

HB

201

HOUSE COMMITTEE REPORT

(9)
Date Referred: March 3, 1989 FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3-29-89

The RESOURCES Committee considered: HB 201

HOUSE BILL NO. 201 [TRANSFER ENTRY PERMITS/PENDING CHARGES]
"An Act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

- RECOMMENDATIONS:
- be replaced with CS HB 201 (255) the same title
 - have attached amendment(s) a new title
 - do pass
 - do not pass
 - no recommendation
 - individual recommendations
 - additional referral to the _____ Committee

ADOPTS: _____ letter of intent

- | | |
|---|---|
| ATTACHES NEW FISCAL NOTE(s):
(Dept) | APPROVES PREVIOUS:
(Date/Dept) |
| <input type="checkbox"/> fiscal impact _____ | <input type="checkbox"/> fiscal note(s) _____ |
| <input checked="" type="checkbox"/> <u>zero</u> fiscal note _____ | <input type="checkbox"/> <u>zero</u> fiscal note(s) _____ |
| <input type="checkbox"/> <u>zero</u> with analysis _____ | <input type="checkbox"/> <u>zero</u> fn/analysis _____ |

SIGNING DO PASS:

Clyde Davis

Scott Newland

Mike Brown

Richard Sobey

Bert Sharp

Mike

George

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend

Clyde Davis
Chairman's signature

6-0861H ✓
Utermohle
3/22/89

Original sponsors: Foster, Jacko,
Goll, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 201 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to additional penalties for viola-
7 tion of commercial fishing laws and for theft of
8 commercial fishing gear."

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

10 * Section 1. AS 16.05.710(a) is repealed and reenacted to read:

11 (a) Upon a person's first or second conviction for violating a
12 federal or state commercial fishing law, the court may, in addition to
13 other penalties imposed by law, suspend any or all of the person's
14 commercial fishing privileges and licenses for a period of not more
15 than one year. Upon the person's third or subsequent conviction for
16 violating a federal or state commercial fishing law, the court shall,
17 in addition to other penalties imposed by law, suspend ^{any or} all of the
18 person's commercial fishing privileges and licenses for a period of
19 not more than three years.

20 * Sec. 2. AS 16.05.710(b) is amended to read:

21 (b) Upon a first conviction of a person for a violation of
22 AS 11.46.120 - 11.46.130 in which the property is commercial fishing
23 gear as defined in AS 16.43.990, the court shall, in addition to the
24 penalty imposed by law, ^{any or} suspend all [ORDER A SUSPENSION] of the per-
25 son's commercial fishing privileges and licenses for one year. Upon a
26 second or subsequent conviction, the court shall, in addition to the
27 penalty imposed by law, ^{any or} suspend all [ORDER A SUSPENSION] of the per-
28 son's commercial fishing privileges and licenses for two years.

29 * Sec. 3. AS 16.05.710(c) is amended to read:

1 (c) If proceedings in which commercial fishing privileges or
2 licenses may be suspended under this section are pending against a
3 limited entry permit holder, the permit holder's limited entry permit
4 may not be permanently transferred, unless allowed by order of the
5 court in which the proceedings are pending, and a permanent transfer
6 of the permit, unless allowed by order of the court, is void. During
7 the period for which a limited entry permit or the permit holder's
8 right to obtain a limited entry permit or to engage in an activity for
9 which a limited entry permit is required is suspended under [(a) OF]
10 this section, a permit card may not be issued to the permit holder and
11 the permit holder's permit may not be transferred or sold.

12 * Sec. 4. AS 16.05.710(d) is repealed and reenacted to read:

13 (d) In this section

14 (1) "commercial fishing license" means a limited entry
15 permit or a crew member license;

16 (2) "commercial fishing privilege" means the privilege of
17 participating in an activity for which a commercial fishing license is
18 required and the privilege of obtaining a commercial fishing license;

19 (3) "commercial fishing law" means a statute or regulation
20 that regulates the conduct of a person engaged in commercial fishing
21 activities by establishing requirements relating to fishing licenses
22 and permits; catch records and reports; size, nature, or use of fish-
23 ing vessels, sites, and gear; time, place, or manner of taking fishery
24 resources; possession, transportation, sale, barter, or waste of
25 fishery resources; or other aspects of commercial fishing;

26 (4) "limited entry permit" means an entry permit or an
27 interim use permit issued under AS 16.43.

28 * Sec. 5. AS 16.43.170 is amended by adding a new subsection to read:

29 (f) The permanent transfer of an entry permit is void if

1 proceedings in which commercial fishing privileges and licenses may be
2 suspended under AS 16.05.710 are pending against the permit holder at
3 the time of transfer unless the transfer of the entry permit is al-
4 lowed by order of the court in which the proceedings are pending.
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FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Additional penalties for violation of Comm. fishing laws
 Sponsor: Foster, Jacko, Goll, Menard
 Requestor: House Resources Committee

Agency Affected: Dept. of Fish and Game
 BRU: Commercial Fisheries (Limited) Entry Commission
 Components: Program Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

Prepared by: David A. Ingram Phone: 586-3456
 Division: Commercial Fisheries (Limited) Entry Commission Date: 3-13-89
 Approved by Commissioner: [Signature] Date: 3-13-89
 Agency: Commercial Fisheries (Limited) Entry Commission


Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

MEMORANDUM**STATE OF ALASKA**

TO: House Resources Committee

DATE: March 28, 1989

FILE NO:

FROM: David A. Ingram 
Managing Hearing Officer
Commercial Fisheries
Entry Commission
M/S 0302
Tel. 465-4081

TELEPHONE NO:

SUBJECT: CS for House Bill
201/Penalties for
Fishing Violations

Herewith is a section by section analysis of the effect of Committee Substitute for House Bill 201, an act relating to additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear.

Section 1

This section eliminates potentially confusing language in the act; broadens the court's abilities to suspend a violator's fishing privileges; and adopts language that is consistent with language used elsewhere in the act.

Section 2

This section makes it clear that a person's commercial fishing licenses as well as fishing privileges may be suspended if he steals another's fishing gear.

Section 3

This is the most critical part of the bill. It provides that a person who is facing potential suspension of his commercial fishing permits under AS 16.05.710(a) or (b) may not permanently transfer away his permits unless the trial court allows him to do so and further provides that if such a transfer is completed without the court's permission, it is void.

Section 4

This section provides definitions of "commercial fishing law" and "commercial fishing privileges," which are missing from the act as it now exists and also gives better definitions for the other terms defined.

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

March 28, 1989

The Honorable Curt Menard, Chair
House Resources Committee
Alaska State House of Representatives
P.O. Box V
Juneau, AK 99811

Re: CS for HB 201

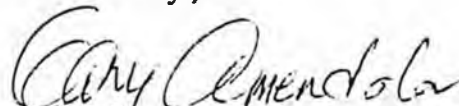
Dear Representative Menard:

You have asked this office to review CS for HB 201, which relates to "additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear." The committee substitute is identical to the sponsor substitute that was reviewed by Assistant Attorney General Tom Koester in a March 20, 1989 letter to Representative Richard Foster. See attachment 1.

We note that CS for HB 201 essentially incorporates changes suggested by Assistant Attorney General Koester in a March 20 letter to Senator Fahrenkamp which reviewed SB 164, a bill in the Senate that deals with the same subject as HB 201. See attachment 2. As with the sponsor substitute, we conclude that CS for HB 201 presents no legal or constitutional problems.

If we can help in any other way, please let us know.

Sincerely,



Gary I. Amendola
Assistant Attorney General

GIA/bt

Attachments

REPLY TO:

1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697

1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
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100 CUSHMAN ST
SUITE 400
FAIRBANKS ALASKA 99701-4679

P.O. BOX K—STATE CAPITOL
JUNEAU ALASKA 99811-0300
PHONE (907) 465-3600

March 20, 1989

The Honorable Richard Foster
Alaska State Representative
P.O. Box V
Juneau, AK 99811

Re: HB 201

Dear Representative Foster:

You asked for a legal review of a proposed sponsor substitute for House Bill ("HB") 201, relating to "additional penalties for violation of commercial fishing laws and for theft of commercial fishing gear."

We have reviewed the proposed sponsor substitute, and conclude that it presents no legal problems.

We also have looked at Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer limited entry permits to avoid forfeiture." We have some technical drafting concerns with that measure, which we have transmitted to the chair of the Senate Resources Committee (copy enclosed), but believe it presents no constitutional or other insurmountable legal problems. We note, however, that it does go substantially farther in terms of imposing significantly greater penalties for commercial fishing violations than either HB 201 or the proposed sponsor substitute. As a consequence, it may be more controversial in terms of obtaining ultimate passage.

Attachment 1

The Honorable Richard Foster

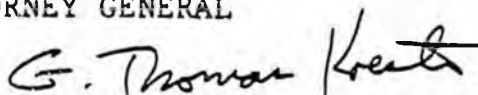
March 20, 1989
Page 2

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:



G. Thomas Koester
Assistant Attorney General

GTK:d1m

Enc.

cc w/o enc.: Representative Davidson
Representative Menard
House Resources Committee

Senator Fahrenkamp
Chairman of the Senate Resources Committee

Senator Zharoff

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

The Honorable Richard Foster

March 20, 1989
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bcc: Arthur H. Peterson.
Juneau AGO

Laurie Otto
Criminal Division

STATE OF ALASKA

STEVE COV. PER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE ALASKA 99501-1994
PHONE: 1907 275-3550

1st NATIONAL CENTER
100 CUSHMAN ST
SUITE 400
FAIRBANKS, ALASKA 99701-4679

March 20, 1989

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE 1907 463-3500

The Honorable Bettye Fahrenkamp, Chair
Senate Resources Committee
P.O. Box V
Juneau, AK 99811

Re: SB 164

Dear Senator Fahrenkamp:

We have reviewed Senate Bill ("SB") 164, relating to "additional penalties for violation of commercial fishing laws and forfeiture of limited entry permits and to transfer of limited entry permits to avoid forfeiture," and would like to bring a few matters to your attention.

First, under section 1, substantially different penalties would apply depending on whether the person held a limited entry permit at the time the violation occurred. If, as a policy matter, it is believed desirable to have different penalties apply based on that distinction, it would be helpful to have the record reflect the reasons such a distinction was made. For example, why should a permit holder, upon a first or second conviction, not have the person's right to obtain a limited entry permit suspended while a person not holding a limited entry permit could have that right suspended? It would be helpful if, in the legislative record, there is some justification for this disparity of treatment if, as a policy matter, it is believed that such a disparity is appropriate.

Second, under section 1, AS 16.05.710(a) would be repealed and reenacted to apply to "[a] person convicted of a misdemeanor for violating AS 16.05.440 -- 16.05.690 or federal or state commercial fishing statute or regulation." Proposed AS 16.05.710(a)(1)(A) and (B) and (2)(A) and (B), on the other hand, address convictions "for violating a commercial fishing statute or regulation." This might lead to some confusion because the language is not as explicit as that used earlier in the section. To clear up any confusion, the phrase "violating a commercial fishing statute or regulation" used in subsections (1)(A)

The Honorable **Bettye** Fahrenkamp

March 20, 1989
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and (B) and (2)(A) and (2) could be replaced by the phrase "such a violation," which would refer back to the earlier reference to "a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation."

Finally, in section 6, the proposed new subsection (f) to be added to AS 16.43.170 includes the following sentence: "A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.210." It is a common practice in the state for notaries not to place a person under oath before signing an affidavit. Accordingly, the appropriate reference should be to unsworn falsification under AS 11.56.210, not perjury under AS 11.56.200.

We hope you find these comments helpful. If we can provide any additional information, please contact us at your convenience.

Sincerely,

DOUGLAS B. BAILY
ATTORNEY GENERAL

G. Thomas Koester
By: G. Thomas Koester
Assistant Attorney General

GTK:dlm

cc: Senator Zharoff
Representative Davidson
Representative Menard
Representative Foster

Bob Evans
Assistant Chief of Staff
Legislative Liaison
Office of the Governor

Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

bcc: Arthur H. Peterson
Juneau AGO

Laurie Otto
Criminal Division
Juneau

MEMORANDUM

State of Alaska

Department of Law

TO Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner
Commercial Fisheries Entry
Commission
Department of Fish and Game

DATE February 7, 1989
FILE NO 663-89-0233
TEL NO 465-3600
SUBJECT Can permit transfers be
suspended pending prosecution?

GTK

FROM G. Thomas Koester
Assistant Attorney General

FLS 10 1989

You asked whether the Commercial Fisheries Entry Commission ("the commission") has the authority to suspend the transferability of a permit pending criminal prosecution of the permit holder for a fish and game violation. The short answer is that the commission probably does not have such authority. In that event, you then asked whether the same end might be reached through some other procedure, such as requiring a permit holder, as a condition of release pending prosecution for a fish and game violation, to agree not to transfer a permit. The courts' liberal interpretation of their authority to impose conditions on the release of defendants pending trial suggests that the courts could require a defendant not to transfer a permit while the criminal proceeding is pending.

As a general matter, limited entry permits are freely transferable. If a permit holder follows the procedures set out in AS 16.43.170(b) and the commission's administrative regulations, and if the proposed transferee can demonstrate the present ability to participate actively in the fishery and the transfer agreement does not violate any provision of AS 16.43 or the commission's regulations, "the commission shall approve the transfer and reissue the entry permit to the transferee." Id. (in part). Under AS 16.043.170(b), then, the commission is under a mandatory statutory obligation to transfer the permit if the requisite procedures are followed and the required showing of ability to participate actively in the fishery is made.

There are specific statutory exceptions to this otherwise mandatory statutory obligation to transfer a permit. AS 16.05.710(a) provides that, upon conviction of a misdemeanor for violating AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation, the court may suspend the permit holder's limited entry permit. AS 16.05.710(c) provides: "During the period for which a limited entry permit is

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
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suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold." Nothing in either AS 16.05.170 or 16.05.710, however, prohibits transfer of a permit prior to conviction.

Under AS 16.43.960(a), the commission has the authority to revoke, suspend, or transfer all of a person's entry or interim-use permits if the person knowingly provides or assists in providing false information or fails to correct false information provided to the commission for the purpose of obtaining a benefit. Under AS 16.43.960(c), a permit subject to commission proceedings to revoke, suspend, or transfer it may not be transferred until all administrative and judicial proceedings have been concluded. Nothing in AS 16.43.960, however, prohibits transfer of a permit pending a criminal prosecution.

Under AS 16.43.970(d), a permit holder charged by the state with a violation of AS 16.43 or a regulation adopted under it may not transfer the permit until after the final adjudication or dismissal of the charges. Nothing in that statute, however, prohibits transfer of a permit pending the outcome of criminal proceedings relating to the laws regulating commercial fishing.

Finally, AS 16.43.970(e) provides that a permit under suspension may not be transferred without the consent of the commission, but does not apply that requirement to a transfer request made by a permit holder who is the subject of a pending criminal prosecution for violating a law relating to commercial fishing.

In brief, there is no express exception to the otherwise mandatory statutory obligation to transfer the permit pending a criminal prosecution of the permit holder for a violation of AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation. In the absence of explicit statutory authority to suspend the transferability of a permit pending such a prosecution, we believe the commission remains under the mandatory statutory obligation to transfer the permit if the requisite procedures have been followed.

We have discovered no cases directly addressing this question. 1/ In State Bd. of Medical Examiners v. Weiner, 172

1/ Judge Carpeneti apparently reached the same conclusion we
(Footnote cont.)

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Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989

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A.2d 661 (N.J. Super. Ct. App. Div. 1961), however, the State Board of Medical Examiners attempted to suspend temporarily a physician's license to practice medicine pending a criminal prosecution for manslaughter after 15 of his patients died. Under New Jersey law, the board had the authority to suspend a license to practice medicine for, inter alia, a "crime involving moral turpitude." Assuming that manslaughter was a crime involving moral turpitude, the court held that the board did not have the authority to suspend the license pending resolution of the criminal proceeding.

In reaching this conclusion, the court noted that the board might well have implied authority to suspend the license temporarily pending formal administrative proceedings before the board to suspend the license. The court refused, however, to find that such implied authority necessarily extended to a situation involving a criminal prosecution in court. The court reached this conclusion through a rigid statutory analysis, finding that the legislature intended the board's authority to suspend the license to be contingent on conviction of a crime of moral turpitude, but not upon an accusation (i.e., an indictment) standing alone.

If an Alaska court were to apply the same strict statutory analysis here, the commission would not have the legal authority to suspend a limited entry permit temporarily pending the outcome of a criminal prosecution. Under AS 16.05.710(a), the court has the authority to suspend a permit following conviction; under AS 16.05.710(c), the transferability of a permit is statutorily suspended only during the period of suspension ordered by the court.

It is not entirely clear that all Alaska courts would apply such a strict analysis, and there certainly are good public policy reasons why a court would not do so. Judge Carpeneti apparently did in the Stanbaugh case, however, and there can be

(Footnote cont.)

have reached when he entered a temporary restraining order prohibiting the commission from refusing to process a transfer request solely on the ground that there was a pending criminal prosecution of the permit holder on a fishing violation charge. Stambaugh v. Commercial Fisheries Entry Comm., 1 JU-88-1839 Civ. (Alaska Super., Nov. 18, 1988). Judge Carpeneti did not, however, include any legal analysis in his order, and one cannot determine the reasoning underlying it.

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Phil Smith, Commissioner, CFEC
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no argument that the commission's express statutory authority to suspend the transfer of permits temporarily appears limited to that appearing in AS 16.43.960(c) and 16.43.970(d) and (e). Under the express language of those statutes, the commission's authority to suspend transfers is triggered only by (1) the initiation of administrative proceedings before the commission relating to the revocation, suspension, or transfer of entry permits as a result of a person providing false information to the commission or a charge that the permit holder violated a provision of AS 16.43; or (2) a suspension of the permit.

While the commission does not have the express statutory authority to suspend a limited entry permit temporarily pending the outcome of a criminal prosecution in court, the same result might be reached through judicial imposition of conditions on the release of the permit holder pending the outcome of the criminal prosecution. AS 12.30.020(a) provides that a person charged with an offense shall

be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required, or will pose a danger to other persons and the community.

The offenses giving rise to judicial authority to suspend an entry permit are misdemeanors, so a person charged with one of those offenses would appear to be entitled to be released on his or her own recognizance or upon execution of an unsecured appearance bond unless the judicial officer finds either that release of the person will not assure his or her appearance or will pose a danger to other persons in the community.

The courts, however, appear to construe liberally their authority to impose additional conditions on the release of criminal defendants. Under AS 12.30.020(b)(6), in ordering a defendant to be released pending trial, the court may "impose any . . . condition considered reasonably necessary to assure the defendant's appearance as required and the safety of other persons and the community." An order imposing a condition of release is subject to appellate review under AS 12.30.030(b). The standard on review is whether the court abused its discretion.

Bruce Twomley, Chairman, CFEC
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Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

February 7, 1989
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The Supreme Court considered the issue of appropriate conditions of bail in Martin v. State, 517 P.2d 1389, 1398 (1974), and concluded that "trial judges have wide latitude in imposing suitable conditions for prehearing release, other than the denial of bail." The issue of bail conditions was also discussed in Gilbert v. State, 540 P.2d 485, 486 (1975):

Although he may not deny bail to an accused, prior to conviction, the trial judge can consider danger to the community as a factor in assessing the amount of bail or fixing the terms of a conditional release. He is in a far better position than an appellate court to assess the evidence and to determine, in the first instance, what alternatives are available, and the amount of bail that should be required.

Courts in Alaska impose a wide variety of bail conditions, and tailor the conditions to the facts of a particular case. For example, a court in an embezzlement case may order a defendant not to transfer funds or sell property while the case is pending. In a case where forfeiture of a motor vehicle is a possible penalty for driving while intoxicated, a court may order a defendant to give the title to the motor vehicle alleged to have been involved in the offense to the court and not to transfer title to the vehicle while the case is pending. 2/

Under AS 16.05.710, a possible penalty for a first or second violation of AS 16.05.440 -- 16.05.690 or a federal or state commercial fishing statute or regulation is suspension of a commercial fishing license or limited entry permit. Suspension is a mandatory penalty for a third or subsequent conviction of the above-listed offenses, or for any violation of AS 11.46.120 -- 11.46.130 in which the property is commercial fishing gear. After a limited entry permit is suspended under AS 16.05.710, a permit may not be transferred or sold.

It would be possible for a person to avoid the penalty provisions of the statute relating to permit suspension by transferring the permit prior to conviction. In this context, we believe a court has the authority to suspend transferability of a limited entry permit as a condition of bail pending trial.

2/ Forms of notice of forfeiture, acknowledgment of conditions, and order for this type of bail condition are attached.

Bruce Twomley, Chairman, CFEC
Rich Listowski, Commissioner, CFEC
Phil Smith, Commissioner, CFEC
Our File No. 663-89-0233

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Page 6

We realize that the foregoing conclusions leave open the possibility that the transfer of a limited entry permit pending a criminal prosecution may preclude the sentencing judge, following conviction, from imposing one of the penalties authorized by the legislature -- i.e., suspension of the convicted defendant's permit under AS 16.05.710(a) -- if a suspension on transfer is not ordered as a condition of bail. At the same time, there is no express statutory basis for administratively suspending the transferability of a permit pending a criminal prosecution, although the legislature has authorized suspension of transferability during the pendency of administrative proceedings (AS 16.43.960(c)), following the charging of a violation of AS 16.43 (AS 16.43.970(d)), during any period of suspension under AS 16.05.710(a) following conviction (see AS 16.05.710(c)), or, without the consent of the commission, during any other period of suspension. (See AS 16.43.970(e)). Moreover, the court can guard against such a possibility by suspending transfer of the permit as a condition of release pending trial.

To the extent that our advice with respect to administrative suspensions of transfer by the commission conflicts with the intent of the legislature, the legislature is free to make appropriate statutory amendments. If you believe such amendments would be desirable, we suggest that you make such a recommendation to the legislature pursuant to your authority in AS 16.43.-980(a).

We hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

GTK:dlm
Attachments [3]

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JOHN DOE)
)
Defendant.)
_____)
Case No. 1JU-S89-0000	

NOTICE OF INTENT TO FORFEIT MOTOR VEHICLE

The State of Alaska notifies the court and the defendant in the above-captioned case that upon the defendant's conviction for the crime of driving while intoxicated as charged in this case, the State will move, pursuant to AS 28.35.036, to forfeit the motor vehicle used by the defendant in the commission of this crime.

Year, Make and Model of Vehicle:

Vehicle License No.:

Vehicle Identification No. (V.I.N.):

DATED at Juneau, Alaska December 30, 1988.

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: _____
Laurie H. Otto
Assistant Attorney General

NOTICE OF INTENT TO FORFEIT

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
JOHN DOE)
)
Defendant.)
<hr/>	
Case No. 1JU-S89-0000)

ACKNOWLEDGEMENT OF CONDITIONS OF RELEASE

I hereby acknowledge that, as a condition of my release on bail pending trial on the criminal charges in this case, the court has ordered that I may not drive or operate a motor vehicle. I acknowledge that the court has ordered me to give the court within 48 hours the title to the motor vehicle alleged to have been involved in the commission of the offense with which I am charged. I acknowledge that the court has ordered me not to sell or attempt to sell or transfer title to this vehicle while the above-captioned case is pending.

Year, Make and Model of Vehicle:

Vehicle License No.:

Registered Owner(s) of Vehicle:

Vehicle Identification No. (V.I.N.):

I understand that if I willfully fail to appear in court as ordered, or if I drive or operate a motor vehicle while this

case is pending, the court will order that the vehicle listed above be permanently forfeited to the state and that the title will be turned over to the state.

SIGNED, at Juneau, Alaska this _____ day of _____, 19____.

Defendant

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 JOHN DOE)
)
 Defendant.)
)

Case No. 1JU-S89-0000

ORDER OF CONDITIONS OF RELEASE

This matter having come before the court on the State's Notice of Intent to Forfeit Motor Vehicle, and the court being fully advised of the relevant facts,

IT IS ORDERED that, as a condition of his release on bail pending trial on the criminal charges in this case, the defendant shall comply with the following restrictions:

1. Defendant may not drive or operate a motor vehicle.
2. Defendant must turn in to the court no later than _____, 19____ the title to the motor vehicle alleged to have been involved in the commission of the offense with which he is charged.

3. Defendant shall not sell or attempt to sell or transfer title to the vehicle described below while the above-captioned case is pending.

Year, Make and Model of Vehicle:

ORDER

Vehicle License No.:

Registered Owner(s) of Vehicle:

Vehicle Identification No. (V.I.N.):

DATED at Juneau, Alaska this _____ day of _____,
19____.

DISTRICT COURT JUDGE

ORDER

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 ROSS GLEN STAMBAUGH,)
4 Plaintiff,)
5 v.)
6 COMMERCIAL FISHERIES ENTRY)
7 COMMISSION, STATE OF ALASKA,)
8 Defendant.)

FILED IN THE TRIAL COURTS
STATE OF ALASKA FIRST DISTRICT
AT

NOV 18 1988

By _____ PG Deputy

No. 1JU-88-1839 Civil

9
10 PRELIMINARY INJUNCTION

11 Plaintiff has moved for issuance of a temporary
12 restraining order. After notice, both sides were heard. The
13 CFEC, through counsel, has opposed the motion.

14 The court has considered the brief of plaintiff, the
15 evidence, and the arguments of counsel. The court finds that
16 the requirements for preliminary injunctive relief have been
17 fulfilled: AS 16.05.710 allows no other conclusion.

18 It is hereby ordered that the CFEC is enjoined from
19 suspending approval of the license transfer application
20 regarding Limited Entry no. S03T 55709U solely on the basis of
21 the proposed Transferor's pending criminal charges.

22 The CFEC is hereby ordered to process the application
23 in accordance with AS 16.43.170(b) and 20 AAC 05.1700 et seq.,
24 without regard to the possible consequences of the criminal
25 action.

This is not a mandatory injunction, and does not

1 compel transfer of the permit in question. It merely restrains
2 suspension of transfer proceedings because criminal charges are
3 pending against the transferor. Therefore, for example, if the
4 CFEC moves under AS 16.43.960, it clearly has the authority to
5 suspend the permit holder's ability to transfer the permit upon
6 issuance of a show cause order. AS 16.43.960(b)(5). There may
7 also be other bases for such an action, not addressed here.
8 This court rules only that the CFEC may not suspend transfer
9 because a charge is pending against the transferor. AS
10 16.05.710.

11 No bond is required.

12 IT IS SO ORDERED.

13 Done at Juneau, Alaska this 18th day of November, 1988.

14
15 Walter L. Carpenetti

16 WALTER L. CARPENETTI
17 Superior Court Judge

18 CERTIFICATION

19 The undersigned certifies that on the 18th day of
20 November, 1988, a true copy of this
21 document was served on the following attorneys:
Steven MARKS; GARY AMENDOLA

22 BY [Signature]

23
24
25
Attachment #2
(2 of 2)

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) *[Repealed, § 27 ch 71 SLA 1986.]*

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (e) of 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 \$5,060, or by both.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

Effect of amendments. — The 1988 amendment, effective June 17, 1988, inserted "or (e)" in subsection (d) and added subsection (e).

Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

<p>Section 710. Suspension of commercial license and entry permit 720 <i>[Repealed]</i> 722. Strict liability commercial fishing penalties</p>	<p>Section 723. Misdemeanor commercial fishing penalties</p>
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Sec. 16.05.710. Suspension of commercial license and entry permit. (a) A person convicted of a misdemeanor for violating AS 16.05.440 — 16.05.690 or a federal or state commercial fishing statute or regulation is, in addition to other penalties provided by law, subject to the following penalties:

(1) upon a first or second conviction the court may suspend, for a period of not more than one year,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and

(2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,

(A) the person's commercial fishing license and the right to obtain a limited entry permit; or

(B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

(c) During the period for which a limited entry permit is suspended under (a) of this section a permit card may not be issued and the permit may not be transferred or sold.

(d) In this section

(1) "commercial fishing license" includes a crew member license;

(2) "limited entry permit" includes an interim use permit. (§ 11 art III ch 94 SLA 1959; am § 1 ch 112 SLA 1961; am § 1 ch 75 SLA 1966; am § 3 ch 73 SLA 1986; am §§ 1, 2 ch 46 SLA 1988)

Effect of amendments. — The 1988 amendment, effective May 25, 1988, repealed and reenacted subsection (a), which formerly related to the same subject matter, and added subsections (c) and (d).
Editor's notes. — Section 6 of ch. 46, SLA 1988, which amended this section, provides: "Notwithstanding the provisions of this Act, in a case pending on May 25, 1988 involving a commercial fishing violation that occurred before May 25, 1988, the court shall apply the law that was in effect on the date the violation occurred."

Sec. 16.05.720. Penalties. [Repealed, § 5 ch 46 SLA 1989.]

Sec. 16.05.722. Strict liability commercial fishing penalties. (a) A person who without any culpable mental state violates AS 16.05.440 — 16.05.690, or a regulation of the Board of Fisheries or the department governing commercial fishing, is guilty of a violation and upon conviction is punishable by a fine of not more than

(1) \$3,000 for a first conviction; and

(2) \$6,000 for a second or subsequent conviction.

(b) In addition, the court shall order forfeiture of any fish, or its fair market value, taken or retained as a result of the commission of the violation. For purposes of this subsection, it is a rebuttable presumption that all fish found on board a fishing vessel used in or in aid of a violation, or found at the fishing site, were taken or retained in violation of AS 16.05.440 — 16.05.690 or a commercial fisheries regulation of the Board of Fisheries or the department. It is the defendant's burden to show by a preponderance of the evidence that fish on board or at the site were lawfully taken and retained.

(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)

will be personally accompanied while hunting by a person who is qualified under the terms of (a) of this section. A person who falsifies the required affidavit is guilty of perjury under AS 11.56.200.

(c) *(Repealed, § 27 ch 71 SLA 1986.)*

(d) A nonresident who violates (a) of this section, or who fails to furnish an affidavit under (b) or (e) of 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.

(e) An applicant for a nonresident big game tag for the taking of moose or caribou shall first furnish to the state, on a form provided by the state, an affidavit showing where the applicant will be hunting and what guiding, transportation, or other big game hunting services the applicant will be employing. A person who falsifies an affidavit under this subsection is guilty of perjury under AS 11.56.200. (§ 1 ch 86 SLA 1967; am §§ 39, 40 ch 59 SLA 1982; am § 1 ch 74 SLA 1982; am § 1 ch 111 SLA 1984; am §§ 24, 25, 27 ch 71 SLA 1986; am §§ 9, 10 ch 160 SLA 1988)

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Article 4. Licensing of Commercial Fishing Crewmembers and Vessels.

Section 710. Suspension of commercial license and entry permit	Section 723. Misdemeanor commercial fishing penalties
720. <i>(Repealed)</i>	
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 - (B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license; and
- (2) upon a third or subsequent conviction the court shall suspend, for a period of not more than three years,
 - (A) the person's commercial fishing license and the right to obtain a limited entry permit; or
 - (B) one or more of the person's limited entry permits and the person's right to obtain a commercial fishing license.

(b) Upon a first conviction of a person for a violation of AS 11.46.120 — 11.46.130 in which the property is commercial fishing gear as defined in AS 16.43.990, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for one year. Upon a second or subsequent conviction, the court shall, in addition to the penalty imposed by law, order a suspension of the person's commercial fishing privileges for two years.

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(c) A person charged with a violation under this section is entitled to a trial by court but not by jury, and is not entitled to representation at public expense. (§ 3 ch 46 SLA 1988)