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Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### CS HB 124; Summary

Section 1: The commissioner may adopt regulations to carry out the provisions of AS 16.10.270- 16.10.296.

Section 2: Those operations which neither purchase fish nor hire employees may, after investigation of the commissioner, be granted a waiver from the bonding requirement of AS 16.10.290-296.

Section 3: Those persons required to obtain a bond and fail to do so will be guilty of a class A misdemeanor. Each day a violation occurs constitutes a separate offense.

Section 4: Sections 1 and 3 take effect immediately.

Section 5: Section 2 takes effect December 31, 1981

D R A F T

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which would amend the bonding requirements of AS 16.10 which a fish processor or primary fish buyer must meet to qualify for a business license or fisheries business license. The processor, or person engaging or attempting to engage in a "fisheries business" as defined in AS 43.75.140(3) must obtain a fisheries business license under AS 43.75.011. The primary fish buyer must obtain an Alaska business license under AS 43.70.020. The bill would delete the existing provision allowing the processors or buyers to pledge a negotiable security rather than obtain a surety bond, permitting only a surety bond or a cash deposit. The exemption in AS 16.10.290(c) from the requirement of obtaining a bond for a person with property in the state which exceeds \$10,000 in value that is unencumbered would also be repealed. This would relieve the Department of Labor from the responsibility of investigating the value and title of the property used as security.

The bonding requirement under this bill could be waived by the commissioner for those small operations that do not purchase fish or hire employees. This bill also would establish a penalty for those processors and buyers who fail to obtain a bond, and autho-

rizes the commissioner of labor to adopt regulations to carry out the purposes of AS 16.10.270 -- 16.10.296.

Sincerely,

Jay S. Hammond  
Governor

CSHB 124



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CLASS "A" Misdemeanor- Less serious violence against a person, offenses against property, offenses against public administration, Public Health, and decency, than felonies.

Sentences:

Class "A" Misdemeanor- Not more than a year

Class "B" Misdemeanor- Not more than 90 days

Fines:

Class "A" Misdemeanor- Not more than \$5,000

Class "B" Misdemeanor- Not more than \$1,000

COMMITTEE REPORT

SENATE

5/5/81

FURTHER: None

Date: 11 MAY 1981

Mr. President:

The Committee on LABOR & COMMERCE has had CSHB 124(Res)  
purchase of raw fish

under consideration and (a majority of the committee) (the committee)  
reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for \_\_\_\_\_  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Holman

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Bill [unclear]

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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[Signature]

CHAIRMAN



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# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

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#### COMMITTEE MINUTES:

11 May, 1981

The Senate Committee on Labor and Commerce was called to order by Senator Mulcahy; Senator Fahrenkamp had been excused from a call on the Senate. Senator Mulcahy announced that HB 214 am would be the first order of business.

Representative Brown, sponsor of the bill, provided an overview of the bill and its amendment, urging passage. Don Koch, Division of Insurance, gave testimony in support of the bill and offered to entertain questions of the committee.

Next on the agenda was CS HB 124, addressed by Judy Knight, Department of Labor, expressing the Department's support of the bill, and explaining the provision granting authority to the commissioner for waiving the bonding requirements for those "mom and pop" operations which neither purchase fish nor use employees. The bill further provides penalties for those cash buyers who are un-bonded (class A misdemeanor) and that both the Departments of Labor and Fish and Game support this concept. For the record, Senator Mulcahy explained that he and Dale Cheek (Dept. of Labor) had discussed this bill at length. The next testimony given was from Dan Moore, a cash buyer, who felt that the bonding requirements were restrictive to small businessmen, and he proposed some amendments for those operations which complied with the "spirit" of the intent. Along with his proposed exemption amendments, he questioned the various effective dates provided for in the bill, hoping to amend the effective date in Section 2. Senator Mulcahy explained the rationale for having the December 31st effective date. Roger Painter, UFA, spoke next, expressing support for the bill, urging passage.

CSHB 325 was addressed by Willis Kirkpatrick, Division of Banking Securities, explained that the bill would allow for remedial actions

for fraudulent proxy solicitations in Native Corporations. Various Native Corporations have expressed the need to address the problem of proxy solicitations and this bill would allow the Department to expedite measures thru examination of proxies rather than injunctive operations. The bill inadvertantly passed the House without the attendant fiscal note, and Mr. Kirkpatrick clarified the fiscal note distributed to the L&C committee explaining the requirement of additional staff for assisting with proxies at Native stock holders meetings. He urged passage of the bill.

SB 552 was addressed by Senator Mulcahy who expounded on the specific problem in the Kodiak community and around the State, where "live-in" parents in certain institutions are impacted by the wage and hour act, while working an on call (24 hr.) shift. Bob Smathers, Department of Labor, explained that while the Department supports the bill, there may be problems with the Federal Government. The bill only addresses couples (married), and Mr. Smathers offered some proposed changes. Judy Knight, DOL, expressed concern with the language, and Senator Mulcahy suggested we hold the bill until the appropriate amendments have been drafted.

HB 214am, CSHB 124, and CSHB 325 were moved from committee with individual recommendations. Senator Mulcahy adjourned the meeting at 3:25pm.

chapter is grounds for suspension of a fishing license or permit by the Department of Fish and Game. (§ 2 ch 33 SLA 1962)

Article 6. Purchase of Fish.

Section

- 270. Purchase of fish by the pound
- 280. Price disputes between fishermen and fish processors
- 290. Security for collection of wages and payment for raw fish

Section

- 292. Filing evidence of compliance
- 294. Suspension and revocation of license
- 296. Definitions

Sec. 16.10.270. Purchase of fish by the pound. (a) A fish processor or primary fish buyer shall purchase raw fish by the pound. The poundage of the fish to be purchased shall be determined by weighing the fish unless both the buyer and seller agree in writing upon a sample weighing technique which will fairly determine the average weight of the fish purchased.

(b) A person who violates this section is guilty of a misdemeanor and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than \$5,000, or by both. (§ 1 ch 49 SLA 1965; am § 1 ch 34 SLA 1969; am § 1 ch 102 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "fish processor or primary fish buyer" for "primary buyer" near the beginning of subsection (a).

Legislative committee report. — For report on ch. 34, SLA 1969 (CSHB 40 am S), see 1969 House Journal, p. 142.

Sec. 16.10.280. Price disputes between fishermen and fish processors. In an area where a price dispute exists between at least one-third of the registered commercial fishermen for that area, as certified by the Department of Fish and Game, and fish processors on the price to be paid for salmon, and no agreement has been reached up to 30 days before the opening of the salmon fishing season in that area, a representative from the Department of Labor shall intervene as mediator of the dispute upon request of either party. (§ 1 ch 242 SLA 1970)

Revisor's note (1970). — In ch. 242, SLA 1970, AS 16.10.280 was incorrectly designated AS 16.10.290.

Sec. 16.10.290. Security for collection of wages and payment for raw fish. (a) A fish processor or primary fish buyer shall file with the commissioner of labor a surety bond running to the State of Alaska conditioned upon the promise to pay (1) all persons furnishing labor to a fish processor or primary fish buyer, including contractual employee benefits; and (2) independent registered commercial fishermen for the price of the raw fishery resource purchased from them. The surety or sureties shall be satisfactory, in the determination of the commissioner.

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(b) The amount of the bond shall be \$10,000. In lieu of the surety bond the fish processor or primary fish buyer may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for the bond. If no claim is asserted under this section within two years from the date the bond, cash deposit or other security is filed, the term of the bond, cash deposit or other security shall be two years; if a claim has been asserted within two years, the term of the bond, cash deposit or other security shall be for five years.

(c) A person applying for a license as a fish processor or primary fish buyer who has less than \$10,000 in lienable property in the state, with proof of the property satisfactorily made to the commissioner, shall file with the application a bond or other security as specified in this section. No bond is required if the fish processor or primary fish buyer has more than \$10,000 in lienable property as specified in this subsection.

(d) Upon certification by the commissioner that a person applying for a license as a fish processor or primary fish buyer has complied with §§ 290 — 296 of this chapter, the Department of Revenue may issue that person a license to engage in the business of fish processor or primary fish buyer.

(e) The commissioner may accept the assignment of a claim held by a person against a fish processor or primary fish buyer under this section and may bring suit upon the bond, cash deposit or other security on behalf of the assignor in the superior court of the judicial district in which the work is done or in any judicial district in which jurisdiction may be obtained. This action shall not be construed to limit the right of a person having a claim under §§ 270 — 296 of this chapter against a fish processor or primary fish buyer to bring suit upon the bond, cash deposit or other security in his own right, in which case a copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed. The commissioner shall maintain a record, available for public inspection, of all suits commenced under this subsection. The service shall constitute service on the surety, and the commissioner shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received.

(f) If the surety on the bond desires to cancel the bond, he may do so by giving the commissioner written notice of his intention to cancel. The cancellation is effective 30 days after the notice is delivered to the commissioner.

(g) If a judgment is entered against the cash deposit, the commissioner, upon receipt of a certified copy of a final judgment, shall pay the judgment from the amount of the deposit. (§ 2 ch. 102 SLA 1977)

**Sec. 16.10.292. Filing evidence of compliance.** A fish processor or primary fish buyer subject to §§ 270 -- 296 of this chapter shall initially file evidence of his compliance with the bonding requirements of §§ 290

— 296 of this chapter, in the form prescribed by the commissioner. (§ 2 ch 102 SLA 1977)

Sec. 16.10.294. Suspension and revocation of license. (a) If a final judgment impairs the liability of the surety upon the bond or depletes the cash deposits or other security so that there is not in effect the bond, undertaking cash deposit or other security in the full amount prescribed in § 290 of this chapter, the license of the fish processor or primary fish buyer shall be suspended until the liability in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(b) If a bonding company cancels its bond of a fish processor or primary fish buyer, the fish processor's or primary fish buyer's license shall be revoked. He may again obtain a license by complying with the requirements of this chapter.

(c) If a licensed fish processor or primary fish buyer fails to fulfill his obligations as set out in § 290 of this chapter, his license shall be suspended for a period of time the commissioner determines is appropriate. After three suspensions his license may be permanently revoked.

(d) Proceedings to suspend or revoke a license are governed by the Administrative Procedure Act (AS 44.62).

(e) If the commissioner determines that a fish processor or primary fish buyer is acting in violation of §§ 270 — 296 of this chapter, he shall give written notice prohibiting further action by the person as a fish processor or primary fish buyer. The prohibition continues until the person has submitted evidence acceptable to the commissioner showing that the violation has been corrected.

(f) A person affected by an order issued under this chapter may seek equitable relief preventing the commissioner from enforcing the order.

(g) In an action instituted in the superior court by the commissioner or his representative, a person acting in the capacity of a fish processor or primary fish buyer in violation of this chapter may be enjoined from acting as a fish processor or primary fish buyer. (§ 2 ch 102 SLA 1977)

Sec. 16.10.296. Definitions. In §§ 270 — 296 of this chapter, unless the context otherwise requires,

- (1) "commissioner" means the commissioner of labor;
- (2) "fish" means any species of aquatic fin fish, invertebrates and amphibians, shellfish, or any other raw fishery resource, in any stage of its life cycle, found in or introduced into the state;
- (3) "fish processor" means a person engaging or attempting to engage in a business for which a license is required under AS 43.75.010 — 43.75.090;
- (4) "primary fish buyer" means a person, other than a cooperative corporation organized under AS 10.15, engaging or attempting to engage in the business of originally purchasing or buying any raw

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