

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 364

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to commercial fishing violations;
7 and providing for an effective date."

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

9 * Section 1. AS 16.05.710(a) is amended to read:

10 (a) Upon a first or second misdemeanor conviction of a person
11 for a violation of AS 16.05.440 -- 16.05.690 [16.05.720] or a federal
12 or state law or regulation for the conservation or development [PRO-
13 TECTION] of the commercial fish of the state, the court may, in addi-
14 tion to the penalty otherwise imposed by law, forfeit the person's
15 right to hold or obtain a commercial fishing license or to obtain an
16 interim use or limited entry permit [OF THE PERSON] for a period of
17 one year, or, if the person holds an interim use or limited entry
18 permit, suspend one or more of the person's permits for a period of
19 one year. Upon a third or subsequent conviction, the court may, in
20 addition to the penalty otherwise imposed by law, forfeit the person's
21 right to hold or obtain a commercial fishing license for a period not
22 to exceed three years, or if the person holds an interim use or limit-
23 ed entry permit, suspend one or more of the person's permits for a
24 period not to exceed three years. During the period that an interim
25 use or limited entry permit is suspended, a permit card may not be
26 issued and the permit may not be transferred or sold.

27 * Sec. 2. AS 16.05.710 is amended by adding a new subsection to read:

28 (c) In this section "commercial fishing license" includes a
29 crewmember license.

1 * Sec. 3. AS 16.05 is amended by adding new sections to read:

2 Sec. 16.05.722. STRICT LIABILITY COMMERCIAL FISHING PENALTIES.

3 (a) A person who without any culpable mental state violates
4 AS 16.05.440 -- 16.05.690, or a regulation of the board of fisheries
5 or the department governing commercial fishing, is guilty of a vio-
6 lation and upon conviction is punishable by a fine of not more than
7 \$6,000. In addition, the court shall order forfeiture of any fish, or
8 its fair market value, taken or retained in any manner in connection
9 with or as a result of the commission of the violation. For purposes
10 of this section, it is a rebuttable presumption that all fish found on
11 board a fishing vessel used in or in aid of a violation, or found at
12 the fishing site, were taken or retained in violation of AS
13 16.05.440 -- 16.05.690 or a commercial fisheries regulation of the
14 board of fisheries or the department. It is the defendant's burden to
15 show by a preponderance of the evidence that fish on board or at the
16 site were lawfully taken and retained.

17 (b) A person charged with a violation under (a) of this section
18 is entitled to a trial by court but not by jury, and is not entitled
19 to representation at public expense.

20 (c) The state must prove the commission of a violation of this
21 section by a preponderance of the evidence.

22 Sec. 16.05.723. MISDEMEANOR COMMERCIAL FISHING PENALTIES. (a)

23 A person who negligently violates AS 16.05.440 -- 16.05.690, or a
24 regulation of the board of fisheries or the department governing
25 commercial fishing, is guilty of a misdemeanor and in addition to
26 punishment under other provisions in this title, including
27 AS 16.05.195 and 16.05.710, is punishable upon conviction by a fine of
28 not more than \$15,000 or by imprisonment for not more than one year,
29 or by both. In addition, the court shall order forfeiture of any

1 fish, or its fair market value, taken or retained in any manner in
2 connection with or as a result of the commission of the violation, and
3 the court may forfeit any vessel and any fishing gear, including any
4 net, pot, tackle, or other device designed or employed to take fish
5 commercially, that was used in or in aid of the violation. Any fish,
6 or its fair market value, forfeited under this section may not also be
7 forfeited under AS 16.05.195. For purposes of this section, it is a
8 rebuttable presumption that all fish found on board a fishing vessel
9 used in or in aid of a violation, or found at the fishing site, were
10 taken or retained in violation of AS 16.05.440 -- 16.05.690 or a
11 commercial fisheries regulation of the board of fisheries or the
12 department, and it is the defendant's burden to show by a preponder-
13 ance of the evidence that fish on board or at the site were lawfully
14 taken and retained.

15 (b) If a person is convicted under this section of one of the
16 following offenses, then, in addition to the penalties imposed under
17 (a) of this section, the court shall impose a fine equal to the gross
18 value of the fish found on board or at the fishing site at the time of
19 the violation:

- 20 (1) commercial fishing in closed waters;
- 21 (2) commercial fishing during a closed period or season;
- 22 (3) commercial fishing with unlawful gear, including a net,
23 pot, tackle, or other device designed or employed to take fish commer-
24 cially; or
- 25 (4) commercial fishing without a limited entry permit
26 holder on board if the holder is required by law or regulation to be
27 present.

28 (c) If, within the 10 years preceding an offense, a person has
29 been convicted two or more times of an offense listed in (b) of this

1 section, regardless of whether the convictions are under this section,
2 under AS 16.05.722, or under former AS 16.05.720, then, upon a con-
3 viction of that person under this section for a violation listed in
4 (b) of this section, and in addition to the penalties imposed under
5 (a) of this section, the court shall impose a fine equal to three
6 times the gross value of the fish found on board or at the fishing
7 site at the time of the violation, or a fine equal to \$10,000, which-
8 ever is greater.

9 (d) In this section, to be "negligent" means to deviate from the
10 standard of care that a reasonable person involved in commercial
11 fishing would observe in the situation.

12 * Sec. 4. AS 16.05.925 is amended to read:

13 Sec. 16.05.925. PENALTY FOR VIOLATIONS. Except as provided in
14 AS 16.05.430, 16.05.722, 16.05.723, [16.05.720,] 16.05.831, and
15 16.05.860, a person who violates AS 16.05.920, or a regulation adopted
16 under this chapter or AS 16.20, is guilty of a class A misdemeanor.

17 * Sec. 5. AS 16.05.720 is repealed.

18 * Sec. 6. This Act takes effect immediately under AS 01.10.070(c).