Sec. 2. AS 16.05.680 is amended by adding a new subsection to read:

27 (b) A person who violates (a)(2) of this section and who also
28 could be prosecuted for the same conduct under AS 16.10.265 is subject
29 to prosecution only under AS 16.10.265.

1 * Sec. 3. AS 16.10.265(a) is amended to read:

2 (a) While acting as a fish processor or primary fish buyer, or
3 as an agent, director, officer, member, or employee of a fish proces-
4 sor, of a primary fish buyer, or of a cooperative corporation or-
5 ganized under AS 10.15, an individual may not intentionally or know-
6 ingly make an original purchase of fish from a seller who does not
7 hold a [AN ENTRY PERMIT OR AN INTERIM-USE] permit issued under [OR
8 TRANSFERRED TO THE SELLER IN ACCORDANCE WITH] AS 16.43.

9 * Sec. 4. AS 16.10.265(b) is amended to read:

10 (b) An individual who violates (a) of this section is

11 (1) upon a first conviction, guilty of a class A [B] misde-
12 meanor and shall be sentenced to a fine of not less than \$1,000 nor
13 more than \$5,000, and may be sentenced to a definite term of imprison-
14 ment of not more than one year [90 DAYS];

15 (2) upon a second conviction, guilty of a class A misde-
16 meanor and shall be sentenced to a fine of not less than \$5,000 nor
17 more than \$10,000, and may be sentenced to a definite term of impris-
18 onment of not more than one year;

19 (3) upon a third or subsequent conviction, guilty of a
20 class A misdemeanor and shall be sentenced to a fine of not less than
21 \$10,000 nor more than \$25,000, and may be sentenced to a definite term
22 of imprisonment of not more than one year.

23 * Sec. 5. AS 16.10.267(a) is amended to read:

24 (a) When a fisherman sells fish, the fisherman shall possess

25 (1) a [AN ENTRY PERMIT OR INTERIM-USE] permit issued [OR
26 TRANSFERRED TO THE FISHERMAN] under AS 16.43, or other document au-
27 thorized by regulation to be used in place of a [AN ENTRY PERMIT OR
28 INTERIM-USE] permit; and

29 (2) an identification card that has been issued to the

1 fisherman by a state or federal agency and that bears a photograph of
2 the fisherman.

3 * Sec. 6. AS 16.43.100(a) is amended by adding new paragraphs to read:

4 (16) establish reasonable user fees for services;

5 (17) issue landing permits in accordance with AS 16.05.675
6 and regulations adopted under that section; and

7 (18) establish and collect annual fees for the issuance of
8 landing permits.

9 * Sec. 7. AS 16.43.110 is amended by adding a new subsection to read:

10 (e) The commission shall adopt regulations to provide for the
11 correction of administrative error.

12 * Sec. 8. AS 16.43.150(a) is amended to read:

13 (a) Each entry permit authorizes the permittee to operate a unit
14 of gear within a specified fishery [ADMINISTRATIVE AREA].

15 * Sec. 9. AS 16.43.150(f) is amended to read:

16 (f) Except for permits which are not transferable under AS 16.-
17 43.170(c) or (e), an [AN] entry permit survives the death of the
18 holder.

19 * Sec. 10. AS 16.43.150(g) is amended to read:

20 (g) Except as provided in AS 16.10.333 - 16.10.337, AS 44.81.-
21 210, and [IN] AS 44.81.230 - 44.81.250, an entry permit may not be [:]

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

23 (2) transferred with any retained right of repossession or
24 foreclosure, or on any condition requiring a subsequent transfer; or

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

27 * Sec. 11. AS 16.43.150(h) is amended to read:

28 (h) Upon the death of an entry permit holder, the permanent
29 permit shall be transferred by the commission directly to the

1 surviving spouse by right of survivorship unless the deceased holder
2 has expressed a contrary intent in a will that is probated [A CONTRARY
3 INTENT IS MANIFESTED]. When no spouse survives, the rights of the
4 decedent pass as part of the decedent's estate. Except as provided in
5 AS 16.10.333 - 16.10.337, AS 44.81.210, and 44.81.230 - 44.81.250, the
6 permit is exempt from the claims of creditors of the estate.

7 * Sec. 12. AS 16.43.160(c) is amended to read:

8 (c) The resident holder of an entry permit or interim-use permit
9 who has a net family income falling within the federal [FEDERAL COM-
10 MUNITY SERVICES ADMINISTRATION] poverty guidelines, adjusted by the
11 commission to reflect appropriate cost-of-living differentials, is
12 subject to a maximum annual fee of \$15.

13 * Sec. 13. AS 16.43.160 is amended by adding a new subsection to read:

14 (d) The commission may charge interest at a rate not to exceed
15 the legal rate of interest established in AS 45.45.010 on fees more
16 than 60 days overdue.

17 * Sec. 14. AS 16.43.170(b) is amended to read:

18 (b) Except as provided in (c) and (e) of this section, the
19 holder of an entry permit may transfer the permit to another person or
20 to the commission upon 60 days' notice of intent to transfer under
21 regulations adopted by the commission. No sooner than 60 days nor
22 later than 12 months from the date of notice to the commission, the
23 holder of an entry permit may transfer the permit. If the proposed
24 transferee, other than the commission, can demonstrate the [ESTABLISH]
25 present ability to participate actively in the fishery and the trans-
26 fer agreement does not violate any provision of AS 16.43 or regula-
27 tions adopted thereunder, the commission shall approve the transfer
28 and reissue the entry permit to the transferee provided that neither
29 party is prohibited by law from participating in the transfer.

1 * Sec. 15. AS 16.43.250(a) is amended to read:

2 (a) Following the establishment of the maximum number of units
3 of gear for a particular fishery under AS 16.43.240, the commission
4 shall adopt regulations establishing qualifications for ranking ap-
5 plicants for entry permits according to the degree of hardship which
6 they would suffer by exclusion from the fishery. The regulations
7 shall define priority classifications of similarly situated applicants
8 based upon a reasonable balance of the following hardship standards:

9 (1) degree of economic dependence upon the fishery, which
10 may include [INCLUDING] but is not limited to percentage of income
11 derived from the fishery, reliance on alternative occupations, avail-
12 ability of alternative occupations, investment in vessels and gear;

13 (2) extent of past participation in the fishery, which may
14 include [INCLUDING] but is not limited to the number of years of
15 participation in the fishery, and the consistency of participation
16 during each year.

17 * Sec. 16. AS 16.43.351(b) is amended to read:

18 (b) A recipient may be issued an educational entry permit valid
19 for designated fisheries [EACH FISHERY] in the administrative area the
20 commission determines to be appropriate, considering the nature of the
21 educational program and the location of the educational or vocational
22 institution. The recipient of an educational entry permit may not be
23 issued an educational entry permit [PERMITS] in more than one adminis-
24 trative area except as issued by the commission in its discretion upon
25 good cause shown.

26 * Sec. 17. AS 16.43.960 is amended to read:

27 Sec. 16.43.960. COMMISSION REVOCATION OR SUSPENSION OF [ENTRY]
28 PERMITS. (a) The commission may revoke, suspend, or transfer all
29 [AN] entry [PERMIT] or interim-use permits held by [PERMIT IF] a

1 person who knowingly provides or [SUPPLIES,] assists in providing
2 false information [SUPPLYING], or fails to correct false information
3 provided, to the commission for the purpose of obtaining a benefit for
4 self or another, including the issuance, renewal, duplication, or
5 transfer of an entry or interim-use permit or vessel license. The
6 commission may suspend that person's eligibility to hold an entry or
7 interim-use permit for a period not to exceed three years, and may
8 impose an administrative fine of not more than \$5,000 on the person.
9 The commission may also impose an administrative fine of not more than
10 \$5,000 on an entity whose officers, employees, representatives, or
11 agents knowingly provide or assist in providing false information, or
12 fail to correct false information provided, to the commission for the
13 purpose of obtaining a benefit

14 [(1) PERMIT APPLICATION;

15 (2) PERMIT TRANSFER; OR

16 (3) PERMIT RENEWAL].

17 (b) The [BEFORE REVOCATION, THE] commission shall serve the
18 respondent [PERMIT HOLDER] personally or by certified or registered
19 mail with a notice to show cause why the proposed action should not
20 take place. The notice to show cause must

21 (1) be supported by an affidavit that [WHICH] may be made
22 on information or belief setting out the facts that [WHICH] are the
23 basis of the proposed action;

24 (2) provide for at least 30 days' notice of the place,
25 date, and time of the hearing where the respondent [PERMIT HOLDER] may
26 present evidence in opposition to the proposed action; unless waived
27 in writing by the respondent [PERMIT HOLDER], the hearing [PLACE]
28 shall be held within the judicial district in which the respondent
29 [PERMIT HOLDER] resides if the respondent [PERMIT HOLDER] resides in

1 the state; the hearing place shall be at the discretion of the commis-
2 sion for those respondents [PERMIT HOLDERS] residing outside the
3 state;

4 (3) specify the statutes or regulations violated;

5 (4) state with particularity the action proposed to be
6 taken;

7 (5) indicate to [THAT] the respondent [PERMIT HOLDER'S]
8 that the respondent's ability to permanently transfer the permits that
9 are [PERMIT WHICH IS] the subject of the show cause [REVOCATION]
10 proceedings has been suspended as of the date of the notice and will
11 continue to be suspended until the exhaustion of all administrative
12 and judicial remedies; and

13 (6) provide other information the commission considers
14 proper.

15 (c) A permit subject to show cause [REVOCATION] proceedings
16 under this section may not be transferred after the date of the notice
17 in (b) of this section pending exhaustion of all administrative and
18 judicial remedies arising from action taken under this section.

19 (d) The show cause [REVOCATION] hearing shall be conducted
20 before a quorum of commissioners and shall be presided over by a
21 hearing officer appointed by the commission who shall rule on the
22 presentation of evidence and other procedural matters. Hearings shall
23 be conducted in accordance with regulations adopted under AS 16.43.-
24 110(b). [WITHIN A REASONABLE TIME AFTER THE CONCLUSION OF THE HEAR-
25 ING, THE HEARING OFFICER SHALL SUBMIT TO THE ATTENDING COMMISSIONERS A
26 PROPOSED DECISION BASED ON THE RECORD OF THE HEARING AND CONTAINING
27 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ACTION. THE
28 ATTENDING COMMISSIONERS SHALL THEN REVIEW THE HEARING OFFICER'S PRO-
29 POSED DECISION AND ADOPT OR AMEND OR REJECT THE CONTENTS OF THE

1 PROPOSED DECISION IN THE WRITTEN DECISION OF THE COMMISSION. A COPY
2 OF THE COMMISSION DECISION SHALL BE MAILED TO EACH PARTY OR THE
3 PARTY'S ATTORNEY BY CERTIFIED OR REGISTERED MAIL.]

4 (e) The failure of a respondent [PERMIT HOLDER] properly served
5 under (b) of this section to appear at the hearing is not grounds for
6 setting aside any commission action taken. However, the commission
7 may in its discretion order a continuance or second hearing.

8 (f) [THE EFFECTIVE DATE OF THE COMMISSION DECISION UNDER THIS
9 SECTION IS THE DATE OF THE NOTICE TO SHOW CAUSE FIRST SERVED UPON THE
10 PERMIT HOLDER UNDER (b) OF THIS SECTION.]

11 (g) The provisions of this section [DO NOT] apply to conduct
12 occurring after January 1, 1973, but do not affect a [THE] permit held
13 by [OF] a person who is a bona fide purchaser. Failure to correct
14 false information is a continuing offense.

15 (h) Judicial review of commission determinations under this
16 section is in accordance with AS 44.62.560 - 44.62.570; however, if a
17 hearing de novo is granted under AS 44.62.570(d), the hearing may, in
18 the discretion of the court, be had with a jury sitting if application
19 for the jury hearing is filed with the court no later than 10 days
20 after service of the notice of appeal.

21 (i) An entry permit revoked by the commission under this section
22 that is pledged [TAKEN] as security for a loan under AS 16.10.333 or
23 AS 44.81.230 shall be reassigned or sold as provided in AS 16.10.337
24 or AS 44.81.250.

25 * Sec. 18. AS 16.43.970(b) is amended to read:

26 (b) A person who knowingly makes a false statement to the com-
27 mission for the purpose of obtaining a benefit, including the issu-
28 ance, renewal, duplication, or transfer of an entry or interim-use
29 permit or vessel license [OF FACT IN THE APPLICATION FOR OR RENEWAL OF

1 AN INTERIM-USE PERMIT OR AN ENTRY PERMIT OR VESSEL LICENSE APPLICATION
2 OR RENEWAL OR IN THE APPLICATION FOR A TRANSFER UNDER AS 16.43.170 OR
3 16.43.180], or a person who assists another by knowingly making a
4 false statement to the commission for the purpose of obtaining a
5 benefit for another, [OF FACT IN SUPPORT OF THE OTHER PERSON'S APPLI-
6 CATION FOR ISSUANCE OR RENEWAL OF AN INTERIM-USE PERMIT OR AN ENTRY
7 PERMIT OR VESSEL LICENSE] is guilty of the crime of unsworn falsifica-
8 tion as set out in AS 11.56.210. Upon conviction, the person [A
9 MISDEMEANOR AND] (1) shall forfeit to the commission all interim-use
10 permits and entry permits [HELD BY THE PERSON MAKING THE FALSE STATE-
11 MENT] and (2) loses [SHALL LOSE] eligibility for interim-use permits
12 and for entry permits for a period of three years [AND IS PUNISHABLE
13 BY A FINE OF NOT MORE THAN \$5,000].

14 * Sec. 19. AS 16.43 is amended by adding a new section to read:

15 Sec. 16.43.975. PUBLIC DISCLOSURE. The commission may provide
16 by regulation that documents submitted to the commission containing
17 information relating to an individual's personal finances and informa-
18 tion supplied by individuals for research purposes, produced in re-
19 sponse to requests by the commission, are not subject to public dis-
20 closure.

21 * Sec. 20. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).