

Introduced: 2/17/86  
Referred: Resources, Judiciary  
and Finance

1 IN THE HOUSE

BY HERRMANN

2

HOUSE BILL NO. 652

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the licensing of limited entry  
7 permit brokers."

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

9 \* Section 1. AS 16.43 is amended by adding new sections to read:

10

ARTICLE 6A. LIMITED ENTRY PERMIT BROKERS.

11

Sec. 16.43.500. LICENSE REQUIRED. Except as provided in AS

12

16.43.592 and unless licensed as a limited entry permit broker, a  
13 person may not

13

14

(1) sell, exchange, auction, or purchase a limited entry

15

permit;

16

(2) list a limited entry permit for sale, exchange, auc-

17

tion, or purchase;

18

(3) assist in or direct the procuring of prospective buyers

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or the negotiation of a transaction that results or is calculated to

20

result in the sale, exchange, auction, or purchase of a limited entry

21

permit;

22

(4) hold out to the public as being engaged in the business

23

of doing any of the things listed in this section; or

24

(5) attempt or offer to do any of the things listed in this

25

section.

26

Sec. 16.43.505. ENTITLEMENT TO LICENSE. (a) A person is en-

27

titled to a limited entry permit broker license if the person

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(1) passes the permit broker examination;

29

(2) applies for a license within six months after the

1 person has taken the permit broker examination;

2 (3) is not under indictment for, or seven years have  
3 elapsed since the person has completed a sentence imposed upon con-  
4 viction of, forgery, theft, extortion, conspiracy to defraud credi-  
5 tors, or another felony involving moral turpitude.

6 (b) Unless the broker fails to pay the biennial renewal fee or  
7 unless the broker's license is suspended or revoked under AS 16.43.-  
8 540, the limited entry permit broker's license continues in effect.

9 Sec. 16.43.510. CONTENT OF EXAMINATION. (a) The permit broker  
10 examination may include, but is not necessarily limited to, questions  
11 on business ethics; knowledge of state statutes, regulations, and  
12 administrative procedures relating to limited entry permits, agency  
13 and brokerage; knowledge of fiduciary duties of brokers; and the  
14 provisions of this chapter and of the regulations of the commission.

15 (b) The only purpose of a permit broker's examination is to  
16 disqualify those whose lack of ability to participate in limited entry  
17 permit transactions would create a risk of serious financial loss to  
18 members of the public.

19 Sec. 16.43.515. ADMINISTRATION OF EXAMINATION. (a) The commis-  
20 sion shall offer written examinations at periodic intervals, but at  
21 least once a year.

22 (b) An applicant who fails the written examination may request  
23 that the examination be reevaluated. The commission shall provide by  
24 regulation for a system of reevaluating examinations on request of an  
25 applicant who fails the examination.

26 Sec. 16.43.520. REEXAMINATION. A person who fails an examina-  
27 tion may apply for a subsequent examination, but shall pay the appli-  
28 cation fee for each application.

29 Sec. 16.43.525. FEES. The commission shall set fees by

1 regulation for a limited entry permit broker licensee or applicant for  
2 the following:

- 3 (1) examination;
- 4 (2) initial license;
- 5 (3) renewal of an active license;
- 6 (4) renewal of an inactive license;
- 7 (5) amendment of a license.

8 Sec. 16.43.530. DEPOSIT IN GENERAL FUND. The commission shall  
9 deposit money collected under AS 16.43.500 - 16.43.593 in the general  
10 fund.

11 Sec. 16.43.535. REINSTATEMENT OF LAPSED LICENSE. A permit  
12 broker whose license has lapsed for more than two years shall be  
13 reexamined before reinstatement.

14 Sec. 16.43.540. DUTIES OF THE COMMISSION. (a) The commission  
15 shall

16 (1) after hearing, have the authority to suspend or revoke  
17 the license of a limited entry permit broker who

18 (A) with respect to a permit transaction

19 (i) made a substantial misrepresentation;

20 (ii) made a false promise likely to influence,  
21 persuade, or induce;

22 (iii) pursued a flagrant course of misrepresenta-  
23 tion or made a false promise;

24 (iv) has engaged in conduct that is fraudulent or  
25 dishonest;

26 (v) violates AS 16.43.570;

27 (B) procures a permit broker's license by deceiving  
28 the commission, or aids another to do so;

29 (C) has engaged in conduct demonstrating unfitness to

1 engage in the business of permit brokerage;

2 (D) knowingly authorizes, directs, connives at, or  
3 aids in publishing, distributing, or circulating a material false  
4 statement or misrepresentation concerning the licensee's business  
5 or concerning a limited entry permit for sale in the licensee's  
6 business in this or another state;

7 (2) prosecute, through the Department of Law, violations of  
8 the provisions of AS 16.43.500 - 16.43.593 or regulations adopted  
9 under AS 16.43.500 - 16.43.593;

10 (3) publish, on three consecutive weekends in a newspaper  
11 of general circulation in the locale of the offending person's princi-  
12 pal office, a notice specifying disciplinary action taken by the  
13 commission against a person licensed under AS 16.43.500 - 16.43.593;  
14 and

15 (4) issue a temporary permit to the personal representative  
16 of the estate of a deceased broker or to some other person designated  
17 by the commission with the approval of the personal representative of  
18 the estate, in order to secure proper administration in concluding the  
19 affairs of the decedent broker's business.

20 (b) When an award is made from the limited entry permit  
21 surety fund under this chapter in reimbursement of losses suffered by  
22 a claimant as a result of fraud, misrepresentation, deceit, or conver-  
23 sion of trust funds on the part of a licensed broker, the commission  
24 may consider the hearing on the claim to be a hearing on the suspen-  
25 sion of the license of the broker, and may suspend the license of the  
26 broker. A suspension ordered under this subsection shall be lifted if  
27 the broker reaches an agreement with the commission on terms and  
28 conditions for the repayment to the surety fund of the money awarded  
29 to the claimant and the costs of hearing the claim under AS 16.43.583.

1 The suspension shall be reimposed if the broker violates the terms of  
2 a repayment agreement entered into under this subsection.

3 Sec. 16.43.545. COMPLIANCE WITH SURETY FUND REQUIREMENTS.  
4 Before issuing a permit broker's license to an applicant under AS 16.-  
5 43.500 - 16.43.593, the commission shall determine that the applicant  
6 has complied with the provisions of AS 16.43.581 and is covered by the  
7 surety fund established in AS 16.43.580.

8 Sec. 16.43.550. PRINCIPLE OFFICE; SERVICE OF PROCESS. (a) A  
9 licensed permit broker shall inform the commission of the broker's  
10 principal office, of any branch offices the broker has, and of the  
11 name and address of a registered agent in the state for purposes of  
12 service of process if the broker's principal office is not located in  
13 the state. The broker may do business only in or out of the principal  
14 office and the branch offices. Failure of a broker to maintain a  
15 place of business or inform the commission of its location and the  
16 name and address of a registered agent, if any, are grounds for the  
17 suspension or revocation of the broker's license.

18 (b) When a permit broker whose principal office is not located  
19 in the state fails to appoint or maintain a registered agent in the  
20 state, or when a registered agent cannot with reasonable diligence be  
21 found, the commission is an agent upon whom process, notice, or demand  
22 may be served. Service on the commission shall be made by delivering  
23 to and leaving with a commissioner, or with a person designated by the  
24 commission in the commission office, duplicate copies of the process,  
25 notice, or demand. The commission shall immediately have one copy  
26 forwarded by registered or certified mail, addressed to the broker at  
27 the broker's principal office. Service on the commission is return-  
28 able in not less than 30 days.

29 Sec. 16.43.555. LISTINGS. Limited entry permit listings must be

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26 forwarded by registered or certified mail, addressed to the broker at  
27 the broker's principal office. Service on the commission is return-  
28 able in not less than 30 days.

29 Sec. 16.43.555. LISTINGS. Limited entry permit listings must be

1 in writing and must be signed by the seller. Exclusive listings must  
2 have a definite expiration date.

3 Sec. 16.43.560. RECORD OF TRANSACTION. A limited entry permit  
4 broker shall

5 (1) keep a complete record of limited entry permit trans-  
6 actions made by the broker for at least the preceding three years;

7 (2) make a closing statement showing disbursements and  
8 accounting for all money in the transaction;

9 (3) keep a separate trust account in a bank, into which the  
10 broker shall deposit all earnest money deposits and purchase money  
11 until it is proper for the broker to distribute the money to the  
12 proper persons;

13 (4) make available to the commission, on request, records  
14 and other documents relating to transactions under (3) of this section  
15 that the commission may require in order to conduct a complete audit  
16 of trust accounts.

17 Sec. 16.43.565. BROKER'S COMMISSIONS. (a) A broker's commis-  
18 sion is earned when the limited entry permit broker fulfills the terms  
19 of a written personal services contract.

20 (b) The commission shall adopt regulations limiting the percent-  
21 age rate or amount of a broker's commission that may be charged for a  
22 permit broker's services.

23 Sec. 16.43.570. CONFLICT OF INTEREST AND FIDUCIARY DUTIES. (a)  
24 A licensed permit broker who has a personal financial interest in a  
25 limited entry permit transaction shall disclose that interest to every  
26 person involved in the transaction.

27 (b) A licensed permit broker shall inform each client of the  
28 broker's fiduciary duties to the client.

29 Sec. 16.43.575. PROHIBITED CONDUCT. (a) A person who is not a

1 limited entry permit broker licensed in this state may not accept a  
2 fee or a commission for performance of an act for which a license is  
3 required.

4 (b) A person may not knowingly make, authorize, direct, or aid  
5 in the publication of a false statement or misrepresentation concern-  
6 ing a limited entry permit offered for sale or exchange or presented  
7 at auction.

8 (c) A person who violates a provision of this section or of  
9 AS 16.43.500 is guilty of a class A misdemeanor.

10 Sec. 16.43.580. LIMITED ENTRY PERMIT SURETY FUND. The limited  
11 entry permit surety fund is established in the general fund to carry  
12 out the purposes of AS 16.43.580 - 16.43.591. The fund is composed of  
13 payments made by licensed limited entry permit brokers under AS 16.-  
14 43.581 and filing fees retained in accordance with AS 16.43.582. The  
15 fund may not exceed \$500,000.

16 Sec. 16.43.581. PAYMENTS BY PERMIT BROKERS. (a) A licensed  
17 limited entry permit broker when obtaining or renewing a permit broker  
18 license shall pay to the commission, in addition to the license fee, a  
19 surety fund fee not to exceed \$125. After the fund reaches \$250,000  
20 the commission shall by regulation adjust the surety fund fees so  
21 that, taking into account anticipated expenditures for claims against  
22 the fund, the fund is maintained at a level not less than \$250,000.

23 (b) Fees collected under this section shall be paid at least  
24 once a month by the commission into the general fund. These payments  
25 shall be credited to the limited entry permit surety fund.

26 Sec. 16.43.582. CLAIM FOR PAYMENT. (a) A person seeking reim-  
27 bursement for a loss suffered in a transaction as a result of fraud,  
28 misrepresentation, deceit, or the conversion of trust funds on the  
29 part of a limited entry permit broker licensed under AS 16.43.500 -

1 16.43.593 shall make a claim to the commission for reimbursement on a  
2 form furnished by the commission. The form shall be executed under  
3 penalty of perjury, and information required to be supplied shall  
4 include the following:

- 5 (1) the name and address of the permit broker;
- 6 (2) the amount of the alleged loss;
- 7 (3) the date or period of time during which the alleged  
8 loss occurred;
- 9 (4) the date upon which the alleged loss was discovered;
- 10 (5) the name and address of the claimant; or
- 11 (6) the general statement of facts relative to the claim-  
12 ant.

13 (b) A copy of a claim filed with the commission under (a) of  
14 this section shall be sent to the permit broker alleged to have com-  
15 mitted the misconduct resulting in losses, at least 20 days before a  
16 hearing held on the claim by the commission.

17 (c) Within seven days after receipt of notice of a claim under  
18 (b) of this section the permit broker against whom the claim is made  
19 may elect to defend the claim as a small claims action in district  
20 court if the claim does not exceed the small claims jurisdictional  
21 limit. An election to defend a claim in district court under the  
22 small claims rules may not be revoked by the broker without the con-  
23 sent of the claimant. Upon receipt of a valid written election under  
24 this subsection the commission shall dismiss the claim filed with the  
25 commission and notify the claimant that the claim must be brought as a  
26 small claims action in the appropriate state court.

27 (d) A claimant under this section shall pay a filing fee of \$250  
28 to the commission at the time the claim is filed. The filing fee  
29 shall be refunded only if

1           (1) the commission makes an award to the claimant from the  
2 limited entry permit surety fund;

3           (2) the claim is dismissed under (c) of this section; or

4           (3) the claim is withdrawn by the claimant before the  
5 commission holds a hearing on the claim.

6           Sec. 16.43.583. CONSIDERATION OF APPLICATION. (a) Upon receipt  
7 of a claim for reimbursement, the commission may, in considering  
8 whether a claim should be granted,

9           (1) take and hear evidence pertaining to the claim;

10          (2) administer oaths and affirmations;

11          (3) compel, by subpoena, the attendance of witnesses and  
12 the production of books, papers and documents pertaining to the claim;

13          (4) engage the services of an investigator, accountant, or  
14 other expert necessary to process the claim.

15          (b) A certified or authenticated copy of a record, including a  
16 transcript of testimony, of a hearing held under AS 16.43.540 in which  
17 fraud, misrepresentation, deceit, or conversion of funds on the part  
18 of a licensed broker is established, may constitute sufficient evi-  
19 dence to support a finding.

20          (c) Before the commission finds that payment should be made from  
21 the limited entry permit surety fund, the permit broker shall be  
22 afforded an opportunity to file with the commission, within 10 days  
23 after receipt of notification of the claim under AS 16.43.582(b),  
24 either a written statement in opposition to the claim or an applica-  
25 tion for the presentation of additional evidence.

26          (d) The claimant bears the burden of proof of establishing that  
27 the claimant suffered losses in a transaction as a result of fraud,  
28 misrepresentation, deceit, or the conversion of trust funds on the  
29 part of a permit broker and the extent of those losses. Facts shall

1 be established by a preponderance of the evidence.

2 (e) The commission may postpone consideration of a claim until  
3 after a hearing under AS 16.43.540 or until after a pending or contem-  
4 plated court proceeding is completed.

5 (f) The provisions of this section do not apply to a claim that  
6 is dismissed under AS 16.43.582(c).

7 Sec. 16.43.584. FINDINGS AND PAYMENT. At the conclusion of the  
8 commission's consideration of a claim made under AS 16.43.582, the  
9 commission shall make written findings and conclusions on the evi-  
10 dence. If the commission finds that the claimant has suffered a loss  
11 in a transaction as a result of fraud, misrepresentation, deceit, or  
12 the conversion of trust funds on the part of a permit broker, the  
13 commission may award a claimant reimbursement out of the limited entry  
14 permit surety fund for the claimant's loss up to \$10,000. However,  
15 not more than \$10,000 may be paid for each transaction regardless of  
16 the number of persons injured or the number of permits involved in the  
17 transaction.

18 Sec. 16.43.585. HEARING COSTS. (a) When an award is made from  
19 the limited entry permit surety fund under AS 16.43.584, the commis-  
20 sion may charge to the fund the costs of a hearing held under AS 16.-  
21 43.540 or 16.43.583. Amounts subsequently recovered by the commission  
22 for these costs from the licensee under AS 16.43.540(b) or from other  
23 parties under AS 16.43.590 shall be deposited to the limited entry  
24 permit surety fund.

25 (b) An amount charged to the surety fund by the commission for  
26 costs under (a) of this section may not be considered in determining  
27 the maximum reimbursement to be awarded under AS 16.43.584 or in  
28 determining the maximum liability of the surety fund under AS 16.43.-  
29 587.

1           Sec. 16.43.586. PAYMENT OF SMALL CLAIMS JUDGMENT. If a claim  
2 originally filed with the commission is dismissed and is heard as a  
3 small claims action under AS 16.43.582(c) and the claimant prevails in  
4 the small claims action against the permit broker, the commission  
5 shall make an award from the surety fund of the outstanding portion of  
6 the small claims judgment on receipt of a copy of the final judgment  
7 and an affidavit from the claimant stating that more than 30 days have  
8 elapsed since the judgment became final and that the permit broker has  
9 not satisfied the judgment during that time. After payment of a small  
10 claims judgment the commission is subrogated to the claimant's rights  
11 in the judgment under AS 16.43.590.

12           Sec. 16.43.587. MAXIMUM LIABILITY. (a) The maximum liability  
13 of the limited entry permit surety fund may not exceed \$50,000 for any  
14 one broker.

15           (b) If the \$50,000 liability of the fund as provided in (a) of  
16 this section is insufficient to pay in full the valid claims of the  
17 persons who have filed claims against one broker, then the \$50,000  
18 shall be distributed among the claimants in the ratio that their  
19 individual claims bear to the aggregate of valid claims, or in another  
20 manner that the commission considers equitable. Distribution shall be  
21 among the persons entitled to share in the recovery, without regard to  
22 the order of priority in which their claims were filed.

23           Sec. 16.43.588. ORDER OF CLAIM PAYMENT. If the money deposited  
24 in the limited entry permit surety fund is insufficient at a given  
25 time to satisfy a duly authorized claim against the fund, the commis-  
26 sion shall, when sufficient money has been deposited in the fund and  
27 appropriated, satisfy unpaid claims in the order that the claims were  
28 originally filed, plus accumulated interest at the rate of eight  
29 percent a year.

1           Sec. 16.43.589. FALSE CLAIMS OR DOCUMENTS. A person who files  
2 with the commission a notice, statement or other document required  
3 under this chapter that contains an intentional material misstatement  
4 of fact, is guilty of a misdemeanor and is punishable by imprisonment  
5 for a period of not more than one year, or a fine of not more than  
6 \$1,000. or by both.

7           Sec. 16.43.590. RIGHT TO SUBROGATION. When the commission has  
8 paid to a claimant from the limited entry permit surety fund the sum  
9 awarded by the commission, the commission shall be subrogated to the  
10 rights of the claimant to the amount paid and the claimant shall  
11 assign all right, title, and interest in that portion of the claim to  
12 the commission. Amounts subsequently realized by the commission on  
13 the claim shall be deposited to the limited entry permit surety fund.

14           Sec. 16.43.591. DISCIPLINARY ACTION AGAINST BROKERS. Repayment  
15 in full of obligations to the limited entry permit surety fund does  
16 not nullify or modify the effect of disciplinary proceedings brought  
17 under the provisions of AS 16.43.500 - 16.43.593.

18           Sec. 16.43.592. EXCEPTIONS. AS 16.43.500 - 16.43.593 do not  
19 apply to

20           (1) a person who is not a licensed permit broker who makes  
21 a transaction with respect to a limited entry permit the person owns  
22 or on the person's own behalf;

23           (2) an attorney in fact under a power of attorney authoriz-  
24 ing the consummation of a specific transaction; an attorney in fact  
25 may not act as such for more than two transactions in a calendar year;

26           (3) a lawyer performing duties as a lawyer;

27           (4) a public official in the conduct of official duties;

28           (5) a person acting as receiver, trustee, administrator,  
29 executor, or guardian;

- 1                   (6) a person acting under court order;  
2                   (7) a person acting under the authority of a will or trust  
3 instrument.

4                   Sec. 16.43.593. REGULATIONS. The commission shall adopt regu-  
5 lations reasonably necessary to implement the provisions of AS 16.-  
6 43.500 - 16.43.592.